



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/13670/2015
AA/13671/2015
AA/13673/2015

THE IMMIGRATION ACTS

Heard in Liverpool
On 4 August 2017

Decision & Reasons Promulgated
On 8 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR A T, MRS Z M, MR M T,
(ANONYMITY DIRECTION MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L. Mensa, counsel instructed by AJO Solicitors
For the Respondent: Mr. McVeety, Home Office Presenting Officer

DECISION & REASONS

1. The appeal came before the Upper Tribunal for an error of law hearing on 28 April 2017. In a decision dated 22 May 2017, I found an error of law and adjourned the appeal for a resumed hearing before me, on the basis of submissions only. That decision is appended.
2. The Appellant's solicitors provided an updated bundle for the hearing, sent on 28 July 2017 and received by the Upper Tribunal on 31 July 2017. This includes *inter alia* a spoken Arabic assessment report dated 20 July 2017 in

respect of the third Appellant. An updated country expert report from Dr Rebwah Fatah dated 3 August 2017 was sent by fax the same day.

Hearing

3. At the beginning of the hearing, Mr McVeety indicated that in light of the linguistic report and the updated expert report that the third Appellant would be suspected as a Daesh/ISIS supporter by the State authorities thus there could be no internal relocation and he accepted that he would be at risk on return to Iraq. He indicated that he was maintaining the SSHD's challenge in respect of the first Appellant but to the extent only that he sought to rely on the refusal letter dated 9 November 2015.

4. Ms Mensah handed up brief biographies of the first and second Appellants which she submitted showed that they are both eligible to apply for jobs on the shortage occupation list: the first Appellant is a highly qualified multidisciplinary professional in Power Electronics & Control Engineering and Distributed Software Development, which fields of specialty are on the current list of shortage occupancies at SCO 2123 and SOC 2136. He obtained a PhD in Electronic Engineering & Electronics from the University of Liverpool in 1990. His wife, the second Appellant is a highly qualified Software Developer, who obtained her MSc in Computer Based Information Systems from Sunderland University in 2007. Her field of specialty is also currently on the shortage occupancy list: SOC 2136.

5. In respect of risk on return to Iraq, Ms Mensah submitted that:

5.1. The first two Appellants have a mixed Sunni/Shia marriage in that the first Appellant is Sunni & the second Appellant is Shia, but the children are seen as Sunni because they follow their father's line. Dr Fatah in his report sets out the risk from non-State actors in Baghdad in that Shia militia have been employed to support the fight against Daesh and Al Qaeda, which forces Sunni Muslims to flee into ever smaller circles in Baghdad, so for the Appellants the starting point is that they are in a mixed marriage.

5.2. The first two Appellants have been out of the country (Iraq) for 19 years. They are professionally qualified and there is a list of professionals that have been targeted and killed in the bundle and the witness statement of Professor Ali Al-Thamir at pages 71-73 of the bundle confirms the killings of a number of professionals and the fact that he fled from Iraq on 21 July 2003 and that two of his close colleagues were killed and another colleague was assassinated shortly after he fled.

5.3. The second Appellant is a highly educated woman, which was acceptable at the time she left Iraq but she would be returning back to a very different country where the position of women is different and women are vulnerable,

5.4. The Appellants do not have in place a support network in Baghdad. As is set out in his supplementary witness statement, the first Appellant had relatives who were part of the Ba'ath party and this would give rise to suspicions of him as a result and he would not be able to obtain employment. He would also be vulnerable to attack in Baghdad.

5.5. Ms Mensah submitted that all of those features taken together would lead to the Appellants being perceived as Western and will place them in a higher category of risk. They would also be perceived as wealthy because they are coming from the West and would be vulnerable to kidnap. Whether it would be on the basis of religious grounds or perceived political opinion there would be no sufficiency of protection for them and the fear of persecution was from non state agents. This was in contrast to the risk to the third Appellant, their son, who would be at risk from the State authorities because of his Jordanian accent and the resulting perceptions. Whilst the country information report from the Home Office makes reference to the support that could be accessed in the absence of sufficiency of protection, there are no family members in Baghdad and whilst the second Appellant has relatives in Kerbala, this is one of the areas that there has been particular violence and the expert evidence makes clear that those in a mixed marriage can only realistically live in Baghdad. She submitted that there was a heightened risk to the family which was clear from the language analysis and expert evidence. They are a family unit and the family will attract all of the wrong attention because all of the features they carry.

