



IAC-AH-KRL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/02290/2015
AA/02297/2015
AA/02298/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2015**

**Decision & Reasons Promulgated
On 11 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**N D (FIRST APPELLANT)
S A H D (SECOND APPELLANT)
A H K D (THIRD APPELLANT)
(ANONYMITY DIRECTION CONTINUED)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Taylor-Gee (Counsel, instructed by J D Spicer Zeb Solicitors)

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellants against a decision made by First-tier Tribunal (Judge Moore) ("FtT") promulgated on 31 July 2015 in which the FtT dismissed the appellants' appeals on asylum, humanitarian protection and human rights grounds.

2. The first appellant is the main appellant and he is the father of the second and third appellants. Their dates of birth are respectively 1 July 1955, 5 May 1985, and 28 July 1994. They are nationals of Iraq. The appellant was separated from his wife who lived in Kuwait where all the appellants had lived prior to coming to the UK.
3. The appellants claimed that if returned to Iraq, they would be persecuted by members of a militia group, who had taken illegal possession of land belonging to the first appellant. The appellants relied on a country expert report by Dr Alan George dated 2 July 2015, and copies of documentary evidence in the form of a police report and property purchase contract.
4. The FtT made adverse findings with regard to the appellants' credibility based on inconsistencies in the interviews and witness statements and with the evidence given at the oral hearing. [30].
5. The FtT was not satisfied that there had been any land dispute. It did not find it credible that there was a militia group which had attacked the appellants' home. The FtT found that there was "no reasonable explanation" as to why the appellant's wife would not be willing to sponsor him in any residence application in Kuwait. [45].
6. In considering human rights under the Rules the FtT considered the question of whether or not the appellants had substantial ties to Iraq. [52].

Grounds of application for Permission

7. **Ground 1** argued that the First-tier Tribunal failed to take into account evidence of the lead appellant's witness statement which addressed the issue of why he and his wife had separated and/or failed to indicate that this was a live issue and did not raise the matter at the hearing. The FtT erred as it may have come to a different conclusion had the witnesses been given the opportunity to address the issue and/or reference made to the main appellant's witness statement.
8. **Ground 2** argued that the FtT failed to reach sustainable findings by failing to take into account relevant evidence; alternatively the FtT drew inferences from the evidence that it was not entitled to draw and/or reached conclusions that were perverse or irrational and/or failed to provide sufficiently reasoned explanation for material findings. The FtT accepted that the expert Dr George had a wealth of experience [31]. The FtT however failed to have any regard to the expert's report when reaching its findings and did not provide any adequate reasons for not attaching weight to the expert's conclusions, specifically with regard to the militia, the land dispute, the killing of the appellant's brother and sufficiency of protection.
9. **Ground 3** argued that the FtT failed to apply the correct test for Article 8; it referred to the issue of "ties", rather than whether there would be "very

significant obstacles” to their integration in Iraq. Further the FtT failed to take into account evidence from the second and third appellants’ as to their ability to integrate into Iraq in light of the fact that they had never visited there.

10. **Ground 4** the FtT failed to reach sustainable credibility findings and/or failed to provide a sufficiently reasoned explanation for material findings. The FtT twice referred in its decision to having provided reasons for finding that the appellant’s documents were not reliable, when in fact no such reasoning appeared in the decision.

Permission to Appeal

11. Permission was granted by First-tier Tribunal Judge Fisher on 28 August 2015 on each of the four grounds in the following terms:

“The lengthy grounds seeking permissions assert that the judge erred in law by failing to give the appellants an opportunity to comment on matters on which he subsequently made adverse credibility findings, that he failed to have adequate regard to the expert’s report, that he applied the incorrect test under paragraph 276ADE of the Rules and that his findings on the documents were irrational”.

12. In its decision, the FtT made very little reference to the evidence of the second and third appellants. It mentioned the expert’s report in [31], on the issue of verifying the documentary evidence, but did not refer to it when assessing the remainder of the evidence before the Tribunal. The current version of paragraph 276ADE refers to “integration”, rather than “ties”. At the end of [31] the FtT stated that for reasons which would be amplified later in the decision, it found that the documents were not reliable. However at [35] the FtT stated that it had already found the documents unreliable.

