



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/10351/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester IAC**

**Decision & Reasons**

**On 8 March 2018**

**Promulgated**

**On 9 May 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**AMI**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes, counsel instructed by Broudie Jackson  
Canter

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION ON ERROR OF LAW AND DIRECTIONS FOR RESUMED  
HEARING**

1. I make an anonymity direction as the appeal concerns a protection claim.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Alis promulgated on 29<sup>th</sup> June 2017.
3. The factual matrix to this appeal is somewhat complex. The relevant matters being that the Appellant is a citizen of Iraq. He had entered the United Kingdom lawfully as the dependant of his wife's application. She was granted entry clearance as a student. Upon

entering the United Kingdom in March 2013, the Appellant claimed asylum. The asylum and human rights claims were considered by a First-tier Tribunal Judge. Ultimately, the whole of that decision was overturned on both aspects by the Upper Tribunal. The matter was then remitted for hearing afresh before the First-tier Tribunal.

4. That re-hearing took place before First-tier Tribunal Judge Alis. The Appellant had relied on grounds relating to his protection claim, the qualification directive and human rights, including Article 8 ECHR. There was oral and written evidence from the Appellant and from other witnesses.
5. The Appellant's claim in outline was that he was born in and had lived in Baghdad. He is of Kurdish ethnicity. He is a Sunni Muslim. He had been a Deputy Officer in the Presidential Special Guard. He had joined the Air Defence Force for the Ba'ath Party under the regime of Saddam Hussein.
6. The Appellant and his wife married in 1999. They have had a child born to them in 2009. That child is here in the United Kingdom.
7. In 2012 the Appellant's wife had received a scholarship from the Government of Iraq to come to study towards a PhD here in the UK at Plymouth University. She had been sponsored by her government. The family arrived in the United Kingdom with valid visas and they had flown as a family from the main airport in Baghdad.
8. The relationship between the Appellant and his wife deteriorated and in 2014 there was an incident when there was violence between the couple. The police were called. Following the incident, the Appellant's wife had telephoned the police. She had also contacted the Iraqi consulate and had informed them that the couple were separating and that the Appellant had claimed asylum; albeit he had not done so at that stage. The consulate had telephoned the Appellant's wife and had asked her questions too.
9. The Appellant's wife and son now live in Edinburgh. The contact arrangements (Children Act matters) are limited with the Appellant's son. Partly because of NASS requirements and partly because of travel cost issues.
10. The couple's divorce was finalised in May 2017. The Appellant's wife's and son's leave was due to expire in January 2018. Mr Holmes told me today that it has now been extended further until August 2018.
11. The Appellant's counsel had submitted that the Appellant was at risk on return because he was a Sunni Muslim and a Kurd who had previously worked for the Republican Special Guard. There was evidence that the Iraqi authorities in the United Kingdom knew that the Appellant had applied for asylum.

12. The Judge's findings noted, amongst other things, the following:

- (1) The Appellant came to this country with his wife and son and their trip was not only authorised by the Iraqi authorities, but they also sponsored the appellant's wife and the whole for family for the trip. They had left Iraq through normal channels via Baghdad airport. This, as will be seen below, is a very important feature of this case which differs significantly from the issues in the case law, including in the Country Guidance. I cannot ignore this feature of the case;
- (2) The Appellant's employment in Iraq was not challenged by the Respondent. The Judge concluded that the Appellant was a low profile employee of the Republican Guard;
- (3) Considering the enumerated and identified inconsistencies in the evidence, the Judge concluded that the Appellant's account of events in Iraq lacked credibility and his claim that he was at risk of persecution in Iraq though those aspects of the claim was rejected;
- (4) There was no risk on Refugee Convention Grounds;
- (5) When considering issues relating to the Qualification Directive and the Country Guidance case of **AA (Iraq) (Article 15 c)** [2015] UKUT 544 and **BA (Returns to Baghdad) CG** [2017] UKUT 18 the Judge specifically noted that:
  - (i) The Appellant was a Sunni Muslim of Kurdish ethnicity;
  - (ii) He held a low profile position in the Republic Guard;
  - (iii) He claimed asylum in the UK; and
  - (iv) He had siblings still living in the Baghdad area.
- (6) The Judge referred to detailed parts of the case law in his decision;
- (7) The Appellant's evidence was that his brothers and sisters had not experienced any problems in Baghdad and they too were Sunnis and Kurds.

