



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02164/2015

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 14 March 2016

Decision & Reasons Promulgated
On 7 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

OMAR ABBAS MESHIAH AL-AZZAWI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayarti instructed by Thakrar & Co
For the Respondent: Mr Duffy Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Nicol promulgated on 21 July 2015 which allowed the Appellant's appeal against the decision of the Respondent to remove the Appellant from the UK following the decision to refuse the Appellant's claim for asylum

Background

3. The Appellant was born on 17 August 1982 in Baghdad and is a national of Iraq and a Sunni Muslim. The Appellant was educated to Masters Degree level.
4. The Appellant had lived in one of the last Sunni communities in Baghdad surrounded by Shi'a. His area was regularly attacked by sectarian Shi'a militia. The Appellant was easily identified as Sunni because he was called Omar.
5. In September 2013 the Appellant was awarded a fully funded scholarship to complete a PhD in the UK, USA or Australia. He was offered a place on a course at Manchester University in Geotechnical Engineering.
6. The Appellant was employed by the Central Bank of Iraq and worked on a project that entailed meetings in London with architects.
7. The Appellant came to the UK on 3 March 2014 for 10 days. On his return to Iraq the atmosphere at work had changed and questions were asked as to why as a Sunni he had been allowed to travel to London. The Appellant believed that this caused him to be identified by members of the Shi'a militias who had infiltrated government organisations such as the bank he worked for.
8. In April 2014 the Appellant applied for a 6 month business visa for the UK and he intended to come on 14 June 2014.
9. The capture of Mosul on 10 June 2014 by ISIS increased Shia/Sunni tensions in Baghdad and the targeting of Sunnis increased.
- 10.6 July 2014 the Appellant was told by a colleague not to return to work as it was not safe. He told him Shi'a militia had been making enquiries about him. The Appellant went to stay with a friend in another area of the city for 5 days. His friend advised him to leave Baghdad and go to the UK because of the upturn in sectarian violence in the city.

11. 8 July 2014 the friend gave him air tickets and offered to arrange safe travel to the airport of \$3000. The Appellant left Baghdad on 11 July 2014.
12. 18 July 2014 Shi'a militia visited his neighbourhood and a group visited his home on 20 July 2014 asking about him and fired shots in the house. His father was told the Appellant should be there in 72 hours because his father had not told them he was not in the country. The militia returned on two other occasions asking neighbours about him.
13. The Appellant claimed asylum on the basis that he feared being killed by the Asai'b Ahl Al Haq Shia militia because of his Sunni ethnicity, because of his name and his position in the bank. The Appellant believes he could not relocate as he would need a personal guarantee to move to Erbil or the KRG.
14. On 22 August 2014 the Appellant applied for asylum.
15. On 14 March 2016 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) The increase in sectarian tensions and violence between June -August 2014 was acknowledged but the evidence showed that the levels of violence in non-disputed areas such as Baghdad have since dissipated to previous levels.
 - (b) Reliance was placed on HM and Others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC) to show that show that the Appellant was not at risk simply because he was a Sunni or because of the security situation.
 - (c) In relation to the Appellants claim that there are additional risk factors relating to him such as his employment at the Central Bank and his authorship of scientific papers was not supported by the background material that suggested that the insurgents targeted other groups.
 - (d) The Appellants claim that his name, Omar, was an additional risk factor was not accepted as the evidence and case law state that being identified as Sunni does not of itself place a person at risk
 - (e) It was not accepted that the Appellant has given a truthful account of the circumstances in which he left Iraq because: he failed to claim asylum promptly on arrival; it was not credible that the militia would wait to visit his home after he left rather than before; the Appellants claim that he was forced to flee was inconsistent with the fact that he took the time to gather photographs and certificates before he left; his claim that he came to the UK

intending to return after 14 days is not credible as he could not have expected matters to resolve within that time; the photographs submitted of damage to his home do not add to his claim as there is no evidence that it is his home and given the violence of the past decade it is unlikely any home in Baghdad is undamaged.

- (f) Even if his claim were accepted at its highest it would not be unreasonable for the Appellant to relocate to another Sunni community in Iraq or to the KRG where his lack of connections or a sponsor would be no bar to relocation on the basis of the background material particularly given that the Appellant is a healthy well educated male in possession of all of the required travel and ID documents.

