



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03633/2017

THE IMMIGRATION ACTS

Heard at Field House
On 30 April 2018

Decision & Reasons Promulgated
On 16 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H. A. H.
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Laurence Tarlow, Home Office Presenting Officer

For the Respondent: Mr David Lemer, Counsel instructed by David Wyld & Co

DECISION AND REASONS

1. This appeal arises out of the decision of First-tier Tribunal Judge Hussain promulgated on 1 June 2017. That decision was set aside by me on 8 January 2018, on the basis that it had not addressed the recent revised country guidance in **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)**. For convenience, I shall use the term appellant to refer to the applicant in this matter (whose anonymity is to be preserved) notwithstanding that it was the Secretary of State who appealed the decision of the Judge Hussain.

2. The judge's credibility and factual findings were expressly preserved. The substantive issue for determination, therefore, was limited to the assessment of risk on return having regard to the up-to-date country guidance now to be found in **BA**. At the conclusion of the hearing I informed the parties that I would allow the appeal and supply written reasons thereafter. These are they.
3. No additional evidence was filed on the part of the Secretary of State. An extensive bundle was lodged on behalf of the appellant. This helpfully drew together material previously before the First-tier Tribunal together with updated statements from the appellant and her husband. Particularly relevant, and helpfully marked as "Essential Reading", was an expert report prepared by Dr Alan George dated 7 March 2018. I will make reference to certain specific elements below, but at the outset I record that the Upper Tribunal had the benefit of Dr George's evidence when giving revised country guidance in **BA**. His acknowledged expertise in Middle Eastern affairs need not be rehearsed.
4. No oral evidence was called on behalf of either party. Mr Tarlow, who acts for the Secretary of State, did not seek to cross-examine the appellant or her husband. As the factual and credibility findings have been preserved, there would have been little utility in him so doing. The Secretary of State produced no evidence to challenge or contradict any of the content of Dr George's report.
5. Mr Tarlow's submissions were very brief. He took me to paragraph 107(vii) of **BA** which reads:

"In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection".

Mr Tarlow submitted that this was not an ordinary case. He indicated that the high profile status of the appellant's husband was such that, in his particular circumstances, the military authorities would afford his family sufficient protection. This was the only argument advanced by Mr Tarlow as to why there would not be risk on return for the appellant.

6. Mr Lemer, on behalf of the appellant, made brief submissions which amplified his well-crafted skeleton argument. I can take the matter shortly, due to the manner in which Mr Tarlow put the case for the Secretary of State. Mr Lemer relied on the findings in the First-tier Tribunal and the evidence which was accepted by the judge. The material section is to be found in paragraph 15 of the decision:

"The respondent, accepting that the appellant cannot reside in Anbar, nevertheless asserts that she could relocate and reside in Baghdad. The appellant was said to have spent several days in the Green Zone before departing for the UK. However, I accept the oral evidence of the appellant's husband who stated the Green Zone is a controlled area and is limited to high ranking politicians and officials and that whilst he is granted the privilege to use Ministry of Defence accommodation, this facility is not extended to his family. I also accept his account that he was permitted to stay with his family on a temporary basis at a friend's home within

the Green Zone whilst waiting for his wife's visa to be processed. This arrangement was only temporary and not a long-term option available to them."

7. This clear finding (which has been preserved) is sufficient to be dispositive of the sole issue raised by Mr Tarlow. It is pure speculation that the military or the police would afford the appellant protection because she is related to a high-ranking military official. To the contrary, however, there is positive and unchallenged evidence that she will not be protected in the Green Zone or elsewhere, notwithstanding the status of her husband or the presence of his children.
8. The preserved findings of fact are conveniently summarised in Mr Lemer's skeleton argument, at paragraph 2. The appellant's husband is a well-known Iraqi General. He was nominated for Minister of Defence in October 2014. His brother was assassinated in 2006 on account of the appellant's husband's status. The appellant's home in Anbar was subjected to numerous attacks by ISIS and she and her husband were subject to threats while in Iraq. Her home was occupied by ISIS in May 2015.
9. The judge determined that the appellant cannot return to Anbar. She and her children would not be allowed to remain in the Green Zone in Baghdad for anything more than a temporary stay. They are not permitted to stay in Ministry of Defence accommodation or in military camps. The appellant's husband has been subject to further threats through publicly distributed leaflets since her arrival in the United Kingdom. The appellant's husband has not claimed asylum since he can maintain his position in the Iraqi Army.
10. It is the appellant's case that she is at risk on return to Baghdad as a result of a number of factors. These include: her husband's status as a high profile General in the Iraqi Army, her Sunni identity, her perceived wealth and the general level violence in Baghdad. It is also her case, reinforced by the preserved findings of fact, that the Baghdad authorities are unwilling or unable to protect her and her children.
11. The country guidance now to be found in **BA** is summarised in the head note, the material parts of which read:
 - “(iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.
 - (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.