Error of Law Hearing

13. At the hearing before me Ms Taylor-Gee relied on the grounds of appeal and amplified the same. As to ground 1 there was clear evidence available to the FtT in the form of the main appellant’s witness statement at paragraph 9 and from the second and third appellants who were at the hearing and could have been asked to provide oral evidence about the reasons for the separation of the first appellant and his wife. The FtT failed to ask any questions of those witnesses at all.
14. As to ground 2 the FtT made significant adverse credibility findings but without any reference to the expert report which specifically covered those issues, in particular as regards the militia at paragraphs 105 and 117. Furthermore the FtT failed to give any detailed reasons as to why it rejected the expert opinion. _
15. The failure to apply the correct test under Article 8 was particularly relevant in light of the fact that the main appellant is a Shia muslim and

the expert report referred to its relevance at paragraphs 118 and 160, which was not taken into account by the FtT. Furthermore, there was no consideration of the second and third appellants return to a country/society where they had never lived and where they would be identifiable as from out of the area.

16. Ms Taylor Gee submitted that ground 4 argued that the FtT provided no adequate reasons for finding that the documents were unreliable. This may have been an error or omission but it was material.
17. In response Ms Sreeraman submitted that the FtT had produced a comprehensive and detailed decision that should be viewed in its entirety. It was clear that the FtT had taken into account all the evidence from the witnesses and considered all relevant issues at [11 to 25], including references to the expert report at [117]. Central to the decision were the adverse findings of credibility; the FtT had set out clear reasons for rejecting the appellants' claims, in particular the FtT identified inconsistencies. The documentary evidence was considered in light of **Tanveer Ahmed** and the amplification of the reasons for rejecting the documents was to be found in [32] in the findings of negative credibility.
18. As to Article 8, whilst accepting that there was no specific reference to the correct test, the findings made by the FtT would be the same if considered under "significant obstacles test"; the outcome would be the same.
19. It was conceded that the FtT failed specifically to refer to evidence from the second and third appellants, in particular to their statements, but there was very little they could add to the main appellant's claim as regards the events in Iraq. This was not a material error of law. _
20. Ms Taylor-Gee responded that it was not adequate for the FtT to have applied a broad approach to considering Article 8; it was necessary to consider the proper test. The FtT's generic statement that it had taken into account "all of the evidence" but had not specifically engaged with any of the evidence given by the second and third appellants, was inadequate. Equally important was the fact that the FtT erred by failing to engage with the contents of the expert report in reaching its decision.

Decision and Discussion

21. I was satisfied that all the grounds 1 to 4 were made out. The FtT failed to specifically engage with the expert's evidence which was clearly capable of corroborating the appellants' claim as to material particulars about the militia, land disputes, the revenge killing of the appellant's brother, sufficiency of protection and risk on return on religious grounds and/or failed to give reasons for why it disagreed with the expert report. Furthermore I am satisfied that the FtT failed to give reasons for finding the documentary evidence to be unreliable. This amounts to a material omission given that the FtT specifically stated that such reasons would be provided. I further conclude that the FtT failed to have regard to evidence

of the second and third appellants and/or the main appellant's witness statement as regards reasons for his separation from his wife, which formed the basis of a negative finding of fact and was thus material to the appeal. It was incumbent on the FtT to have drawn attention at the hearing to the significance it placed on this issue and given the appellants the opportunity to address this issue. I am also satisfied that the FtT considered Article 8 with reference to paragraph 276ADE the incorrect statutory test in relation to ties in the UK. Given the factual background that the second and third appellants had never lived in Iraq, the FtT failed to engage with the correct test which considers whether there would be very significant obstacles to integration in the country of origin.

22. At the end of the hearing I found material errors of law on all four grounds. In light of the fact that the errors went to the core of all of the findings made by the FtT, I set aside the decision in its entirety. There were no findings of fact that could be preserved.

Decision

23. The decision and reasons does disclose a material error of law. The determination shall be set aside.
24. The matter is remitted to Taylor House for a hearing *de novo* with an interpreter in the Iraqi language, time estimate three hours and three witnesses.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated 7.1.2016

G A Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

No fee award made.

Signed

Dated 7.1.2016

G A Black
Deputy Upper Tribunal Judge G A Black