



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

Appeal Number: AA/01493/2011

THE IMMIGRATION ACTS

Heard at Bradford

**Determination
Promulgated**

On 30th April 2013 and 30th September 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MISS I A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Plimmer, Counsel, instructed by the GMIAU
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is the Appellant's appeal against the decision of Judge Mensah made following a hearing at Bradford on 7th March 2011.

Background

2. The Appellant is a citizen of Iraq born on 17th January 1970. She is separated from her husband and has three children. She is an educated woman and worked for an international NGO in Iraq called Premiere Urgence who provided humanitarian aid. The Appellant was an architect with them from March 2004 until 2007, before becoming the Base Administrator.
3. It was accepted by the Respondent and by the Judge that in January 2010 somebody opened fire on her car, the bullets hitting one of the car doors, but she was not injured. It was also accepted that around the same time a bullet hit a window at the front of her house.
4. During the last week of October or in November an officer from the National Guard came to her house and was very aggressive, asking her children questions about who was living there and why their father was not there and who was responsible for the house. Around the same time her elder son was approached by local youth who threatened to tell police that he was a homosexual unless he gave them his mobile phone, digital camera and laptop.
5. The Appellant resigned from her job in December 2010 and travelled to Jordan by taxi, then flying to Heathrow where she claimed asylum on arrival.
6. The judge concluded that the Appellant had described two isolated incidents of random violence in Baghdad which were common. It made no sense for the National Guard to take the trouble to visit her and ask her children questions if they already had her name and address on a list of employees for Premiere Urgence. If they wanted to persecute her because they believed she was working for a foreign company they could have simply killed her or kidnapped her. She said that there were some inconsistencies in her account of the visit by the National Guard but in any event what she described did not amount to persecution. The Appellant continued to work for her employer after the incidents and did not modify her behaviour. If she was being specifically targeted because of her religion or employment why would the attackers stop when she continued to work and remained a Sunni Muslim? She concluded that the incident relating to her son was motivated solely by criminal intent.
7. The judge said that since she heard the case the Home Office published a COI Report after the date of the hearing. She considered whether it was necessary to reconvene the hearing to allow the parties to comment on the report, but she said that the relevant passages were available to them before 25th March 2011 and were not new sources of information. The country materials showed that uneducated widows, mainly in rural areas and as female heads of household, are more vulnerable in Iraq, but the Appellant was in fact an educated female head of household who had shown herself to be able to successfully work for many years in Baghdad and had been able to support herself and her family.
8. The judge applied the case law of NS (Iraq perceived collaborator relocation) Iraq CG [2007] UKAIT 00046 and LM (educated women - Chaldo-Assyrians - risk) Iraq CG [2006] UKAIT 00060 but did not consider the Appellant to be a vulnerable female. She dismissed the asylum appeal.

She observed that the family would all return to Baghdad together and dismissed the human rights appeal.

The Grounds of Application

9. The Appellant sought permission to appeal on the grounds that the judge had failed to properly consider the country background material or to consider the country guidance cases and had considered material not before her at the hearing. She had also made adverse credibility findings on perceptions of what a reasonable persecutor would do and had not considered Article 15(c) or Section 55 and the best interests of the children at all.
10. Permission to appeal was granted on all grounds by Judge Plumtre on 27th April 2011.
11. On 17th May 2011 the Respondent served a reply defending the determination in respect of the asylum decision but acknowledging the error in relation to Article 8 which it invited the Tribunal to determine with particular reference to the Section 55 best interests of the children.

Submissions

12. Ms Plimmer relied on her grounds. She submitted that the judge had failed to consider that this particular Appellant had been vulnerable to targeting in the past and on return would be vulnerable again by reason of her particular characteristics, given that it had been accepted that four incidents had occurred whilst she was in Iraq. It was incumbent on the judge to step back and decide whether the Appellant's particular characteristics may have led to her being targeted in the past, which was indicative of future risk. The Appellant was a single woman, head of household, and separated from her husband. The judge accepted that she was estranged from him and that her own family were in Malaysia apart from one sister with whom she was not on good terms. She was also a Sunni who worked for a European NGO.
13. Secondly, the judge took into account the COIS Report which tended to suggest that educated women were less vulnerable without hearing any submissions on the point. It would have been clear to the representative, if she had been aware what was in the judge's mind, that an argument should be put that the case had to be assessed not simply on the basis of whether the Appellant was a single educated woman, but also in the light of her other characteristics which made her vulnerable. Simply because the Appellant was educated and had a higher chance of gaining employment did not mean that she was not vulnerable when taking into account the combination of risk factors. The judge did not consider the cumulative effect of the risk to the Appellant on account of her family status and her employment in the NGO. The Appellant did not have direct knowledge as to why the incidents occurred and had made her own assumptions.
14. Ms Plimmer argued that the judge had erred in her assessment of the Appellant's credibility when stating that there was an inconsistency in her

