



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00056/2019

THE IMMIGRATION ACTS

Heard at Bradford
On 24 September 2019

Decision & Reasons Promulgated
On 26 September 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AAJ
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Forster instructed by TMC Solicitors LTD
For the Respondent: Mr Diwnycz - Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 19 June 2019 it was found a judge of the First-Tier Tribunal had erred in law in a manner material to the decision to dismiss the appeal. The reasons for it being so found are set out at [3 – 9] of the Error of Law finding.
2. The country guidance case of *BA (returns to Baghdad) Iraq [2017] UKUT 00018* found the authorities in Baghdad were unable and in the case of Sunni

complainants likely to be unwilling to provide sufficient protection. Mr Diwnycz confirmed the respondent's position is that it was accepted that the appellant, as a Sunni Muslim, would not be able to rely on the authorities for protection if targeted within Baghdad.

3. Mr Diwnycz did not concede the appellant's claim to have been targeted prior to his leaving Iraq at the error of law hearing but accepted there were concerns such that the matter needed to be looked at again. It does not appear to be disputed that those targeting the appellant are nonstate actors. It was also accepted the internal relocation issue requires further examination, it being submitted by Mr Diwnycz there are a number of options available to the appellant including the IKR, where the issue of reasonableness requires further consideration.
4. The matter comes back before the Upper Tribunal today to enable it to substitute a decision to either allow or dismiss the appeal.

Background

5. It is not disputed the appellant is a citizen of Iraq who had his own practice as a dentist there and that he originates from a wealthy family. It is not disputed that the appellant is a Sunni Muslim.
6. In addition to the appellant being a successful dentist his mother was a lawyer and his sister a pharmacist.
7. The appellant states in his earlier evidence that in August 2017 three people approach him at home claiming there were members of the Asaib' Ahl Al'Haq (AAH) and demanding \$1,000 as protection. A row resulted after which the alleged members of the AAH left the property.
8. Later in August 2017 the appellant stated members of the AAH again came to the appellant's home demanding money but fled after arguing with the appellant and his friend.
9. In September 2017 the Appellant's car was broken into and he claimed the note was left by AAH stating that unless he paid protection money he would be killed.
10. The appellant applied for a student Visa on 19 September 2017 which was granted on 28 September 2017.
11. On 1 October 2017 members of AAH came to the appellant's dental clinic and threatened and assaulted him.
12. The appellant entered the United Kingdom using his visa on 12 October 2017.
13. At the end of February 2018 members of the AAH spoke to the appellant's family and said they had to pay money which his mother refused.
14. The end of March 2018 members of AAH left the appellant's mother a note stating that unless she paid money her "sons" would be killed.
15. The appellant's claim is that if he returned to Iraqi he will be killed by AHH because he was considered to be a higher social class as a dentist, as medical professionals were targeted, or alternatively he would be killed by AAH as he is a Sunni Muslim.

Discussion

16. The appellant's home is was located at Saidya in Iraq. Al-Saydiya is a neighbourhood in the Al Rashid district of southwestern Baghdad. A once middle-class district, Al-Saydiya is one of the 'turned-Sunni Arab' areas after 2006–2007. Before that time it was mixed with respect to the facts that the majority sections of the neighbourhood were overwhelmingly Sunni, like the officers' quarter reserved for Hussein loyalists. The appellants home area was described as one of the worst areas of Baghdad as Sunni insurgents planted roadside bombs intended for American troops and fired at the mainly Shia policemen from mosques and other buildings overlooking their bases and checkpoints. Thousands of Shia residents have fled as a result of the violence.
17. A substantial volume of material has been provided in support of the appellant's case. It is not disputed by the respondent that if the appellant is targeted in the manner claimed he will not receive any support or protection from the police in Baghdad and that the issue in the appeal is therefore whether there is any where to which the appellant can reasonably be expected to relocate.
18. Discussions at the outset of the hearing identified three possible regions being elsewhere in Baghdad away from the appellant's home area which is effectively ruled out following the country guidance decision in *BA* referred to above, the IKR which was accepted as not a realistic proposition as the appellant as a Sunni Arab is unlikely to be granted entry to that region, he having no connection whatsoever with the Kurdish north, or the areas between Baghdad and the IKR and south of Baghdad including Basra.
19. In terms of whether the appellant's claim to have been targeted is credible it is necessary to consider the country information provided. Ms. Forster relies upon the European Asylum Support Office (EASO) Country of Origin report for Iraq "Targeting of Individuals" dated March 2019. There are in addition a number of photographs provided which the appellant states show members of the AAH, have occupied his property.
20. In relation to a risk to those perceived as being wealthy there is within the report section 3.9 the following:

'3.9 People perceived as wealthy

In May 2018 an article in the Washington Post reported that Shia militias 'operate as Mafia style organisations that engage in criminal activities, extortion and human rights abuses'. In a February 2018 report, Red24, a global security specialist consultancy based in South Africa indicated 'the kidnapping threat will remain high in conflict and previously conflict affected areas of Iraq in 2018, in particular in the central and northern Sunni governorates. In addition to the kidnapping threat posed by Islamic militant groups, such as the Islamic State (ISIL), in the above-mentioned regions, the upsurge in kidnapping by a myriad of criminal and militia groups which we have witnessed over the past 18 months is expected to continue, and possibly increase, in 2018. Locals are cited as primary targets. The report further notes

the kidnapping threat is expected to remain lower in the Kurdish north and Shia south. In its 2017 Country Report on Terrorism, USDOS notes all through 2017 kidnapping for ransom remained a source of funding for ISIL.

In a September 2018 article the New York Times noted that organised crime groups are rampant in Basra. The leaders of these criminal organisations are said to be linked to powerful Shia militias. In a September 2017 article Iraqi News reports a surge in ransom kidnappings of the relatives of well-off residence merchants in Mosul. A source within Mosul's police, who asked not to be named, indicated that many of the armed groups and mobilisation troops do not receive salaries from the Iraqi government, which prompts undisciplined elements to carry out kidnappings and armed robberies. In January 2017 article Al-Monitor reports on the rise kidnappings for ransom in Baghdad. According to Al-Monitor some criminal gangs employ a person called Al-Atlas, which means a bounty hunter. This person's mission is to provide the names and details of wealthy individuals of families to gang members. A deputy head of the Security Committee of the Baghdad Provincial Council stated influential political or armed group are behind the kidnappings to secure funds through ransoms. An Iraqi consultant Landinfo and Lifos met in Amman in February 2017 indicated that militia were directly involved in the wave of criminally motivated kidnappings witnessed in Iraq since 2014.

Mark Latimer explains at EASO's practical cooperation meeting on Iraq in April 2017 Sabea-Mandean are perceived as rich because they were associated with the jewellery trade.

Because of this they became a target for extortion by extremist groups and criminal gangs. In a January 2017 article Middle East Eye reports numerous kidnappings - politically and criminally related - take place almost daily in Baghdad. Former Iraqi Interior Minister Mohammed al-Ghabban informed Middle East Eye the criminal gangs aim to blackmail people to get money, and the terrorist, political type aims to impose the gangs influence and blackmail people at the same time. A senior Iraqi security official who declined to be named indicated that some of the abductors 'are either supported by big Shia armed factions or take advantage of contacts with the security forces'. Several key security officials told Middle East Eye that the abductees and their abductors were mainly Shia. According to Middle East Eye the criminal gangs responsible for the kidnappings aims to extort ransoms ranging from USD 10,000 to USD 100,000 depending on the financial situation of a victim's family.

In a March 2016 report Michael Knights and the southern provinces was caused by criminals claiming to be PMU. In a June 2015 report Norman Cigar notes that after June 2014 'in many areas the departure of army and police units to the front created a security vacuum that was exploited by criminal elements that engaged in kidnappings, extortion and robberies. Often, the perpetrators claimed to belong to one of the militia'. AAH's leader

Qais al-Khazali acknowledged that some criminals joined the militia as a cover for their illegal activities.

