



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

Appeal Number: PA/04407/2018

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

Decision & Reasons

On 30th November 2018

Promulgated

On 21st December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**H D A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo of Counsel instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Powell (the Judge) of the First-tier Tribunal (the FtT) promulgated on 7th August 2018.
2. The Appellant is a national of Iraq. He was born on 1st May 1991 making him 27 years of age at the date of hearing.

3. The Appellant entered the UK on 2nd November 2017 and claimed asylum. His claim was based upon his fear of persecution as a member of a particular social group that being doctors in Iraq, and he also feared that he would be at risk if returned to Iraq, from the Al Baydani tribe because he had a relationship with a member of the tribe which was discovered by her family.

The Refusal

4. The Appellant's human rights claim and claim for international protection was refused on 18th March 2018. The Respondent accepted the Appellant's nationality, but not the remainder of his account. It was not accepted that he would be at risk by reason of being a doctor in Iraq. It was not accepted that he had been in a relationship, and therefore it was not accepted that he would be at risk from a particular tribe.
5. In any event the Respondent found that if the Appellant would be at risk if returned to his home area, which was not accepted, he had a reasonable internal relocation option to Baghdad which would not be unduly harsh. It was not accepted that the Appellant would be at risk if returned to Iraq and therefore he was not entitled to a grant of asylum or humanitarian protection, and it was not accepted that his removal from the UK would breach any human rights protected by the 1950 European Convention on Human Rights (the 1950 Convention).

The First-tier Tribunal Hearing

6. The judge heard evidence from the Appellant, and took into account the Respondent's bundle of documents, the Appellant's bundle containing sections A-D, and the Appellant's skeleton argument. The judge concluded that doctors as a profession form part of a social group in Iraq but that the group requires further definition. The judge found that the social group in question is one consisting of practising doctors. The judge found that the Appellant is not a practising doctor in Iraq and therefore he is not part of that particular social group.
7. The Appellant did not claim to be a practising doctor in Iraq. His case was that he had left Iraq in 2014. He had qualified as a doctor in Ukraine. He wished to practise as a doctor in Iraq but believed that he would be at risk if he did so.
8. The judge went on to consider a scenario in which the particular social group consisted of doctors whether practising or not. Such a group would include the Appellant, but the judge found that this did not mean that the Appellant personally faced a real risk of persecution. The judge found that the evidence indicated that doctors are generally targeted because of their high salaries and lifestyle and a belief that they can be extorted or held for ransom. There is also evidence that some doctors are targeted by militias for a variety of political reasons.

9. The judge found that the Appellant would not be targeted on his return as he has not worked as a doctor in Iraq. He does not have a job as a doctor awaiting him, and it was not likely he would be recognised as a doctor simply because he had published evidence of his graduation as a doctor on Facebook. He did not have an income or lifestyle that would mark him out as ripe for extortion. He did not fit the profile of doctors or medics who had been targeted.
10. The judge found that the Appellant would not be at risk as at the date of hearing, and if in future he established himself in practice as a doctor in Iraq, 'and gains the trappings that have led to some doctors being targeted, is not a matter for me to decide today.'
11. The judge found that the Appellant would not be at risk from the Al Baydani tribe. It was not accepted that the Appellant had provided a reliable account of his relationship with a girl from that tribe. The Appellant's account was not accepted. The judge did not believe his account of being threatened or his family being threatened and was not satisfied that he faced a real risk of harm from that tribe.
12. The judge went on to make an alternative finding, which was that if the Appellant was at risk from that tribe in his home area the Appellant would be able to relocate to a different area which would not be unduly harsh. The judge noted that his family had relocated.
13. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

14. The Appellant applied for permission to appeal relying on six grounds which are summarised below;

Ground 1:

The judge erred by failing to apply the principles in HJ (Iran) [2010] UKSC 31. The judge accepted that practising doctors form a particular social group in Iraq and therefore accepted by necessary implication that were the Appellant to return to Iraq and practise as a doctor he would face a well-founded fear of persecution. The judge thereafter failed to apply the principles in HJ (Iran) which amounts to a material error of law.

