



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02243/2016

THE IMMIGRATION ACTS

Heard at: Manchester
On: 15th November 2017

Decision & Reasons Promulgated
On: 10th January 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MN
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Holmes, Counsel instructed by Broudie Jackson & Canter
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Iraq born in 1989. He seeks international protection.
2. The Appellant claimed asylum on the 13th October 2015, the day that he arrived in the country, hidden in the back of a lorry. He told officers that he was a Sunni Arab from Kirkuk and as such had faced problems from all sides in Iraq. Because he is an Arab in a Kurdish area he had faced racism and discrimination

from the local population; because he lived in Kirkuk he faced a real risk of indiscriminate violence because of ISIS/Daesh and the conflict that they brought with them. The Respondent accepted that both of those things were true, and found that the Appellant faced a real risk of harm in his home area. Protection was however refused, on the grounds that the Appellant could avoid harm by going to live somewhere else in Iraq, for instance in Baghdad.

3. The Appellant appealed and the matter came before the First-tier Tribunal (Judge Birrell). The Respondent argued that there had been a change in position and sought to withdraw her concession that the Appellant was at risk in Kirkuk. The Respondent argued that since Daesh had been defeated it was no longer a 'contested area' where Article 15(c) of the Qualification Directive was engaged. Judge Birrell rejected that argument, pointing out that on a proper analysis of the evidence presented by the Respondent the situation for civilians in Kirkuk had actually worsened since the Upper Tribunal had found, in AA (Iraq) CG [2015] UKUT 544 (IAC), there to be a real risk of indiscriminate violence arising from the armed conflict. Judge Birrell dismissed the appeal, however, for the same reasons that the Respondent had refused protection. Having regard to the fact that the Appellant is a healthy male who speaks Arabic, and who is in possession of the requisite identity documents, she was satisfied that it would not be unduly harsh to expect him to relocate to Baghdad.
4. The Appellant was granted permission to appeal by Upper Tribunal Judge Smith on the 5th May 2017. The matter came before Deputy Upper Tribunal Judge Hall who in a decision dated the 15th September 2017, found an error in approach in Judge Birrell's decision and set it aside. He did so on the basis of a concession by the Respondent, who accepted that in reaching her decision the First-tier Tribunal Judge had overlooked the evidence before her relating to sectarian violence against Sunnis in Baghdad (and other regions in central and southern Iraq). The Respondent invited the Upper Tribunal to remake the decision as it related to internal flight.
5. The matter came before me on the 15th November 2017; as set out above my task was limited to considering whether it would be safe or reasonable to expect the Appellant to go and live elsewhere in Iraq. In his submissions Mr Harrison confirmed that the place of proposed internal relocation was confined to Baghdad.

Legal Framework

6. Article 8 of the Qualification Directive reads:
 1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted

or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
 3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.
7. In *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49 the House of Lords make clear that the question of whether internal flight is "reasonable" is not to be equated with the test under Article 3 ECHR. Lord Bingham refers [at 5] to his own guidance in *Januzi v Secretary of State for the Home Department* [2006] UKHL 5:

"In paragraph 21 of my opinion in *Januzi* I summarised the correct approach to the problem of internal relocation in terms with which all my noble and learned friends agreed:

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.... There is, as Simon Brown LJ aptly observed in *Svazas v Secretary of State for the Home Department*, [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls... All must depend on a fair assessment of the relevant facts'.

Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the rule could be more simply or clearly expressed. It is, or should be, evidence that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant's way of life in the place of persecution. There is no warrant for excluding, or giving priority to consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is."

117. At 20 Baroness Hale cites with approval the UNHCR view that the test is whether the individual will be able to live a "relatively normal life without undue hardship", itself a formulation approved by their Lordships in *Januzi* [9]:

"As the UNHCR put it in their very helpful intervention in this case:

'...the correct approach when considering the reasonableness of IRA [internal relocation alternative] is to assess all the circumstances of the individual's case

holistically and with specific reference to the individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal life without undue hardship'.

