



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

Appeal Number: AA/07114/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 April 2016**

**Decision & Reasons  
Promulgated  
On 25 July 2016**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**AAM  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Gilbert, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr S Staunton, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq, born on [ ] 1967. A decision was made by the respondent on 2 April 2015 to remove him pursuant to section 10 of the Immigration and Asylum Act 1999, after the refusal of his asylum and human rights claim.

2. The appellant's appeal against that decision came before First-tier Tribunal Judge Bowler ("the FtJ") on 6 October 2015, whereby the appeal was dismissed on all grounds. In the grounds of appeal challenging the decision of the FtJ it is argued, in summary, that the FtJ had failed to take into account material evidence and had otherwise not given adequate reasons for her conclusions. In relation to background evidence, it is argued that the FtJ had failed to take into account evidence in terms of militias operating in Iraq who would be a potential risk to the appellant, and bearing in mind that he and his family had variously received threats and harassment, and his uncle had been kidnapped. It is also contended that the FtJ's Article 8 assessment was flawed with reference to his private life.

*The decision of the First-tier Tribunal*

3. The FtJ summarised the appellant's witness statement and his interviews. These are to the effect that the appellant is a Shia Muslim who was a member of the Ba'ath Party from 1994 to 1999. His mother is a famous artist in Iraq and a high-ranking member of the Ba'ath Party. Her art gallery in their house was visited by senior members of the Ba'ath Party during the regime of Saddam Hussein. His mother would also set up art galleries for the Ba'ath Party and she was a member of the Women's Union. The appellant had provided evidence of a book showing his mother's paintings and photographs of her with senior Ba'ath Party members, including Saddam Hussein. The last time important Ba'ath Party members visited their home was around the end of 2002.
4. The appellant claimed to have run a coffee shop in a mainly Sunni area of Baghdad, which he opened in 1998. Between 2005 and 2006 he was harassed and received threats from unknown individuals in his shop and by letter.
5. In late March 2006 his maternal uncle was kidnapped from the appellant's coffee shop. However, the appellant believed that he himself was the target of the kidnappers. His uncle was released after payment of a ransom. That uncle now lives in the UK, although the appellant has lost contact with him. The uncle refuses to see the appellant or the appellant's close family because he blames the appellant for the kidnapping. The appellant closed the coffee shop on the day of the kidnapping and never returned to it.
6. Two or three weeks later the appellant received a threatening letter asking him to leave the neighbourhood, referring to his Shia faith and his membership of the Ba'ath Party.
7. The appellant left Iraq in 2006 and came to the UK on a visit visa. He then went to Syria where he stayed until the civil war started. There he applied for refugee status, although he was not interviewed by the UNHCR. He went to Jordan in 2011 and again waited for a refugee interview. However, he has not been officially recognised as a refugee by the

UNHCR. He was however, granted residency in Jordan as a dependant of his parents.

8. Ultimately, he came to the UK. Since leaving Iraq he has not been contacted by those who threatened him, although he believes that he would still be a target because of his previous membership of the Ba'ath Party, his mother's senior position in that party, the fact that his mother is an artist and militia groups do not permit art or music and because of the appellant's involvement in arranging exhibitions and meetings for Ba'ath Party members with his mother, as well as his Shia faith. The appellant would also be at risk, it was claimed, because of the general state of violence and danger in Iraq.
9. All the appellant's immediate family are in the UK, his parents having arrived in May 2014 through the UNHCR. He has two brothers and a sister who have lived in the UK for some years and are now British citizens. He has an aunt in Belgium and an aunt in Iran, an uncle in Germany, and the uncle in the UK.
10. The appellant said that he would not be able to relocate to another area in Iraq because he does not have anyone there to support him or any accommodation. Furthermore, he would be identified as soon as he arrived at the airport and targeted by militias or their agents.
11. The Ftj made the following findings. She found that the appellant is a Shia from Baghdad and that relocation outside Baghdad would not be feasible. She concluded that because the respondent would only return people to the "Kurdish region" of Iraq if they originate from that area, the appellant could not be returned there because he does not come from that area.
12. She found that the appellant was a member of the Ba'ath Party from 1994 to 1999 but that his involvement was at a low level and limited both in time and extent. She found that the appellant's mother was a more senior member of the Ba'ath Party, having sufficient status to enable her to be a lecturer at the Institute of National Arts. However, whilst her recognition as an artist in Iraq meant that high-ranking members of the government at the time of Saddam Hussein visited her gallery, she was not herself a politician or a member of the government.
13. She found that the family were not perceived as prominent members of the Ba'ath Party because although Saddam Hussein's government fell in 2003, the appellant and his family did not receive any threats or demands for money until 2005 at the earliest. The appellant's mother's evidence was clear in that they were not blackmailed until 2006. Furthermore, the appellant had said in his witness statement that he was harassed and received threats from unknown individuals at his shop and by letter from 2005 to 2006. The Ftj said that it was a matter of public record that there was considerable unrest and violence in the years from 2003 to 2006, yet the appellant and his family did not encounter problems until 2005.