Ground 2:

The judge erred by making an erroneous distinction between practising doctors and qualified doctors. The judge erred by not accepting evidence that doctors were targeted per se. The judge partially accepted this at paragraph 38 by making a finding that there is evidence to show that some doctors are targeted for a variety of political reasons. It was submitted that the political social group must be either "qualified doctors" or "qualified doctors who intend to practise on return".

Ground 3:

The judge erred by not accepting evidence which confirmed that the Appellant would practise as a doctor if returned.

Ground 4:

The judge failed to consider the importance of indirect threats and was wrong in law by effectively requiring the Appellant to show that he had already been directly threatened and ignoring the central importance of inter-tribal contact.

Ground 5:

The judge erred by failing to consider case law and objective evidence in relation to threats.

Ground 6:

The judge erred by failing to conduct a proper internal relocation analysis. He did not apply the test of “undue harshness” laid down in Januzi [2006] UKHL 5. The judge erred by concluding that the fact that the Appellant’s family had relocated disposed of the question of whether the Appellant could internally relocate.

Permission to Appeal

15. Permission to appeal was granted by Judge S H Smith and I set out below the grant of permission in part;

- “2. The grounds assert that the judge erred in that, (1) he failed to consider HJ (Iran) [2010] UKSC 31, (2) drew an erroneous distinction between practising doctors and qualified doctors when considering membership of a particular social group (“PSG”), (3) failing to take into account evidence suggesting the Appellant would practise upon return to Iraq, (4) took the wrong approach to evidence of inter-tribal conduct, (5) failed to consider the authorities and objective evidence concerning threats and, (6) conflated risk to the Appellant’s family with risk to the Appellant personally.
3. There is an arguable material error of law. It is arguable that the judge fell into error by drawing a distinction between practising and qualified doctors. The Appellant has trained as a doctor and clearly seeks to practise as a doctor in the future. By failing to consider the implications of whether, pursuant to HJ (Iran), the Appellant will have to suppress his vocation and membership of this PSG upon his return, the judge arguably fell into error. Indeed, the judge appeared to consider that not practising in Iraq as a result of fear or persecution deprived a doctor of PSG status (see [36]) whereas such an approach arguably runs contrary to HJ (Iran), and is arguably inimical to the Geneva Convention.
4. The other grounds are simply disagreements with legitimate findings of fact or are immaterial. They have less merit than the first.”

The Upper Tribunal Hearing

16. Mr Yeo made oral submissions in relation to the risk to the Appellant as a doctor and submitted authorities, those being RT (Zimbabwe) [2012] UKSC 38 and MSM (Somalia) [2016] EWCA Civ 715.
17. Mr Yeo submitted that the first three Grounds of Appeal should be considered together. The Judge erred by failing to apply HJ (Iran) principles. Reference was made to RT (Zimbabwe), on the basis that a person has a right to have no political opinion, a person who is politically neutral is entitled to the protection of the Refugee Convention. It was submitted that MSM (Somalia) is in legal terms similar to this case. Mr Yeo accepted that the conclusions reached by Beatson LJ at paragraph 35 onwards are obiter dicta and therefore not legally binding, but submitted that these remarks were support for the proposition that an Appellant cannot be expected to change his occupation to achieve safety, particularly if his occupation is a profession such as a doctor.
18. Mr Yeo submitted that doctors in Iraq have been politicised, and in this case the Appellant would either be a member of a particular social group, or at risk because of political opinion or imputed political opinion.
19. Mr Yeo submitted that the judge had erred as contended in the first three grounds contained within the application for permission to appeal, and that background evidence contained within the Appellant's bundle at section CA indicated that doctors in Iraq were at risk.
20. I was asked to conclude that the judge had erred, which meant that the decision should be set aside. Mr Yeo submitted that this was a case which could be remade by the Upper Tribunal without a further hearing, based upon the evidence that was before the FtT.
21. Mr Howells submitted that the judge had made findings and reached conclusions which were open to him to make on the evidence. It was relevant that the Appellant, although recently qualified as a doctor, had never actually practised in Iraq. The judge was entitled to find that even if the Appellant was a member of a particular social group that did not necessarily mean that he would be at risk.
22. Mr Howells submitted that the judge had made a relevant finding, that as at the hearing date, the Appellant was not a practising doctor in Iraq and therefore would not be at risk as at the date of hearing, which was the date that the judge must consider. It was not for the judge to consider a hypothetical situation or speculate.
23. Mr Howells submitted that there was no material error of law, but agreed with Mr Yeo that if I found to the contrary, and decided that there was such a material error, then the decision could be remade without the necessity of a further hearing, based upon the evidence that was before the FtT.