I do not understand there to be any difference between this approach and that commended by Lord Bingham in paragraph 5 of his opinion. Very little, apart from the conditions in the country to which the claimant has fled, is ruled out."

Personal Characteristics of the Appellant

8. On the facts as found by the First-tier Tribunal and/or accepted by the Respondent the Appellant has the following personal characteristics, relevant to my consideration of internal flight:

- i) He is of Arab ethnicity
- ii) He speaks fluent Arabic
- iii) He was born in Kirkuk to a family who had been there for at least three generations (in his unchallenged evidence to me he said that as far as he was aware his grandparents had been born there)
- iv) He has no tribal affiliation
- v) He is a practising Sunni Muslim whose observance of his faith includes regular attendance at Mosque (in his unchallenged evidence before me he told me that he currently attends Mosque at least once per day)
- vi) The Appellant has parents and three sisters living in Iraq. He claims to have lost contact with them but their last known whereabouts was Kirkuk
- vii) He is unmarried and has no dependents
- viii) He has no known connections to Baghdad; he has never been there and has no family living there
- ix) He has a CSID and an Iraqi passport

9. In respect of his name the Appellant told me that it would be identifiable as a Sunni name by a process of elimination. It is not a Kurdish or tribal name, and it is not one of the set names that Iraqi Shi'ites have. People would therefore recognise him to be Sunni if they were aware of his name.

Country Guidance & Background Evidence

10. In reaching her original decision on internal flight the Respondent had placed reliance upon the reported 'country guidance' case of AA. Heard in May 2015 (but not promulgated until November of that year) the Upper Tribunal found as follows:

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.

15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:

(a) whether P has a CSID or will be able to obtain one (see Part C above);

(b) whether P can speak Arabic (those who cannot are less likely to find employment);

(c) whether P has family members or friends in Baghdad able to accommodate him;

(d) whether P is a lone female (women face greater difficulties than men in finding employment);

(e) whether P can find a sponsor to access a hotel room or rent accommodation;

(f) whether P is from a minority community;

(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

11. In finding there to be an error of law in the First-tier Tribunal decision Judge Hall noted the findings in the decision in BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC). This country guidance was heard in August 2016 and was reported in January 2017. As the title suggests, this decision was concerned specifically with the situation in Baghdad. Two paragraphs of the headnote deal with Sunni religious affiliation:

(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.

....

(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.

12. On the matter of Sunni identity the Tribunal in BA noted that it is not simply a matter of religious identity: it has become a badge of political affiliation [at 84]. After the invasion of Iraq in 2003 many Iraqis turned to their own communities as a source of protection, and by 2006-07 the country was engulfed in a ferocious civil war drawn on sectarian lines, characterised by 'ID killings' , primarily perpetrated by Shi'ite death squads manning checkpoints in the city. After a period of decline since the end of that phase of civil war, the number of sectarian attacks started to rise again in 2013. This is attributable to the Shi'ite response to the rise of Sunni fundamentalists Daesh. It has reignited resentment towards the Sunni minority, who continue to be associated with the regime of Saddam Hussain [86] Iraq expert Dr George referred the Tribunal to the US Commission on International Religious Freedom (USCIRF) Annual Report on Iraq dated 02 May 2016 [at 85 BA]:

"While ISIL was the most egregious perpetrator of human rights and religious freedom violations, the Popular Mobilization Forces (PMF), recognized by Prime Minister al-Abadi in September 2015 as officially part of the Iraqi state, have continued to commit systematic attacks against Sunni Muslim civilians, exacerbating sectarian tensions. Although al-Abadi attempted to bring the PMF into the fold of government-sanctioned armed groups through this maneuver so far it has remained clear that the group - which technically reports to the Ministry of Interior - exercises a significant amount of autonomy and espouses strong, pro-Shi'a leanings, mostly to the exclusion of Iraq's Sunni population. However, because the PMF is one of the most effective groups in fighting ISIL, the Iraqi government has not curtailed their activities or prosecuted those who have perpetrated violent attacks."