14. The Ftj found that the appellant and his family were harassed and threatened in 2005-2006 and that the appellant's parents had sufficient wealth to be seen as financial targets at that time. She noted that the appellant's mother had said that they had paid blackmailers US\$20,000 on two occasions in 2006. In contrast however, the appellant was not blackmailed, despite his family's wealth. He was harassed and threatened and that that culminated in the kidnapping of his uncle.
15. Notwithstanding that the appellant's uncle was not able to give evidence despite living in the UK, taking into account the lower standard of proof the Ftj found that it was credible, given the background of violence and kidnappings in Baghdad at the time, that the appellant's uncle was kidnapped and that he no longer has contact with the appellant and his immediate family. She took into account that the appellant's uncle is the half-brother of the appellant's mother and she found it credible that given that he was kidnapped from a coffee shop jointly owned by the appellant, there is family enmity over the ransom being paid by the uncle's half of the family.
16. Nevertheless, she did not find that the evidence established that the intended victim of the kidnapping was the appellant. She noted that the kidnappers took the uncle from the shop which he operated jointly with the appellant during the hours when the uncle routinely was in the shop and the appellant routinely was not. She concluded that if the kidnappers had really intended to kidnap the appellant they could have gone to the coffee shop at a time when the appellant would be expected to be there, or could have found the appellant at his home. From late March when the kidnapping took place until May 2006 when the appellant left Iraq, there were no attempts made to kidnap him. Although the appellant said that he had received a threatening letter a couple of weeks after his uncle was kidnapped asking him to leave the neighbourhood, he was therefore not staying in the neighbourhood in secret.
17. At [55] the Ftj said that she took into account that the appellant travelled to the UK in 2006 on a visit visa. Despite his assertion that he is now at risk if he returns to Iraq, he did not claim asylum in the UK in 2006 when the kidnappings and threats had just been experienced. Although however, he did not make an asylum claim immediately on entering the UK in 2014, he did make his claim a week later and she found therefore, that that delay did little to damage his credibility.
18. In relation to the UNHCR documents, in particular a Refugee Certificate, whilst that was issued by the UNHCR in Syria it is not in the appellant's name. The Ftj did not find credible the appellant's claim that that was an error by the UNHCR staff and that he did not feel able to query it. She noted that the appellant was an intelligent man who had been to university and she would have expected him to check a document such as that certificate and ensure that it was issued in the correct name. Accordingly, she gave the certificate little weight. In any event, she

concluded that there were substantial countervailing reasons to justify a different conclusion from that of the UNHCR.