24. At the conclusion of submissions I reserved my decision.

My Conclusions and Reasons

25. The judge has prepared a careful and considered decision. I find no error of law in the conclusion at paragraph 54 that the Appellant has not provided a reliable account of his relationship with a member of the Al Baydani tribe. The judge did not err in being satisfied that the Appellant had not had an intimate relationship and in finding that he would not have been perceived to have been in such a relationship with her. The Appellant had not proved that he had been threatened and the judge was entitled to conclude that he was not satisfied that the Appellant faced a real risk of harm in Iraq from the Al Baydani tribe.
26. Turning to the consideration of risk to the Appellant as a doctor, the Respondent has not challenged the finding made by the judge at paragraph 36 that the country evidence establishes that doctors as a profession form part of a social group in Iraq. The primary finding by the judge is that the social group in question is one consisting of practising doctors. The Appellant's case is that the particular social group should be either "qualified doctors" or "qualified doctors who intend to practise on return to Iraq".
27. There was evidence before the FtT that the Appellant wished to practise as a doctor in Iraq. The judge does not specifically reject that evidence.
28. This is a somewhat unusual case, in that the Appellant has never practised as a doctor in Iraq, although he is an Iraqi citizen, and it is accepted that he is now a qualified doctor, having qualified in Ukraine. In my view it was an error of law for the judge not to consider the Appellant's evidence that he is a qualified doctor and I do find that the judge erred by failing to take into account evidence suggesting that the Appellant would practise as a doctor upon return to Iraq, and drew an erroneous distinction between practising doctors and qualified doctors when considering membership of a particular social group, and erred by failing to consider the HJ (Iran) principles.
29. In my view the judge erred at paragraph 41 when finding that the Appellant would not be at risk at the date of hearing, and declining to consider whether he may be at risk in future if he establishes himself as a doctor in Iraq. Although the circumstances appertaining at the date of hearing must be considered, the judge must consider whether there is a well-founded fear of persecution in the future, if an individual was to be returned to their own country.
30. For the reasons given above, although the decision is careful and considered, I find an error of law in relation to the first three Grounds of Appeal, and therefore conclude that the decision of the FtT is unsafe and must be set aside. The findings in relation to the absence of a risk from the Al Baydani tribe are preserved.