The Judge's Decision

16. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Nicol ("the Judge") allowed the appeal against the Respondent's decision on asylum, humanitarian and human rights grounds. The Judge:

- (a) Set out the law .
- (b) Set out what the Appellant claimed in his asylum interview.
- (c) Set out his oral evidence.
- (d) Stated that he had read the expert report of Dr Fatah.
- (e) Confirmed that submissions were made.
- (f) Under the heading Asylum Appeal at 29-31 again sets out the Appellants claim.
- (g) At paragraph 32 states that he finds the Appellants account to be true and there is a realistic risk of him suffering harm on return.
- (h) In relation to relocation at paragraph 33 he states that the Respondent 'had not shown that the Appellant could travel safely within Iraq.'
- (i) He accepted that the Appellant had given an explanation for his late claim

17. Grounds of appeal were lodged arguing that :

- (a) The Judge had failed to give reasons for findings on material matters in that he gave no reasons for accepting the Appellants account was true but simply made a bare statement that he found his account to be true.
- (b) The Judge had also failed to identify and resolve key conflicts in the evidence and explain why he preferred one version to the other as set out in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)

(c) In considering the viability of relocation the Judge reversed the burden of proof requiring the Respondent to show that it was safe for the Appellant to relocate.

18. On 7 August 2015 First-tier Tribunal Judge Landes gave permission to appeal.

19. There is a Rule 24 Response drafted by Ms Bayarti which states:

(a) The challenge that the reasons are inadequate fails to consider the whole decision simply focusing on paragraph 32 and does not take into account the Judges detailed record of the Appellants oral and documentary evidence.

(b) It is accepted that in relation to relocation the Judge erred in law as to the burden of proof however the error is not material because even had he approached it correctly the result would have been the same.

20. At the hearing I heard submissions from Mr Duffy on behalf of the Respondent that:

(a) He relied on the grounds as drafted.

(b) At paragraph 32 the Judge makes a finding that being a Sunni in Baghdad the Appellant is at risk without making findings as to why. He does not reconcile his finding with either the caselaw or background material.

(c) There is a complete absence of reasoning.

(d) He conceded that the Respondent did not seek to argue that the Appellant should relocate outside of Baghdad so the error in relation to that falls away.

21. On behalf of the Appellant Ms Bayarti submitted that :

(a) The decision must be looked at as a whole in that the Judge accepted the Appellant was at risk as a Sunni with the name Omar.

(b) This Appellants case was that his personal history would lead to him being targeted and this was supported by the expert report from Dr Fatah.

(c) The decision did not support the contention that every Sunni was at risk because not every Sunni was immediately identifiable as a Sunni.

- (d) The CG relied on by the Respondent was about Article 15 (c) not whether being a Sunni put an applicant at risk.
- (e) The Secretary of State rejected part of the Appellants account based on plausibility but the Judge on the basis of the Appellants evidence and that of the expert report of Dr Fatah found his account to be credible. He was entitled to make that finding.
- (f) His conclusion was that having accepted his account the Appellant was an immediately identifiable Sunni who had previously been targeted he would be at risk on return.

22. In reply Mr Duffy on behalf of the Respondent submitted

- (a) AA was indeed about Article 15(c) but paragraph 22 stated that it replaced all current country guidance on Iraq. Thus if there was a risk to Sunnis because they bore the name Omar it would have been addressed given the number of Sunnis in Baghdad.
- (b) The Judge found the Appellant at risk simply because he was a Sunni and given they are 20% of Baghdad's population such a risk would be addressed in AA.

The Law

23. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

24. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law,

nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

25. As to the requirement to provide reasons in a decision and address and engage with MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons. The Respondent also relied on Budhathoki where it is stated :

“ It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost.

Finding on Material Error

26. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law as the reasons given for the limited findings are wholly inadequate.

27. I do not propose to address the error of law made by the Judge in relation to relocation because the Respondent through Mr Duffy accept that there is no question of the Appellant living other than in Baghdad so the error is not material to the outcome.

28. The refusal letter in this case incorporated a number of challenges at paragraphs 6-20, which I have analysed in more detail at 14(a)-(f) above which relate to the core of the Appellants claim. These challenges, based on both case law and background material, were to the Appellant's assertions as to the increasing levels of sectarian violence in Baghdad, that being a Sunni per se put the Appellant at risk, that his employment put him at further risk, his name putting him at additional risk, that militia had targeted his home and his intentions on arrival in the UK.
29. While the Judge set out the Appellants claim and the oral evidence at some length there is no identification or analysis of the challenges raised by the Respondent merely a bare assertion in paragraph 5 that he did not qualify for asylum. In the Judges findings under the heading 'asylum appeal' there is only one paragraph that can be described as findings (paragraph 32) as the rest simply re state his case. I do not accept Ms Bayarti's assertion that this decision is improved by reading it as a whole as there is a requirement to make findings on disputed evidence. Paragraph 32, 7 lines long, is a bare assertion that the Appellants account is true with no attempt to identify the identify and resolve the key conflicts in the evidence and explain in clear and brief terms his reasons for preferring the Appellants account and that of the expert witness over the background material and case law relied on by the Respondent.
30. The failure of the First-tier Tribunal to provide adequate reasons constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
31. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.
32. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

33. In this case I have determined that the case should be remitted because the findings of fact are wholly inadequate and the matter will be a complete re hearing.

34. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed, before me.

Signed

Date 28.3.2016

Deputy Upper Tribunal Judge Birrell