19. The document only states that the appellant's claim for refugee status was being examined, not that the appellant had been recognised as a refugee. The Ftj concluded that it added little weight to the other evidence before her.
20. Although it was accepted by the Ftj that the appellant's mother was an artist in Iraq, and that she held exhibitions at her galleries which were attended by senior Ba'ath Party officials, the evidence beyond that of her fame is limited and nine years had passed since she and her family had left the country. On the other hand, in 2014 her paintings were displayed in an exhibition sponsored by the Iraqi Business Council and the Iraqi ambassador in Amman, and a book about her and her work was published. The Ftj accordingly found that the appellant's mother is known as an artist "to an extent" in Iraq.
21. However, even taking into account that she could be said to be a famous artist in Iraq does not mean that the appellant has a profile in Iraq which would cause him to be a particular target. He and his mother do not share the same name. The evidence showing pictures of her with officials at exhibitions and the evidence from her book relates to her and does not include pictures of, or reference to, the appellant. She found that the appellant is not famous in his own right and the evidence did not lead her to conclude that he would be known as the son of his mother. Even if it could be said that the appellant's mother has a high profile in Iraq, the appellant does not. Notwithstanding the background material to which she was referred, in terms of the treatment of artists in Baghdad and their being targeted, the evidence related to artists currently living and practising in Iraq and the appellant is not such a person.
22. At [61] the Ftj considered the position on the assumption that the appellant's mother was a prominent member of the Ba'ath Party and taking at its highest the appellant's claims to have been engaged with senior Ba'ath Party officials in organising events, as well as his own membership of the Ba'ath Party before 1999. She concluded that in the light of the UNHCR's guidelines for determining refugee status in terms of the treatment of former Ba'ath Party members, there was no evidence that the appellant or any member of his family was involved as a perpetrator of detention, torture or other violations of human rights under the Saddam Hussein regime. There was insufficient evidence to establish that there would be a real risk to the appellant on return to Iraq as a result of his Ba'ath Party links. She concluded that the appellant is not and was not one of those listed who may be at risk. Although the appellant's father was a high-ranking lawyer in Iraq, it had not been claimed that the appellant was at risk by virtue of his relationship to his father.
23. The Ftj also concluded that there was no risk to the appellant in terms of Article 15(c).

24. So far as Article 8 is concerned, she concluded that the respondent's decision would not amount to a disproportionate interference with his Article 8 rights in terms of his private life, which is the basis upon which the Article 8 argument was advanced.

### *Submissions*

25. Mr Gilbert referred to the findings made by the FtJ, including in particular at [54] that the appellant's uncle was kidnapped. It was also found that threats had been directed towards him. Reference was made to the appellant's asylum interview. The FtJ should have taken into account that the purpose of the kidnapping of the appellant's uncle was to drive the family away, according to what the appellant said in his interview at questions 55-59.
26. So far as [10] of the grounds is concerned, and the contention that the FtJ had failed to consider what the appellant said at the hearing in evidence, it was correct that there was no agreed note of the evidence in that respect but nevertheless the matter is referred to in the grounds and the respondent was not therefore taken by surprise.
27. At [59] the FtJ had concluded that the appellant was not famous in his own right. However, she would have been required to take the additional step of asking whether the appellant would be required to keep his history hidden on return, even if he would not immediately be identified as his mother's son. He would have to keep his education and qualifications hidden, as well as the history of his work for his mother at art galleries, and even his work in the coffee shop.
28. In that respect the question also arises of whether he would come to the adverse attention of the militias in Iraq. It is also to be borne in mind that the appellant had been threatened previously. The grounds refer to the background material in relation to militias still operating in Baghdad. The FtJ had not considered the risk to the appellant on a cumulative basis in the light of her findings.
29. So far as Article 8 is concerned, although the appellant was now aged 49, he had always lived with his parents and had always looked after them. All his family are in the UK, he was granted residency in Jordan as a dependant of his parents. Those aspects of his private life had been established prior to his entry into the UK, and had therefore not been established whilst his private life was precarious. His parents are aged 79 and 89 years, respectively.
30. Mr Staunton relied on the 'rule 24' response. He submitted that it is evident that the FtJ had balanced a consideration of all the relevant facts, accepting aspects of the appellant's account. At [54] she gave reasons for concluding that the appellant was not the intended victim of the kidnap. The grounds in relation to these aspects of the FtJ's decision are simply a disagreement with her conclusions.

