



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

Appeal Number: PA116932016

THE IMMIGRATION ACTS

Heard at Bradford

**Decision & Reasons
Promulgated**

On 21st August 2017

On 31st August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MHA
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer
For the Respondent: Mr Jones of Counsel instructed by Sutovic & Hartigan

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Heap made following a hearing at Bradford on 28th March 2017.

Background

2. The claimant is a citizen of Iraq born on [] 1973. He arrived in the UK on 18th May 2011 and claimed asylum, was refused and a subsequent appeal dismissed. There then followed a number of fresh claim representations

and successful judicial review proceedings, finally culminating in a further decision to refuse asylum dated 7th October 2016. It was this decision which was before the Immigration Judge.

3. The underlying facts in this case are not in dispute. The claimant was arrested and tortured in July 2004 by the al-Sadr Army for providing food supplements to the US Army and to the National Guard. He was liberated after six weeks when US Forces re-took the town in which he was held. In August 2005 ASA supporters came to the family shop looking for him and a week later the shop was burned down. The claimant was not there since he had relocated to work some distance away and subsequently left the country first, for Syria, then Libya and finally the UK.
4. The judge accepted that the claimant had been a victim of past persecution by the ASA on the basis of his imputed political opinion. He also accepted that he continued to be persecuted after his liberation and that his family had been forced to disown him and that there continued to be an interest in him by the militias some years after the events of 2004.
5. The judge found that the claimant would be still at risk in his home area, relying not only upon the Secretary of State's own country guidance but also the significant amount of background country material produced by him showing that there had been a resurgence in the activities of those who had previously persecuted him. The judge recorded that he had the assistance of the recent decision of the Upper Tribunal in BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) which showed that the militia have regained strength and those who were perceived as being collaborators with the coalition forces were targeted.
6. There was no possibility of relocation to the IKR since the claimant was a Shia Arab and not a Kurd. He concluded that he would not be able to obtain a sufficiency of protection in Baghdad as a result of the preponderance of the Shia militia there with whom he had a profile.
7. The judge then set out in some detail why it would not be reasonable for the claimant to relocate to Baghdad. His health is poor. He has a significant bladder condition and mental health problems as a result of the torture which he suffered. He no longer has the benefit of family support in Iraq. There would be little prospect of his finding employment in Baghdad. He had no friends or wider support network to turn to. His business had been destroyed.
8. The judge concluded:-

“57. The appellant – a vulnerable individual suffering from significant mental health issues – would therefore be returned destitute and without any means of supporting himself. The appellant's evidence before me was that if he had to return to Iraq then he would commit suicide. Although not a contention that I have accepted lightly, in view of the medical evidence and the other

material before me, I do not have significant doubts in this case that the appellant might in fact do so.

58. I am satisfied that the circumstances set out above do not lend themselves to it being reasonable for the appellant in all events to internally relocate and, indeed that he would face insurmountable obstacles in being able to do so.”

The Grounds of Application

9. The Secretary of State sought permission to appeal on the grounds that the judge had failed to explain why the appellant would still be at risk from Shia militias in Baghdad given the conclusions in BA that any potential risk there was likely to emanate from Sunni extremist groups and not from Shia militias who, together with the Iraqi authorities and the US military now had a common goal in fighting ISIL.
10. Permission to appeal was granted by Designated Judge Manuell for the reasons stated in the grounds on 10th May 2017.

Submissions

11. Mrs Pettersen relied on her grounds but acknowledged that they did not address the wider aspects of the judge’s conclusions on internal relocation.
12. Mr Jones submitted a detailed skeleton argument and submitted that the judge had clearly understood the country guidance case of BA which was principally concerned with Sunnis and not authority for the arguments set out in the grounds that Shia militias could pose no threat to the claimant. In any event, the Tribunal in BA was dealing with protection issues and had nothing to say to the factors which the judge had properly taken into account as to the reasonableness of relocation in Baghdad. Indeed, the grounds made no challenge to the core of the judge’s decision that it would be unreasonable to expect this particular claimant to relocate.

Findings and Conclusions

13. Mrs Pettersen realistically accepted that there was little she could advance on behalf of the Secretary of State.
14. There is no challenge to the judge’s conclusions that the appellant would be at risk in his home area of Al-Najaf due to a resurgence in the influence of the Shia militia generally. Nor to the evidence that the claimant had been targeted in particular.
15. It was accepted by the original judge who had dismissed the appeal in 2011 that the claimant had suffered past persecution which is an indicator of future risk in the absence of durable change in Iraq. The judge was entitled to conclude that there had in fact been no durable change given the resurgence of the militia who had previously targeted him. There has

been no challenge to the background country material which he relied on. It was accepted that the claimant had a particular profile with the militia, and he had continued to be persecuted even after his liberation by US Forces. His family had been forced to disown him because of their continued interest in him.

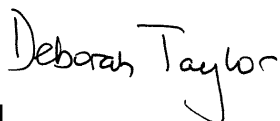
16. There is nothing in BA, which makes it clear that the decision is fact-sensitive, which is inconsistent with the judge's conclusions. The Tribunal in that case was dealing with a person who had worked for a western/international company and who might be perceived as a collaborator, and expressly concerned with whether past association with a western company may cause a risk of harm now. In this case the claimant had worked with the US Army and National Guard. The Tribunal did not deal with the risk to collaborators such as the claimant, in particular those who had actually been tortured, charged and convicted by the Shia militia under Sharia law and then escaped their detention because of the intervention of US Forces. Moreover the main issue in BA was in relation to Sunnis.
17. The crux of this matter however is that the grounds fail to acknowledge that the issue before the judge was whether relocation to Baghdad would be reasonable. Whether or not the claimant would be at risk from Shia militias there was only a part of that assessment and not addressed in the grounds. The judge took into account, as she was required to do, the claimant's severe physical and mental health needs and his ability to access care and treatment. She accepted that there was a risk of suicide. There would be no support from family and no other wider network to turn to. He would be destitute, having little prospect of finding employment. There is no engagement in the grounds with the judge's holistic conclusions.

Notice of Decision

18. The original judge did not err in law. The decision stands. The Secretary of State's challenge is dismissed.

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.



Signed

Date 30 August 2017

Deputy Upper Tribunal Judge Taylor