31. I find it appropriate to remake the decision on the basis of the evidence that was before the FtT. I am considering whether the Appellant has proved to a reasonable degree of likelihood that he would be at risk of persecution if returned to Iraq as a qualified doctor. I am also considering Article 3 of the 1950 Convention. The burden of proof is on the Appellant.
32. It is common ground that the Appellant is a qualified doctor. It is not in dispute that he qualified in Ukraine and he has not practised as a doctor in Iraq. He was last in Iraq in 2014. He is a newly qualified doctor. I accept the Appellant's evidence in his witness statement, so far as it relates to his profession as a doctor and in particular I accept the contents of paragraph 9 in which the Appellant states that if working as a doctor one must treat people unconditionally, regardless of their religion or ethnicity. I am satisfied that the Appellant is a member of a particular social group that being a qualified doctor who wishes to practise medicine in Iraq.
33. I have to consider whether the Appellant has proved to a reasonable degree of likelihood that he would be at risk if he returned to Iraq as a doctor. I find that objective and background evidence contained within the Appellant's bundle proves that he would be at risk. The relevant section in the bundle is CA. I refer to an article at CA1 dated 8th August 2017 in which an Iraqi Health Ministry spokesperson described attacks on doctors occurring daily in Baghdad.
34. I then refer to an article dated 7th March 2017 headed 'Iraq's public healthcare system in crisis'. Unfortunately, the paragraphs are not numbered but at page 4 (CA5 of the bundle) there is reference to doctors in Baghdad being killed at a rate of 47.6 per 1,000 professionals when American soldiers withdrew from Iraq in December 2011. I then turn to an article beginning at CA10 of the bundle headed 'The Wall Street Journal' with a subheading of 'Iraq's doctors face threats of violence'. This article is dated 1st May 2016 and makes reference to a breakdown in public order exposing the country's doctors to revenge attacks from grieving families, powerful tribes and militia leaders. The unchecked attacks, are prompting some doctors to depart the country even as it suffers from a shortage of medical professionals. The article makes reference to the weakness of the government and the power of militias. There is reference to violence against medical professionals having flared.
35. There is an article by Associated Press dated 15th December 2015 at CA13 of the bundle which confirms that doctors still working in Iraq face violence and tribal justice. There is a further article commencing at CA16 of the bundle by Global Research making reference to medical doctors in Iraq being vilified, hunted and killed.
36. There is a further article prepared by middleeast.net commencing at CA18 of the bundle which at CA20 refers to an interview with a doctor and the fact that his profession has made him a perpetual target. The doctor in question had received repeated death threats from various militias who suspected him of treating Daesh wounded. The doctor described working

in fear of retaliation simply for treating members of his community, regardless of association. The article goes on to describe “the multiplicity of armed actors, including Daesh, the Iraqi Army and the Shia militias (themselves a loose network of popular mobilisation forces), has created a fatally, unpredictable environment for healthcare providers and their families.” There is further reference in the article to doctors who “continue to brave daily violence and intimidation to save the lives of their compatriots.”

37. I now consider the HJ (Iran) principles. I firstly must consider whether the Appellant would be at risk as a member of a particular social group, that being a doctor, if he lived openly in Iraq. I find that the background and objective evidence referred to above indicates to a reasonable degree of likelihood that he would be at risk.
38. I then must consider what the Appellant would do if returned to Iraq. I am satisfied that he would wish to work as a doctor. I find that if he lived openly as a doctor, he would be at risk. If the Appellant lived discreetly, I must consider why he would do so. To live discreetly, the Appellant must either hide the fact that he is a doctor, and operate as a doctor in secret, or give up his occupation. I must consider why the Appellant would give up his occupation or try and operate as a doctor in secret, and the answer is because of a fear of persecution. I therefore conclude that the Appellant has proved to a reasonable degree of likelihood that if he lived openly as a doctor in Iraq he would be liable to persecution, and if he chose to give up his occupation or operate as a doctor in secret, this would be because of a fear of persecution, and therefore he would still be entitled to a grant of asylum.
39. Because the Appellant is entitled to a grant of asylum he is not entitled to humanitarian protection. I conclude that if returned to Iraq he would be at risk of treatment that would breach Article 3 of the 1950 Convention for the reasons I have given when considering his asylum claim.
40. I was not asked to consider Article 8 in this appeal.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The appeal is allowed on asylum grounds.

The Appellant is not entitled to humanitarian protection.

The appeal is allowed on human rights grounds with reference to Article 3 of the 1950 Convention.

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 5 December 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee has been paid or is payable. There is no fee award.

Signed

Date 5 December 2018

Deputy Upper Tribunal Judge M A Hall