31. The contention that the appellant would be at risk on return in terms of his relationship to his mother, relies on the earlier arguments. However, on the Ftj's findings, the appellant would not be subject to any scrutiny on return, bearing in mind for example, that he does not have the same name or profile as his mother.
32. The Ftj had considered Article 8 and again the grounds in this respect amount only to a disagreement with the Ftj's decision.

*My conclusions*

33. I deal with the three grounds in turn. Reliance was placed, amongst other things, on what the appellant said in interview to the effect that the threats were directed at him in person at his coffee shop before his step-uncle was kidnapped. It is said that it was arguably crucial to the determination as to whether there was a real risk that it was the appellant who was the target for the kidnapping, as the appellant said in evidence. It is argued that this was not the subject of any reasoned consideration by the Ftj.
34. It is true that in the interview at questions 55-65 the appellant referred to threats being made to him, by people he described as "criminals" and saying that it may be that they were Sunnis, telling the appellant, a Shia, to leave the area. From question 125 the appellant referred to threatening letters he received.
35. However, the Ftj explicitly referred to this aspect of the appellant's account at [20(g)] in terms of his Shia faith and membership of the Ba'ath Party. At [30] the Ftj referred to evidence given in cross-examination by the appellant's mother in terms of how she knew that the kidnappers had meant to kidnap the appellant rather than the appellant's step-uncle. At [27] she had set out the evidence of the appellant's mother in terms of the involvement of the appellant in the art galleries and exhibitions and contacts with the Ba'ath party. At [51], under the "Findings and Reasons" section, she referred to the appellant's account of having been harassed and receiving threats from unknown individuals at his shop and by letter from 2005 to 2006. It is apparent, including from [52], that the Ftj accepted that aspect of the appellant's account.
36. However, the Ftj was entitled to conclude as she did at [54] that the evidence did not establish that the appellant was the intended victim of the kidnapping, referring to the kidnappers taking the uncle from the coffee shop which he operated jointly with the appellant during the hours when the uncle routinely was in the shop and the appellant was not. She concluded that if the kidnappers had really intended to kidnap the appellant they could have gone to the shop at a time when the appellant would have been expected to be there, or indeed could have found the appellant at his home. She also referred to the fact that the appellant did not leave Iraq for about two months after the kidnapping. She also noted

that there were no attempts made to kidnap him between the date of the kidnapping in March 2006 and May 2006 when he left.

37. The FtJ was well-aware of what the appellant's and his mother's account was in terms of the kidnapping and she rejected the contention that he was the intended target, for reasons which are entirely sustainable. There was no challenge on behalf of the respondent before me to the account in the grounds at [10] of one aspect of the appellant's mother's evidence, and the FtJ's manuscript record of proceedings confirms the accuracy of what is in the grounds in that respect, i.e. a threat by phone that specifically including the appellant. As indicated above however, it is clear from the FtJ's reasons that she was aware of, and fully considered, all aspects of the appellant's and his mother's account. The FtJ was not required further to rehearse the appellant's evidence in all its respects before rejecting the account of his being the intended target of the kidnapping.
38. Whilst it is said in the grounds that it was material in terms of there being no further kidnap attempts upon the appellant prior to his departure, the fact that the family's departure was the aim of the kidnappers rather than the appellant as an individual, the FtJ was nevertheless entitled to take into account in terms of the contention, (repeated in the grounds) that the appellant was the target for the kidnap, the fact that there were no attempts to kidnap him in the specified period.
39. The second ground in terms of whether the appellant would be required to hide his identity or personal history in order to avoid persecution, relies on the decisions in *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31, and *RT (Zimbabwe) and others v Secretary of State for the Home Department* [2012] UKSC 38. However, I consider this to be a speculative ground, or more precisely, a ground that relies on speculation. There would be no reason for the appellant to have to hide his identity or his personal history in order to avoid persecution. Furthermore, at [59] the FtJ dealt with this point in stating that even viewing the appellant's mother as a famous artist in Iraq does not mean that the appellant has a profile which would cause him to be a particular target. She noted that they do not share the same name and he is not shown in any pictures of her with officials at exhibitions and so forth. She noted that the appellant is not famous in his own right and the evidence did not lead to the conclusion that he would be known as the son of his mother. In addition, at [61]-[62] the FtJ considered whether the appellant, as a former member of the Ba'ath Party from 1994 to 1999, comes within any of the risk categories, concluding that he does not. She came to that conclusion even taking at its highest the appellant's claims to have been engaged with senior Ba'ath Party officials in organising events, in addition to his own membership of the Ba'ath Party before 1999. It seems to me to be inherent in the FtJ's conclusions that even if the appellant was known as his mother's son, the evidence, including the background evidence, did not establish a risk to him.