In a December 2014 article Middle East Eye reports dozens of kidnappings take place every week in Baghdad. Some abductions are a direct result of the sectarian tension that has grown since ISIL took over part of Iraq; others are the work of extortion gangs that are prospered in the confusion. Victims or their families report that the kidnappers often used text messages to make their demands, and that the amount asked is usually subject to negotiation. The agreed ransom is usually between USD 20,000 and UD 30,000.

21. The reference to PMU is a reference to Popular Mobilisation Units which is the overall term for the main militia and associated groups within Iraq. One of these is the Asaib al-Haq (AAH) which broke away from the Mahdi army, the militia run by an influential Shiite cleric Muqtada al-Sadr, in 2006. In September 2014 the New York Times designated AHH as 'the largest and most formidable of the Iranian-backed Shiite militias dominating Baghdad'. According to a report published in August 2017 the group was between 5,000 and 10,000 men strong as of March 2015.
22. I find the appellant has established to the lower standard of proof applicable in appeals of this nature that his claim to have been targeted as a person perceived as being wealthy by armed individuals in the manner described in his evidence is credible as it is in accordance with the country information. In terms of the identity of those who approached him it appears there is a strong possibility that they are criminal elements within the AAH or acting independently but pretending to be members of this militia for the purposes of frightening those they choose to target.
23. The appellant's home area of Baghdad was described as one of the most lawless in the country information and to lower standard it is accepted the appellant has established that such groups will have a presence and will have operated in the manner he describes.
24. It is not made out the appellant has been targeted directly as a result of any adverse political view but rather as a means of a potential further source of economic gain to those who chose to target him through extortion.
25. Whilst I find there is no evidence the appellant will experience problems in redocumentation, the appellant's mother the lawyer remaining in Iraq, or any difficulty in his being returned to Baghdad airport in light of the country information, it is not made out that he will be able to return to his home area.
26. Miss Foster raised as an issue within the appeal of the appellant's name which will identify him as a Sunni Arab. In the EASO report at section 1.15 there is reference to people with Sunni names seeking to change their name to hide their religious identity. The report refers to the fact that persons passing checkpoints in Iraq must prove their identity and that surnames and clan names can to some extent indicate which part of the population a person belongs to and where they come from. Sectarian violence within Iraq is a serious problem and Sunnis could arbitrarily be suspected of sympathy with ISIS which could subject them to abuse. An April 2015 article published in the Guardian newspaper stated that

identifiable Sunni names may arouse suspicion at checkpoints manned by Shia militia or Iraqi soldiers. The report refers to family names being deleted from citizenship cards. There is a specific reference to a July 2014 Human Rights Watch report of how a Shia man was abused and mistreated by members of AHH assuming he was a Sunni.

27. In light of the fact he has been targeted in the past and that no sufficiency of protection will be available to him in the future in Baghdad the question is, as it has always been in this appeal, whether it is reasonable in all the circumstances for the appellant to internally relocate elsewhere. It is not disputed that the United Kingdom has a right as a matter of international law and subject to treaty obligations to control entry, residence, and expulsion of aliens, unless such expulsion gives rise to breach of article 3. If substantial grounds have been shown for believing that the person concerned will face a real risk of being subjected to treatment contrary to article 3, removal of that person by the United Kingdom will contravene a protected right.
28. Paragraph 339O of the Immigration Rules, which is intended to incorporate the Directive, states:
 - (i) The Secretary of State will not make:
 - (a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
 - (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
 - (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
 - (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.
29. The principle of internal relocation applies equally to an Article 3 claim.
30. In *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)* the Tribunal held that there is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a well-founded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. In practice, the issue of internal relocation needs to be raised by the Secretary of State in the letter of refusal or (subject to procedural fairness) during the appellate proceedings. It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there. In an Article 3 claim, a

similar position pertains, in that, although the test of reasonableness/undue harshness does not formally apply, unduly harsh living conditions etc – albeit not themselves amounting to a breach of Article 3 – may nevertheless be reasonably likely to lead to a person returning to their home area, where such a breach is reasonably likely.

