



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

Appeal Number: PA/01282/2018

THE IMMIGRATION ACTS

Heard at Field House

On 15th March 2019

**Decision & Reasons
Promulgated
On 26th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**[R K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood, Counsel, instructed by Wilson Solicitors LLP

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a citizen of Iraq whose date of birth is recorded as [~] 1977. On 21st May 2016, he arrived in the United Kingdom and claimed international protection as a refugee. On 24th December 2017, a decision was made to refuse the application and the Appellant appealed. On 18th December 2018, his appeal was heard by Judge of the First-tier Tribunal Henderson, sitting at Taylor House.

The background to the Appellant's case was that he had worked for an American company, KBR, from the end of 2003 to 2006. That company provided services to the United States Army at its military bases in Iraq. The Appellant worked at one of those bases for one year and then at another. He worked as a guard within the security team. There came a time when he received threatening letters from the Mahdi Army. These letters referred to him as a traitor and an American spy/agent. Threats were made on his life.

It was the Appellant's case that the base shut down in 2006 and he changed his work. He became concerned with a small restaurant in Hillah. That was his family home, and it was his case that within a month of that restaurant opening the person who was running the restaurant for him told him, the Appellant, that people were making enquiries about him. The Appellant was, on his case, still receiving threatening letters and he decided to sell the restaurant, and it was further his case that he then moved from place to place, staying with friends. In 2014, the Appellant's next-door neighbour's home was attacked with a hand grenade which, the Appellant believed, had been meant for him. So much by way of background, which I have taken from the Decision and Reasons of Judge Henderson.

Judge Henderson made mixed findings. She accepted part of the Appellant's case but found, in her words, that certain parts were not "plausible". What she did accept was that the Appellant had been working, as he contended, for this company with its American associations. She also accepted that there had been some threatening letters which the Appellant had received. However, so far as the evidence concerning the restaurant was concerned, that was not accepted, and more importantly, Judge Henderson did not accept that the Appellant was of any continuing risk and so she came to the view that the Appellant was not entitled to international protection and dismissed the appeal.

Not content with that Decision, by Notice dated 23rd January 2019, the Appellant made application for permission to appeal to this Tribunal and on 6th February 2019, Judge of the First-tier Tribunal Povey granted permission. Thus, the matter comes before me.

The Grounds of Appeal run to thirteen paragraphs but in fact, there are two substantive grounds. The first attacks the reasoning of Judge Henderson and the second is a contended failure to take into account the expert evidence of Sheri Laizer, whose report appeared within the Appellant's bundle at page 7.

I heard quite a lot of argument both from Mr Sellwood and Mr Lindsay on the report. Each took me to various passages and Mr Sellwood pointed to those parts which supported his case. The expert reported that the Sadrist movement was still active, that the current incarnation of its armed wing, the al-Mahdi Army, had been renamed and that the group has widespread control of many parts of Baghdad and the main roads northwest as far as the Fallujah checkpoint in the south, including the Appellant's hometown of Hillah. The expert had recently visited the area (October 2018). She had travelled on the road towards Mosul and noted the ongoing presence of ISIS militias there. She noted that some checkpoints and barriers there within Baghdad were under the

sole control of Shia militia and, at page 12 of the report at (v), “Central Baghdad and former mainly Sunni districts that have been taken over by the Shia also testify to the strong presence of Saraya al-Salam and the Sadrist movement”.

Further in the report, in answer to certain questions posed by the Appellant’s solicitors, Ms Sheri Laizer said that those working for the Americans were likely to be identified and their names put on a list. She makes further observations, but the conclusions were clear, and that was, as set out at page 32 of the report, that the Appellant would remain at risk on return to Iraq on account of his employment history. It is certainly common ground and it is trite law that a person is not required to lie so that were the Appellant asked questions at a checkpoint then he would reasonably be expected to answer that he had worked for the American-based company.

Mr Lindsay for the Secretary of State submitted that the conclusions were not supported by the substance of the report and that much of the background material relied upon by Ms Laizer was out dated. He made the point that there was reference to a checklist but no sufficient evidence within the report to substantiate the notion that the Appellant would be on one, and in any event it was open to the judge to find, as she did, that the Appellant was no longer at continuing risk.

Certain it is that the judge was cognisant of the expert report. She deals with it at paragraphs 46 to 49. The report runs to many pages, but the judge was able to dispense with it in four paragraphs and I make particular reference to paragraph 49, in which she says as follows:

“The expert report confirmed the plausibility of the Appellant’s account with regard to receiving threats from the Mahdi Army: however, the report itself is not evidence of the credibility of the Appellant’s account with regard to his own fear of persecution in his individual circumstances”.

What is not in issue is what appears at paragraph 46 of the decision, which states as follows: “The Respondent did not challenge the credentials or expertise of Ms Laizer, nor was there **any** challenge to the content of her expert report”.

Mr Lindsay submitted that it was obvious that the conclusions were in issue because otherwise there would not have been a hearing. I am afraid, I cannot accept that submission. The decision to refuse the application is made by a caseworker. This is an adversarial jurisdiction. A party may submit any relevant evidence. The expert report was clearly relevant. The report made certain assertions. It made assertions of fact, one of which was that the Appellant was at continuing risk within the Refugee Convention. That was not challenged (see **NR (Jamaica) [2009] EWCA Civ 856**). It may be that the Presenting Officer ought to have made himself clearer, but it is also clear that no point was taken before me concerning what is recorded. I was only invited to interpret what was recorded in a different way.

What the judge failed to do, and I shall come back to the fact that the expert report was not challenged, was to consider what the effect was of her positive finding objectively upon the Appellant. Having found that the Appellant had an association with the United States forces indirectly through his employment, even though she found his claim lacking in credibility in other respects, the judge was required to go on to consider whether objectively the Appellant was at risk of serious harm by virtue only of that finding, which she did not do.

There was, in my judgment, both because she did not give sufficient reasons and for going behind what is essentially a concession, a material error of law in the decision-making. Neither party suggested that this was a case which should be remitted to the First-tier Tribunal, turning as it does on the effect of the evidence of the expert when taken properly into account.

In my judgment, given that there was no challenge to the content of the expert report, then there is no challenge to the facts asserted by the expert, and one of those is that the Appellant will remain at risk on return to Iraq on account of his employment. There are checkpoints, so that he cannot freely move around, including in his own area, but in any event, he would have to access it, and it is clear from the expert report that there are checkpoints within Baghdad, being the place to which he would be returned.

In the circumstances, given the lack of any challenge to the content of the expert report, I remake the decision of the First-tier Tribunal such that the appeal is allowed.

Decision

The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside such that the appeal is allowed on international protection (Refugee Convention) and also Articles 3 and 8 ECHR.

Signed

Date: 23 April 2019



Deputy Upper Tribunal Judge Zucker