13. Importantly, the Judge summarised the issue at paragraph 71 when he said,

"The issue I have had to consider is whether this appellant as a Sunni would be at risk and whilst I rejected his claim about the perceived risk from his former employment I have nevertheless considered the additional factor that he is a Sunni returning from the West having failed with his asylum claim,"

14. The Judge referred to the case law further, including at paragraph 72 of his decision when he said that the Upper Tribunal made it clear in the decision of **BA** that the risk on return depends on the circumstances of each case. He also noted the increasing levels of sectarian violence, but that "something" more would be needed to engage Article 15(c). The Judge also noted that the decision made clear that the plight of Sunni Muslims in Baghdad was not good, but that that alone was not sufficient to give rise to a real risk of serious harm.

15. In respect of Article 8 noted that the Appellant's ex-wife and (then) 7 year old son was in the UK and had been in the UK for 4 years. The Judge considered various aspects, including that the Appellant's wife was in the UK on a "limited" visa.
16. Mr Holmes had referred to the grounds of appeal and had amplified them to say that there were three matters:
  - (1) The Judge had failed to consider the issue of the Iraqi authorities. There had been third party enquiries;
  - (2) The Appellant's Sunni background; and
  - (3) There was no proper best interests assessment in respect of the child.
17. Mr McVeety said the Appellant's wife was in the UK on a temporary visa. The burden was on the Appellant to deal with this. There was no breach of section 55 Borders, Citizenship and Immigration Act 2009. It was a very weak Article 8 ECHR argument. It was difficult to see how it could succeed. The issue in respect of the Appellant being a Sunni Muslim was dealt with by the Judge at paragraph 70. The Appellant was not at risk when he left Iraq legally 4 years ago. He said the CSID issue was not relevant. The Appellant would not be going to a contested area.
18. Mr Holmes in reply said that the best interests was a relevant factor for the purposes of Article 8. In what circumstances was the child being returned. Was it in the child's best interests to be returned? What about the separation from the father? The Sunni identity was dealt with in an odd place. The Judge had compartmentalised it. There were additional matters. There was a difference between someone involved in the present regime coupled with an interest in the Appellant whilst he has been in the UK. The judge rejecting the claim can only relate to matters which took place in Iraq itself. The fact that the Appellant's family is not settled in the UK is of no significance. The risk was not only from the authorities, but also from the militia.
19. Having reflected on matters and having considered the case law of **AA (Iraq) v Secretary of State for the Home Department** [2017] EWCA Civ 944 and the Upper Tribunal's decision in **BA (Returns to Baghdad) CG** [2017] UKUT 17, I conclude that there is no material error of law in the Judge's decision. I have also considered the Article 8 family and private life issues with the section 55 Borders, Citizenship and Immigration Act 2009 duties at the forefront.
20. Dealing first with the protection claim, including of course the asylum, humanitarian protection and Article 3 aspect claim to the appropriate standard of proof, it is quite clear to me that this case is very different to the types of cases ordinarily before the Tribunal and indeed very different from the case law of the Court of Appeal and the Upper Tribunal.