6. Ms Mensah also sought to rely on the Upper Tribunal decision in *BA (Returns to Baghdad)* Iraq CG [2017] UKUT 00018 (IAC), in particular, the fact that kidnapping remains a significant problem; there is sectarian violence and the Shia dominated government is supported by Shia militia and Sunni men are likely to be targeted; individual characteristics which do not, in themselves, create a real risk on return might amount to a real risk if considered cumulatively. The authorities were unable and unwilling to provide protection to Sunni complainants. Ms Mensah invited me to allow the appeal on refugee grounds for all of the family members.

7. In respect of Article 8, Ms Mensah accepted that the Appellants did not meet the partner or parent requirements of Appendix FM of the Rules. She submitted that the Appellants did meet the private life requirements under paragraph 276ADE(vi) of Appendix FM in that there would be very significant obstacles to their integration into Iraq. It is clear from the medical evidence that the third Appellant has very serious mental health problems and that there would be serious discrimination against the family members on the basis of the Sunni religion of the first and third Appellants and the fact that the first and second Appellants are in a mixed marriage. All of those things would make employment extremely difficult. Moreover, IDPs in Baghdad are living in extreme poverty. All of these factors amount to very significant obstacles.

8. In respect of consideration of Article 8 outside the Rules, they could meet the financial and English language requirements. Whilst their private life was developed at a time when their private life in the UK was precarious, they were here lawfully. The first and second Appellants' daughter is here in the United Kingdom and has refugee status and the relationship has now been re-kindled. It has been accepted on the evidence that their son cannot return to Iraq and it cannot be proportionate for the family to be severed, given the young ages of the daughter and son and the fact that the first and second Appellant are the only family they have and the emotional and physical dependency. The relationships between the parents and children would be severed and their son has never lived without his parents. The first Appellant and thus the rest of the family has lost residency in Jordan and the first Appellant has lost his pension as well. They are clearly able to work and there would be no burden upon the State. Ms Mensah submitted that the public interest does not weigh in favour of them leaving and that the Immigration Rules do not recognize these unique circumstances. She submitted that there were exceptional circumstances and in the alternative there were very significant obstacles to private life in Baghdad.

Decision and reasons

9. I allow the appeals on refugee protection grounds and in the alternative with reference to paragraph 276ADE(vi) of the Rules and Article 8 human rights grounds. I announced my decision at the hearing. I now give my reasons.

Third Appellant

10. The essential facts of the appeal by the third Appellant, MT are that he is a national of Iraq, born on 1 March 1999 in Jordan and he has never lived in Iraq. The medical evidence makes clear that he suffered a deterioration in his mental health and began self-harming in the Summer of 2014, arising from a fear of being returned to Iraq following the refusal by the SSHD to extend his father's Tier 2 visa. He was at that time 15 years of age and he was referred to the child psychiatrist at Alder Hey and then to the child and adolescent mental health team, following which his condition improved but relapsed when he discovered that the family's asylum application had been refused, as a consequence of which he was unable to complete his GCSE examinations in June 2016.

11. The First tier Tribunal Judge accepted the third Appellant's medical condition but found it did not reach the Article 3 threshold [67] and whilst it was in the third Appellant's best interests to remain in the UK [81] it would not be disproportionate to expect the family to return to Iraq [83]. However, further evidence was produced to the Upper Tribunal, including:

- (i) expert report of Dr Rebwah Fatah dated 23 November 2016;
- (ii) spoken Arabic assessment report dated 20 July 2017;
- (iii) supplementary report of Dr Rebwah Fatah dated 3 August 2017.

