



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/00519/2016

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 19 January 2018**

**Decision Promulgated
On 24 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

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(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer counsel instructed by Broudie Jackson and Cantor

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on [] 1966 and is a national of Iraq.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is a resumed hearing in relation to a decision I made on 12 September 2017 to set aside a decision of First tier Tribunal Judge Shergill in so far as it related to relocation to Basra for this Appellant and her dependent husband and child. I preserved those findings made in relation to the inability of the Appellant to return to her home area of Mosul or relocate to Baghdad.
5. Mr Greer and Mr McVitie agreed that there was no need for further oral evidence. Mr Greer indicated that he would be relying on the lengthy and detailed report of Mr George dated 31 October 2017.

Final Submissions

6. At the hearing I heard submissions from McVitie on behalf of the Respondent that:
 - (a) It was clear now even from the expert report of Mr George that there were flights from Manchester to Basra via Baghdad so the mechanics of travel were not in issue.
 - (b) He accepted that the Appellants ID card was issued in Fallujah and showed her place of birth as Alanbar Fallujah. He argued however that she had family members, connections that would mean she was not treated as an IDP and internal relocation because of those connections would be reasonable.
7. On behalf of the Appellant Mr Greer submitted that :
 - (a) He accepted that it was now clear that there were onward connections from Baghdad to Basra. However in this case the issue was whether the Appellant

would be allowed to board the plane to Basra or disembark and enter Basra itself.

(b) He referred me to paragraphs 164-165 of the expert's report. He said that this required a hypothetical assessment of what was more likely to happen on arrival. The expert referred to the likely attitude of caution in relation to security issues and that given the Appellants circumstances it was more likely than not that she would not be allowed to enter Basra.

(c) What was relevant to the assessment of the Appellant was that her place of registration: this was Fallujah, she would be treated as coming from there.

Findings

8. I am required to look at all the evidence in the round before reaching any findings. I have done so. Although, for convenience, I have compartmentalised my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole.
9. The issue I have to determine in this case is a narrow one. Would it be unreasonable or unduly harsh for the Appellant and her family to relocate to Basra it being accepted that in their circumstances they cannot return to their home in Mosul or relocate to Baghdad. The reasonableness of relocation must inevitably include not only whether their circumstances and personal profile make it reasonable but whether they are physically able to enter the city.
10. The Respondents case has always been that the Appellant could reasonably relocate to Basra which it described in the refusal letter as her 'home area' as that was her place of birth. I note from the asylum interview (Q32) that she lived in Basra until she married when she was 21 and then moved to Baghdad where she lived until 1990 when she moved to Fallujah, She remained there until 1995 when she returned to Baghdad and then in 2000 she moved to the UAE. I note that the ID cards now produced before me show that the ID cards were registered in Fallujah and also show her place of birth as 'Alkarna-Basra'. However the Appellant had most recently lived and worked in Mosul before her flight to the UK.

11. The issue of relocation is addressed by Dr George at paragraphs 164-165 of his report which is underpinned by material originating from a COI of 12 April 2017 on relocation. The report sets out the circumstances in which those originating from ISIS held or conflict areas can obtain security clearance and register as IDPs and regularize their stay in the governate.
12. At paragraph 165 of the report Dr George addresses the issue of how the authorities would view where the Appellant originates from on the basis of Rules summarised by UNHCR and her previous history including the fact that she had not lived in Basra since her marriage and had lived in areas under the control of ISIS and that Basra lies in what he describes as 'Shia heartland.'. All this information would be disclosed by a cursory examination of her ID card and any modest degree of enquiry that resulted therefrom. He concludes that they would be more likely to view her as being from Fallujah because that was where her ID card was issued and where she had lived previously. He reaches this conclusion given the authorities '*tendency to caution in matters of security*' no doubt reinforced by her Sunni religion and previous history. On that basis and in the absence of evidence that the UNHCR had eased restrictions on the entry of displaced persons he concludes that she could not live legally in Basra.
13. I remind myself of the low standard of proof in these cases and note that the Respondent had no background material to show me that disagreed with Dr Georges conclusion. His conclusions were not, I accept, expressed in the strongest terms but he gives reasons why although in theory she could access Basra there are also reasons why the authorities in Basra would not allow her access to the city. In those circumstances I accept that relocation to Bsra is not an option.

Conclusions on Asylum

14. I find that the Appellant has discharged the burden of proof on her to show that she has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the Appellant's removal would cause the UK to be in breach of its obligations under the Geneva Convention.

Conclusions on ECHR

15. On the facts as established in this appeal, there are substantial grounds for believing that the Appellant's removal would result in treatment in breach of ECHR.

Decision

16. The appeal is allowed on asylum grounds.

17. The appeal is allowed on human rights grounds.

18. Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.

Signed

Date 22.1.2018

Deputy Upper Tribunal Judge Birrell