13. Examples of such sectarian killings include an incident in Diyala in 2015 when Shi'ite militias killed 70 Sunnis [at 86]. The BBC reported the discovery of 53 bodies in a Shi'ite neighbourhood in Baghdad, believed to be Sunnis murdered in revenge attacks [87]. Pathologists reported that a typical day in 2014 would see the bodies of 9-10 Sunnis being brought to mortuaries bearing the signs of "Shi'ite style execution", ie having their hands tied behind their back and being shot in the back of the head [91]. The UNHCR confirmed that in their view these killings were driven by fear of/revenge against Daesh [92] Amnesty International reported Sunnis being harassed at checkpoints, driven from their

homes and threatened by Shi'ite militias, all justified by the fight against Daesh [88]. In respect of checkpoints the Tribunal was told that there are an estimated 200 official checkpoints, and a number more that are run illegally by Shi'ite militias. Even the 'official' checkpoints are sometimes manned by these forces, and it is often difficult to tell whether the 'officials' are members of the security services or militiamen. Civilians passing through are required to produce identity documents and answer questions about their religious affiliation [89]. Some Sunnis have acquired fake identity documents giving them 'Shi'ite' sounding names, in order to get through checkpoints [90].

14. The Tribunal in BA also had regard to an August 2016 Country Information and Guidance (CIG) report entitled 'Iraq: *Sunni (Arab) Muslims*'. Paragraph 7.6.3 of that report quotes from a UNHCR report 'Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) in Baghdad for Sunni Arabs from ISIS-Held Areas' (May 2016):

"According to reports, there has been a renewed surge in targeted violence against Sunni Arabs in Baghdad since 2014... There has reportedly been a renewed increase in bodies discovered, mostly of Sunni Arab men, who are found blindfolded, handcuffed and apparently executed on a daily basis, mostly in Baghdad. According to reports, the mode of killing and the geographic location where the bodies are found often correspond with known patterns of Shi'ite militias killing for sectarian or political motivations. Families of those abducted or killed are reportedly often apprehensive about reporting the abduction or killing to the police, or checking the morgue, as they fear being subjected to reprisals."

15. The Tribunal note [at 95] that the Home Office policy summary relating to the risk to Sunnis states [at 3.1.1 of the CIG]:

"Sunnis may face a real risk of persecution or serious harm from the Shia militia in Baghdad and the 'contested' governorates. However, there may be circumstances, including tribal, family or political links, which mean a person is not at risk and can return or relocate to Baghdad."

16. Having had regard to all of that evidence the Tribunal in BA concluded:

98. Both parties are in agreement that the evidence does not show that a person would be at real risk of serious harm solely on account of his or her religious identity if returned to Baghdad at the current time. This is consistent with the findings made by the Tribunal in *AA (Iraq)* [136]. However, the evidence indicates that the number of sectarian attacks has increased since the withdrawal of US-led coalition forces in 2012. Dr George considered that there was a significant level of sectarian violence although, in his view, it had not yet reached the heights seen in the period 2006-2007.
99. The evidence shows that ISIL is capable of launching attacks in public areas of Baghdad largely populated by Shias. In response the Shia militias which control the city are reported to carry out targeted killings of Sunnis. The balance of power in Baghdad is firmly with the Shia controlled government; supported by militias. A large number of checkpoints are set up throughout the city. A number of

checkpoints are illegal and by definition may move to different areas of the city. Many are manned by Shia militias. There are reports of some Sunnis being identified and taken away from checkpoints.

100. While it is difficult to ascertain the reasons behind some of the killings in Baghdad there is evidence to suggest that young Sunni men are more likely to be targeted as perceived ISIL supporters. Although a purely statistical analysis does not give risk to a real risk solely on account of Sunni identity, the number of kidnappings and killings, even taking into account the likelihood of underreporting, is a concern. Although the majority of Sunnis are likely to be able to lead a relatively normal life in Baghdad it is not without risk. The level of political and sectarian violence in Baghdad remains high even if it does not meet the threshold required to show a generalised risk of indiscriminate violence.
101. The respondent's most recent policy statement recognises that Sunnis may face a real risk of persecution or serious harm from Shia militias in Baghdad. It goes on to state that tribal, family or political links, might mean a person is not at risk and can return or relocate to Baghdad. We find that the significance of a person's religio-political identity to risk on return will inevitably depend on the circumstances of each case. The increasing levels of sectarian violence in Baghdad, albeit not sufficient if taken alone, are likely to be an important consideration in assessing whether a person can demonstrate individual characteristics that would place him or her at real risk of serious harm.