12. The first expert report of Dr Fatah at [168] identifies that the third Appellant would be at risk as a Sunni Arab and see [173]-[205]. I note that the Upper Tribunal reached the same conclusion generally in respect of Sunni males in *BA (Returns to Baghdad) Iraq CG* [2017] UKUT 00018 (IAC) although they found that “*Sunni identity alone is not sufficient to give rise to a real risk of serious harm*”. At [230] of his report, Dr Fatah opined that if the third Appellant had a Jordanian accent, this would be likely to cause him to be treated with suspicion wherever he may relocate to in Iraq, particularly in Baghdad.

13. The Appellant’s solicitors commissioned a report concerning the spoken Arabic of the third Appellant, by Ali Sarmemy, a professional interpreter who has produced “*numerous expert reports, which have been commissioned for the First-tier Tribunal, Home Office and the Police in the UK and Europe.*” Mr Sarmemy concludes, having conducted a number of tests that the third Appellant speaks Jordanian Arabic and not Iraqi Arabic.

14. The supplementary report of Dr Fatah makes clear at [38]-[39] that this Appellant’s Jordanian accent is likely to put him at risk or at least put him under suspicion in any encounter with Shia militias who control the security apparatus in Baghdad as Sunni Arab males are often targeted by these militias for their perceived association with ISIS and other insurgent groups. Jordan is one of the countries that has a high number of ISIS fighters in Iraq and Syria and prior to that within Al-Qaeda in Iraq (AQI) that sought to destroy Shia rule in Iraq and were responsible for provoking the civil war and whose leader was a Jordanian national.

15. The issue of individualized risk in respect of this Appellant was not put forward at the previous hearing, given his young age and because it was only upon receipt of the first report of Dr Fatah in November 2016 that this head of claim emerged. The appeal was conceded in light of the evidence produced prior to the hearing before the Upper Tribunal. I consider that Mr McVeety on behalf of the Home Office was correct to concede his appeal. However, for the avoidance of doubt, in light of the expert evidence, the country guidance decision in *BA (Returns to Baghdad) Iraq CG* [2017] UKUT 00018 (IAC) and the fact that the third Appellant is a Sunni male with a Jordanian accent I allow the appeal of the third Appellant on refugee protection grounds.

First Appellant

16. The first Appellant’s evidence – that he is an academic with a profile; his family members (his brother and his cousin) were Level 3 Divisional members of the Ba-ath Party (ie above rank and file) and that his marriage is “mixed” in that he is Sunni and his wife is Shia – was accepted by the First tier Tribunal Judge and his findings at [32]-[39] were unchallenged in the grounds of appeal to the

Upper Tribunal and are preserved. The Respondent in the refusal letter of 9 November 2015 found that the Appellant would not be at risk for these reasons. The issue is, whether in light of the expert evidence that post dates the SSHD's decision and that of the First tier Tribunal Judge, the first Appellant has a well-founded fear of persecution if returned to Iraq.

17. I have had regard to the first expert report of Dr Fatah dated 23 November 2016, who concludes as follows in respect of risk to the first Appellant:

(i) Sunni Arabs (the majority group of the Baath apparatus) fear being perceived by Shias as inherently pro-Baathist simply for protesting against the government and this phenomenon is perhaps most manifest in the killings of Iraqi academics, who were regarded as agents of the Baath regime even if membership was simply expedient [158]-[159];

(ii) All civilians are at risk of indiscriminate violence in Baghdad however the first and third Appellants are at greater risk of targeted violence because of their Sunni identity [202];

(iii) Should the Appellants feel at risk from Shia militias in Baghdad they cannot rely on the police for protection [280].

18. I have also had regard to a witness statement of Professor Ali Al-Thamir dated 15 August 2016, who states that the first Appellant worked under him at the University of Technology in Baghdad from 1990 to 1993 and 1995 to 1998; that from 2003 professionals such as University professors and their families were regularly targeted, 300 were killed and that he was forced to flee on 21 July 2003, following the killing of two of his close colleagues. He also stated that one of his colleagues, Dr Saad Al-Shaabani returned from Jordan in 2010 and was assassinated the following month in Baghdad.