31. In *Januzi and others v SSHD* [2006] UKHL 5 the House of Lords appeared to suggest that the test was whether an applicant would face conditions such as utter destitution or exposure to cruel or inhuman treatment, threatening his most basic human rights. However, in *AH Sudan* [2007] UKHL 49 the House of Lords said that, if the AIT considered that conditions in the place of intended relocation could not be unreasonable or unduly harsh unless they were liable to infringe an applicant's rights under article 3 or its equivalent, it was plainly wrong. Nothing in *Januzi* or in the materials referred to in *Januzi* suggested such a test. No argument to that effect was advanced in *Januzi*, because there was no issue on the point. To the extent that reference was made to article 3 in *Januzi* it was to make clear, as might be thought obvious, that a claimant for asylum could not reasonably or without undue hardship be expected to return to a place where his rights under article 3 or its equivalent might be infringed.
32. In *VNM v SSHD* [2006] EWCA Civ 47 the Court of Appeal said that the reasonableness of relocation would require consideration of the practicability of an appellant settling elsewhere: consideration of her ability convincingly to present to those in her milieu a false history relating to herself and her daughter, including the latter's paternity; and a false explanation for their arrival there; and the ability to sustain a reasonable life beyond the short term given her psychological vulnerability.
33. In this appeal the appellant originates from a wealthy family. It is not made out this is a case in which there will not be sufficient financial resources to assist the appellant in resettling elsewhere which, in light of the tensions and risk from the militia present in the central regions of Iraq, realistically only leaves the southern area including Basra as a potential place of relocation.
34. As the country information shows, however, similar criminal elements to those the appellant experienced in Baghdad operate in Basra and the southern provinces.
35. The appellant is a dentist by profession and to properly maintain himself in terms of meeting his requirements for living a reasonable life elsewhere he is likely to be required to set up a new practice in his new home area. The appellant is clearly very successful at the work he undertakes and is very competent based upon the economic benefits he secured when in Baghdad. The risk for the appellant is that any form of economic betterment or external signs of means and resources is likely to place him at real risk of further extortion by the criminal gangs. There is also an addition the difficulty the appellant is likely to face as a person moving into an area of been able to hide his religious affiliation or even his area of origin, based upon the naming conventions referred to above.
36. The extent of the difficulties reflected in the country information is that the reality for the appellant is that wherever he sets up a successful business within

Iraqi he is likely to draw adverse attention to himself and be targeted. It was not made out in any of the country information that the appellant will benefit from a sufficiency of protection from either the Iraqi police or a favourable militia group as followers of the Shia faith may from the various militia. When the appellant is targeted it is reasonably likely, for the reasons noted above, that there is a real risk he will be subjected to treatment by way of extortion threats or further acts of violence sufficient to breach article 3 ECHR. On that basis it cannot be said that it is reasonable in all the circumstances to expect the appellant to internally relocate within Iran.

37. Whilst the IKR is an area where such concerns would be substantially reduced and where the appellant may be able to internally relocate to in principle, this is not an area of Iraq that is available to him in light of the country conditions and country guidance case law.
38. I find the appellant has discharged the burden of proof upon him to the lower standard applicable in appeals of this nature to establish a real risk of further treatment sufficient to breach article 3 if he returns to his home area Baghdad, a risk of being the victim of extortion or adverse criminality in any other part of Baghdad or elsewhere if he is perceived to be a person of means, from which there will be no sufficiency protection from the authorities. I find the appellant has discharged the burden of proof upon him to the required standard to establish that there is no reasonable internal relocation option available to him in any other part of Baghdad to which he will realistically be able to gain entry.
39. On that basis the appeal is allowed on article 3 grounds. It has not been made out that the difficulties the appellant will encounter arise as a result of any Convention Reason but rather as a result of criminal actions by Non-State Actors.

Decision

40. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

41. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 25 September 2019