21. It has to be borne in mind that the Judge fully had in mind the background to the Appellant being here in the UK and how he came to leave (not flee) Iraq. I entirely agree with Mr McVeety that the fact that enquiries were made by the Iraqi authorities here in the UK about the sponsorship it had paid for the Appellant's wife studies in the UK has nothing to do with a risk on return, persecution, vengeance or the like. The telephone call had nothing to do with him being sought for such purposes. The submissions and grounds seek to side-step the clear findings made by the Judge.
22. Those findings are numerous and include the following:
- (1) Inconsistencies and clear reasons for rejection of the Appellant's credibility by the Appellant's own evidence. For example, at paragraphs 56 and 57 of the Judge's decision the events the Appellant claimed as having occurred in Iraq were roundly rejected;
  - (2) The Appellant had left Iraq on his own passport and those of his wife and son. Not only was the trip authorised by the Iraqi authorities, it was the same regime who had sponsored them to come to the UK (paragraph 50);
  - (3) Following the fall of Saddam Hussein, the Appellant did not face any immediate problems due to his former employment as a low profile employee of the Republican Guard. It was in 2006 that the Appellant decided to move some 5 kilometres away to his aunt's house;
  - (4) There was a big inconsistency in the evidence as to whether the house was searched between 2006 and 2013. The Appellant said it was not, but his wife said it was;
  - (5) Applying the case law of **AA** and **BA** the Judge considered the four aspects of the risk on return at paragraph 61. The Judge considered other case law in some detail. He applied it correctly. The Judge specifically considered whether the Appellant would be at risk on return to Baghdad as a failed asylum seeker from the UK at paragraph 71 onwards. His reasoning was sufficient. To interfere with the decision would be no more than mere disagreement. The grounds ask me to look at things differently but do not identify a material error of law;
  - (6) In so far as Article 8 ECHR is concerned, the Judge dealt with this at some length. In the end though the facts of the case revealed a couple who had separated and lived in different cities. The Appellant's former wife has only temporary leave. At the date of hearing it was due to expire in months. At this hearing I am told that has been extended by a few more months (to August 2018). That is hardly akin or near to being Indefinite Leave to Remain.
  - (7) At paragraph 77 the Judge considered and rejected Appendix FM. The Judge noted the relatively limited contact which took place between the Appellant and the son and the reasons for it. The Judge noted that even telephone contact was limited. The Appellant's former wife expressed no fear or the like of returning

to Iraq once she completes her PhD. The Judge considered section 117 NIAA 2002. The Judge did not cite section 55 Borders, Citizenship and Immigration Act 2009 but he properly referred to the child's best interests at paragraph 82 of his decision. He noted that the couple were divorced. In such cases the parties have to do the best that they can in respect of the non-resident parent seeing and speaking to the child. On the evidence there was limited contact here in the UK. There was no reason why such a situation could not continue in the medium to long term whilst the Appellant's former wife completed her studies.

23. Overall, in my judgment, the Judge's decision dealt with the various aspects to the Appellant's claim in an entirely complete way. Despite rejecting the Appellant's credibility about past claimed events, nonetheless the Judge still went on to deal extensively with the case law and various permutations of possible areas of risk on return. I am satisfied that there is nothing sufficient within the Appellant's grounds or submissions which can properly be categorised as a material error of law in the Judge's decision.
24. Similarly, in so far as Article 8 is concerned, although the experienced Judge did not refer to section 55 Borders, Citizenship and Immigration Act 2009, (the case law makes quite clear that there is no need to do so) there is no error of law. That is because the Judge did have the best interests of the child in mind. Having considered the Appellant's former's wife's precarious leave, that the child has been in the UK for 4 years (albeit he is aged 7) and that the stated intentions of the Appellant's former wife were to return to Iraq after her studies with no concern about any fear or risk on return, then it is clear that there is no error of law in relation to the assessment of family life. Similarly, there is nothing of substance to overturn the decision in respect of private life.

## **DECISION**

There is no error of law in the Judge's decision. The decision of the First-Tier Tribunal dismissing all aspects of the claim 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 their 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: Abid Mahmood

Date: 30 March 2018

Deputy Upper Tribunal Judge Mahmood