17. Mr Holmes took me to some more recent evidence. The June 2017 version of the CIG Iraq: *Sunni (Arab) Muslims* maintains the position that religious identity is not alone sufficient to give rise to a real risk of serious harm, but acknowledges that Sunni men are more likely to be targeted as Daesh suspects [2.2.1]. In particular it is noted [at 2.2.8] that:

Sunni Internally Displaced Persons (IDPs), who generally lack support networks and economic means, are more vulnerable to suspicion and abuse. Decision makers need to consider each case on its merits.

It is estimated that there are over half a million IDPs in Baghdad [4.2.2]. Large numbers of IDP men and boys have been detained at checkpoints [9.2.5].

18. The 2017 CIG cites various reports on Shi'ite militias in Baghdad. Many of the already established groups reactivated upon the emergence of Daesh. There are two main blocs. The first is generally aligned – politically and theologically – with Iran and are heavily armed. The second are a federation of militias who are loyal to Prime Minister Abadi and follow the teachings of Iraqi Shi'ite cleric Ayatollah Sistani [6.1.4]. Recent campaigns have seen Sunni Arabs as their major target. Whilst attacks have some correlation with actions by Daesh, the Minority Rights Group report scepticism about the claim that these are defensive actions: “there is no consistency in who is targeted, or as one IDP framed it: ‘revenge is carried out on whoever crosses their [the militias] path” [7.1.2]. The UNHCR report that Sunni Arabs are also targeted by the security forces who use wide powers under the Anti-Terrorism Law of 2005 to arrest

without warrant; detention conditions are harsh and torture is frequently reported [9.1.1]

19. In addition to these security issues the 2017 CIG reports on socio-economic difficulties faced by Sunnis in Baghdad, who report discrimination and difficulties in obtaining employment and housing, attributed to direct prejudice as well as the fact that such matters are usually organised through nepotism and connections, so in Shi'ite dominated areas it will generally be more difficult for non-Shi'ites.
20. The last matter raised in the 2017 CIG, relied upon by Mr Holmes, is the matter of access to Baghdad. The UNCHR report that access to the city has become increasingly difficult for IDPs since 2014. IDPs from ISIS areas require a sponsor to enter the city, (with the exception of those requiring medical treatment). Since December 2015 the sponsorship requirement has been intermittently halted and reinstated, but in February 2016 entry has been put on hold, even to IDPs with sponsors. Large numbers of those seeking safety in the city have been forcibly removed to camps in Al-Anbar. Those already in the city face severe restrictions on their freedom of movement [at 9.2.5]:

“Within Baghdad, IDPs could, in principle, freely choose the area in which they wish to settle. However, as a result of the sectarian segregation within Baghdad, which followed the large-scale sectarian violence of 2006/07, many areas where one sect is in the majority are reportedly not accessible for members of the other sect, or only at the risk of serious security incidents. At checkpoints within the city, the ISF/Shi'ite militias reportedly ask people for their national ID card, which often gives an indication of the individual's religious (Sunni/Shi'ite) affiliation based on the person's first name, family or tribal name and area of origin. Therefore, Sunni Arabs generally remain in Sunni-dominated neighbourhoods. Incidents of IDPs being stopped at checkpoints inside the city and interrogated by the ISF have been reported. Some IDPs were reportedly asked for a second sponsor at checkpoints inside Baghdad, or in the areas where they intended to reside. As a result, some IDPs limit their movements to their initial sponsor's area of residence, which may impact on their ability to join other family members, and/or to access services or employment.