- (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.
- (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. Dr George's report assesses the risk generally and in relation to this particular appellant in the light of the altered military and political landscape in Iraq consequent on the "defeat" of ISIL. The following matters in the report are illustrative:

"122. I can also confirm that as a General in the Iraqi Army [the appellant's] husband would be a prime target for extremist factions very much including the Islamic State Group. In my view his wife and children would be targets by dint of their close association with him.

123. I would note that while women and children are generally exempted from politically motivated violence in Iraq this is far from being universal as the case matched in my previous paragraph demonstrates.

[...]

125. In this regard I would stress that although the Islamic State Group now controls no territory in Iraq, it persists as a clandestine force

126. On the basis of her testimony, in my opinion [the appellant] and her children would be at real risk in Iraq as the close relatives of an Iraqi Army General.

127. In my opinion this risk would apply in all areas to which the Islamic State Group and related extremist militias had access, including her home area and Baghdad.

128. In my opinion, and again based on [the appellant's] testimony, the risks that she and her children would face as relatives of an Army General and from the general violence would be serious in my view as Sunnis and as returnees. They would presently face only low risks."

13. In relation to kidnapping, it is a matter of record that even very senior state officials who benefit from tight security can and do fall victim to attacks by militants. At paragraph 220 of his report, Dr George records that on 31 January 2018, Islamic State militants assassinated a former Iraqi Army General in Kirkuk.

14. Paragraph 106 of Dr George's report contains a reference to the UN Secretary-General's report dated 17 January 2018 which states:

"Baghdad continues to experience more improvised explosive device and vehicle bomb attacks perpetrated by ISIL and targeting security forces and civilians and any other centre. A total of 124 attacks with improvised explosives took place between 22 November and 19 December resulting in the deaths of 60 civilians.

On 27 November a double suicide attack in a market in Narwarwan east of Baghdad left more than 20 civilians dead and 30 wounded.”

15. And at paragraph 108, Dr George refers to a *Report on Human Rights in Iraq January to June 2017* (United Nations Assistance Mission for Iraq, August 2017) which records:

“The overall human rights situation in Iraq remains precarious. The ongoing armed conflict between the Government of Iraq and pro-Government forces and the Islamic State of Iraq and the Levant has exacerbated violence and terrorism in Iraq and further eroded a range of human rights including those pertaining to the rule of law and administrative justice, the care and protection of women and children from sexual and gender-based violence and conflict-related sexual violence and accountability for perpetrators, the respect and protection of the rights of a minority ethnic and religious and other communities, protection of sexual minorities and the rights of persons with disabilities and the respect for the rights of freedom of expression and freedom of assembly.”

16. Dr George further states at paragraph 91:

“I would emphasise that the family, extended family and tribe are the fundamental units of Iraqi society, that revenge is a central feature of Iraqi culture and that revenge attacks could be directed not only against specific individuals, but also against their extended families”.

18. These selective quotations from Dr George’s report give a flavour of the whole, which runs to some 107 pages in all. Mr Lemer’s skeleton argument, at paragraph 8, assists in navigating the report by extracting a series of references on a thematic basis. I need not incorporate them into this decision because of the very limited basis of Mr Tarlow’s submissions.
19. The evidence points overwhelmingly to the conclusion that the appellant has a well-founded fear of persecution on return to Iraq. I inevitably find that she would be unable to return to Baghdad since, on the basis of her evidence, her husband’s evidence, Dr George’s unchallenged expert report, and the preserved findings of the First-tier Tribunal, the authorities would not be able to provide her with adequate protection.
20. In all the circumstances, as I indicated at the conclusion of the hearing, having scrutinised the totality of the evidence through the prism of the revised country guidance in **BA**, I reach the same conclusion as did the First-tier Tribunal Judge had done under the pre-existing guidance. Accordingly, having already set aside the First-tier Tribunal determination, I re-make the decision and I allow the appeal.

Notice of Decision

The appeal is allowed on asylum grounds.

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 *Mark Hill*

Date 7 May 2018

Deputy Upper Tribunal Judge Hill QC