40. Notwithstanding what is said about the militias still operating in Baghdad, and the background evidence in that respect set out in the grounds, on the Ftj's analysis of the appellant's background, he would not be at risk, notwithstanding the Ftj's conclusions as to the family history and the threats that had previously been made. The Ftj plainly took into account those matters. She concluded that there were no good reasons to believe that persecution or serious harm would eventuate on the appellant's return.
41. So far as ground 3 and Article 8 of the ECHR is concerned, it is to be noted that notwithstanding the arguments advanced in terms of the appellant's relationship with his family in the UK, including his parents, it was not argued before the Ftj that there was any claim to family life in the UK. The Ftj accepted that the appellant will have developed a private life whilst in the UK, although stated that there was limited evidence of the extent of it, beyond the relationship with his parents and the fact that he has two brothers in the UK. It is not the case, as asserted in the grounds at [13], that the Ftj concluded that it was doubtful that the appellant had any private life in the UK. She expressly stated that he will have developed a private life in the UK but said that it was doubtful as to whether Article 8 was engaged. Nevertheless, recognising the low threshold for engagement she proceeded on the footing that Article 8 was in fact engaged.
42. It is argued that in the proportionality assessment the Ftj failed to consider relevant matters, namely the appellant's cohabitation with his parents in Iraq into adulthood, as well as in Jordan, cohabitation with them now, his family members all being present in the UK and settled and that no family remained in Iraq. However, it is evident from [69] that the judge recognised the appellant's relationship with his parents and his two brothers here. Although it was contended in submissions before me that the appellant had not established a private life whilst his immigration status was precarious, because that private life was established before his entry into the UK, that does not mean that the Ftj was not bound to give effect to s.117B(5) in terms of little weight being given to a private life established at a time when a person's immigration status is precarious, insofar as an element of his private life was established since his arrival in 2014. The Ftj was bound to take into account the statutory provision. As I have already indicated, the Ftj was aware of and took into account his relationship with his parents. I do not consider that it was necessary for the Ftj to trace the history of that relationship from the appellant's life in Iraq, Syria and Jordan. It is also to be borne in mind that the appellant is now 49 years of age.
43. In addition, other public interest considerations were taken into account by the Ftj, as mandated by s.117B of the 2002 Act, namely that the appellant does not speak English and that he is not financially independent.
44. I cannot see that there is any error of law in the Ftj's assessment of the Article 8 ground of appeal, albeit that the Ftj dealt with this aspect of the

appeal in less detail than what was obviously the main ground of appeal, namely the asylum ground.

45. Although I bear in mind what was said on behalf of the appellant in terms of his father in particular having very poor health, it was not contended, and it cannot be the case, that that new information informs the assessment of whether the Ftj erred in law in terms of her consideration of Article 8.
46. In summary, having considered the grounds of appeal with care, I am not satisfied that it has been established that there is any error of law in the Ftj's assessment of the appeal in any respect. The Ftj's decision involves a balanced assessment of all the evidence, resolving various issues in favour of the appellant, but ultimately concluding that he would not be at risk on return. Her reasons for coming to that view are free from any error of law, as is her assessment of the Article 8 ground of appeal.

### *Decision*

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds therefore stands.

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

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

Upper Tribunal Judge Kopieczek

22/07/16