Discussion and Findings

21. I begin with AA. The factors identified as relevant in AA, pertinent to this case, led Judge Birrell to conclude that internal relocation would not be unduly harsh for this Appellant. Looking at the considerations listed in that country guidance, her conclusion is understandable: this is a healthy young man who speaks fluent Arabic, is of the majority ethnic group, and importantly, who has a full set of identity documents which would enable him to freely move and find employment. Before me the parties agreed, however, that since that decision in November 2015 the situation for Sunni Arab IDPs in Baghdad has deteriorated. The question for me is whether it has deteriorated to the extent

that it would be unduly harsh for this man, with his personal characteristics and history, to relocate there.

22. The evidence given to the Tribunal in BA makes grim reading. The fight against Daesh and the understandable desire of the Shi'ite population in Baghdad to keep the militants out of the capital has led, it would seem, to a resurgence of the sectarian hatred that led to the brutal civil conflict in 2006-2007. The evidence shows that Sunnis in the city live with the constant threat of violence, harassment, intimidation, discrimination and arbitrary arrest. At one end of the spectrum of harm Sunnis may face discrimination in the workplace or in securing accommodation; at the other they live with the threat of kidnap and murder by Shi'ite death squads. The Tribunal in BA nevertheless concluded, having regard to the overall size of the Sunni population, that there was not a real risk of harm to all Sunnis. An assessment of risk must take into account individual circumstances. I accept that must be so. A Sunni who comes from a neighbourhood in Baghdad where his family have lived for centuries is likely to have strong links in the community, to have a wide network of family and friends, which would likely include local Shi'ites: some of the evidence before the Tribunal in BA spoke of such men being rescued from militias by their Shi'ite neighbours [at 88]. I do not underestimate the difficulty that such Iraqis face, but they have a measure of protection from the fact that they are known in the city. A Sunni who has lived in a Baghdad neighbourhood all of his life, and who has established links there, is far less likely to be suspected of being a Daesh infiltrator or sympathiser.
23. This is not however the position that the Appellant finds himself in. He is not from Baghdad. He has no connections and has never even been there. He has no prospect of being able to find a sponsor to vouch for him. Even supposing that he was permitted to enter the city from the airport (the evidence on the imposition of the sponsorship requirement at the airport is unclear) he would face considerable difficulties in trying to establish himself.
24. Knowing no-one, his starting point might be a Sunni mosque. The fact that he attends mosque regularly is something of a double-edged sword. On the one hand it might mean that he is able to meet other Sunnis and establish some kind of tentative social support network; on the other it would make him readily identifiable as a Sunni to any observant Shi'ite militiaman. I have not seen any specific evidence on how Baghdadi Sunnis are reacting to incomers, but given the general tenor of the evidence, that communities are retreating inwards as a means of self-protection it would seem likely that a single Sunni Arab male from an area of high Daesh activity would be viewed with some suspicion, even by his co-religionists. Even if they felt some sympathy for his position, it would be understandable if they wanted to keep a distance from him, given the ever-present threat from the militias. Accordingly I find his prospects of gaining support from other Sunnis in Baghdad to be slim.

25. He is from Kirkuk, an area associated with Daesh. His accent and identity documents would plainly confirm that to any prospective employer or landlord, or anyone at a checkpoint. I note the Respondent's policy position that persons in that position are more vulnerable to suspicion and abuse, and the background evidence indicating that there is a high level of violence, discrimination and harassment being directed against Sunnis. I find it very difficult in those circumstances to see how the Appellant could lead any sort of normal existence there. The very factors that might have worked in his favour at the time that AA was heard – a single Arab man with no dependents – now work against him, since he has precisely the profile that a Shi'ite militiaman, on the lookout for Daesh infiltrators, might be interested in: a cursory check of his CSID would reveal his place of origin and give rise to a real risk of harm. I am satisfied, having regard to the individual characteristics of this Appellant, that it would be unduly harsh to expect him to try and relocate to Baghdad. That being the only place of internal relocation proposed by the Respondent, that disposes of the appeal in the Appellant's favour.

Decisions

26. The decision of the First-tier Tribunal contains a material error of law and it is set aside.
27. I remake the decision by allowing the appeal on protection grounds.
28. There is an order for anonymity.

Upper Tribunal Judge Bruce
24th November 2017