19. I accept Ms Mensah's submission in light of the background evidence including that set out in the CIG in respect of Iraq; Sunni (Arab) Muslims August 2016 (recently updated in June 2017) that, whilst the number of mixed Shia Sunni areas in Baghdad is reducing due to attacks by Shias, these are the only neighbourhoods where the Appellants could live. I have given careful consideration to the CG decision of the Upper Tribunal in *BA (Returns to Baghdad) Iraq CG* [2017] UKUT 00018 (IAC). Reference is made therein at [24] to the conclusions of the ECtHR in *JK and Others v Sweden* (Application no. 59166/12) (23 August 2016) at [116] which records that the Home Office Country of Origin Information report dated 2014, single out certain particularly targeted groups, such as interpreters, Iraqi nationals employed by foreign companies, and certain affiliated professionals such as judges, academics, teachers and legal professionals, as being at risk of persecution. The Upper Tribunal reached *inter alia* the following conclusions:

(iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.

(v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

(vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.

(vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection."

20. I have concluded in light of the expert and background evidence and the CG decision set out above, that the first Appellant has a well-founded fear of persecution if returned to Iraq on a cumulative basis *viz* his Sunni religion; his mixed marriage and his profile as an academic with family links to the Baath Party. I allow his appeal on refugee protection grounds.

21. In respect of the second Appellant, she is a dependant on her husband and I did not hear submissions specifically on the issue of risk on return, save that she is a professionally qualified woman and this would cause her difficulties on return to Iraq as women are vulnerable. Whilst I accept that this may well be the case, there is an absence of evidence before me to show that the second Appellant would be at risk specifically on account of her gender. The First tier Tribunal Judge considered and rejected her claim to be at risk on account of her daughter's behaviour *viz* drinking and smoking, which had been published on facebook. She may at risk on account of her mixed marriage but the evidence does not go as far as to state this in terms. Consequently, her appeal falls to be allowed on the basis that she is a dependant of her husband.

22. I go on to consider in the alternative, whether removal of the Appellants would be contrary to their private life pursuant to Article 8 of ECHR. I have had regard to paragraph 276ADE(vi) of the Rules and whether: "*there would be very significant obstacles to the applicant's integration into the country to which he would*

have to go if required to leave the UK.” In light of my findings as to the risk on return to the first and third Appellants I find that there are very significant obstacles to their integration into Iraq. In respect of the second Appellant, I have considered whether there are compelling reasons justifying consideration of Article 8 outside the Rules and I have concluded that there are, bearing in mind that her daughter has been granted refugee status in her own right and the SSHD has conceded her son’s appeal. Whilst both children are now adults, having been born in 1998 and 1999 they are very young adults and careful consideration must be given to splitting a family. I have had regard to section 117B of the NIAA 2002 and the fact that she (and her husband and son) speak English and are financially independent. I bear in mind that the private life of each family member has been established at a time when their status in the United Kingdom was precarious. I have concluded, when all the factors are considered cumulatively, that it would not be proportionate for the family to be separated, with the result that the appeals are allowed, in the alternative on human rights grounds.

23. I was invited to consider making a costs order pursuant to rule 10(3)(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 on the basis that the Secretary of State acted unreasonably in defending proceedings. I have given careful consideration whether to do so and I have concluded that it would not be appropriate in light of the fact that the evidence that tipped the balance in respect of the third Appellant was submitted only shortly before the hearing before the Upper Tribunal, in that the bundle containing the spoken Arabic assessment report dated 20 July 2017 was only received by the Presenting Officers Unit and the Upper Tribunal on 31 July 2017 and the supplementary expert report of Dr Fatah was dated 3 August 2017 and was only received on the date of the hearing.

Decision

24. The appeals of all three Appellants are allowed on the basis of refugee protection grounds (in respect of the first and third Appellants in their own right and in respect of the second Appellant, as a dependant of her husband, the first Appellant).

25. The appeals are allowed, in the alternative, on human rights grounds (family and private life) protected by Article 8 of ECHR.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman
7 August 2017