evidence in relation to the National Guard visit, although she had accepted that the visit had taken place and indeed that the Appellant would have felt threatened. The judge said that at interview the questions which the guards had asked gave far less emphasis to the Appellant's employment but by the time of the hearing she suggested that this is what the questions were focused upon. She said that there was a lack of evidence as to the motives of the National Guard and insufficient evidence to be able to say that it was reasonably likely that they visited the family on account of her religion or employment. Ms Plimmer said that the judge's conclusion that there was a difference in emphasis was not borne out by the interview record when the Appellant had given a detailed response to the question of whether she thought that the visit was to do with her work with an international organisation or for some other reason. The judge was not entitled to reach the conclusion that the evidence was inconsistent, particularly when it was accepted that the Appellant could not be sure as to who had targeted her.

15. Finally, the judge had unlawfully substituted her own view of what a reasonable persecutor would do at a number of points in the determination.
16. Mr Diwnycz acknowledged that the Secretary of State accepted that the incidents took place but said that the judge was entitled to find that the Appellant's fear was not objectively well-founded.

Consideration of Whether there is an Error of Law

17. Ms Plimmer's submissions are made out. In particular the judge erred in not considering the risk posed to the Appellant holistically. This is a case where it is accepted that four incidences of varying degrees of threat occurred. With respect to Article 8, there was no mention of the Section 55 duty. The children have been in the UK for over two years, and in the context of a return to a country which remains troubled it was incumbent on the judge to consider their best interests first.
18. For these reasons the decision is set aside.
19. Mr Diwnycz said that there would be no need to cross-examine the Appellant in relation to her previous claim but the Appellant has adduced a further witness statement relating to lengthy domestic violence in Iraq to which she and her children were subjected, and he was not in a position to give a clear view as to whether or not that would be challenged. There was no available interpreter booked for the hearing. It was therefore agreed that the appeal would be relisted before Mrs D Taylor at Bradford on 23rd May 2013 with an Arabic interpreter on the basis that the Appellant's account of the incidents which had taken place in Iraq were accepted. The Respondent is directed to consider whether she wishes to challenge any of the fresh evidence at an oral hearing in relation to the Appellant's claims of domestic violence and to inform the Appellant and the Tribunal of her position seven days before the hearing.
20. Miss Plimmer sought an anonymity direction which was unopposed by Mr Diwnycz and is granted.

Resumed Hearing

21. Mr Diwnycz confirmed that no challenge was being made to the credibility of the Appellant's account and he did not wish to cross-examine her, including in relation to the domestic violence which she suffered at the hands of her husband in Iraq prior to her separation from him in August 2010. Neither was it challenged that, since leaving Iraq, her husband has contacted her children five or six times by phone and sent threatening messages to her, swearing and abusing her. He has threatened to take revenge upon her.
22. The Respondent also accepts that the Appellant's brother-in-law, who lives in Malaysia, had been informed by the Appellant's neighbour that National Guards went to the Appellant's house last December with an arrest warrant for her and asked the neighbour where she was. They also asked whether there were any family members in Baghdad.
23. It was therefore agreed between the parties that the risk on return should be assessed on the basis that the Appellant worked for an international NGO from March 2004 to December 2010 when she left Iraq. In 2010 her car was hit by bullets and the front windows of her house were also hit by bullets in two separate incidents. Although the Respondent initially challenged the evidence that it was member of the National Guard who visited the Appellant's home in October/November 2010 no challenge is made to the evidence of the brother-in-law that members of the National Guard approached her home in February 2011 with an arrest warrant. *There was a further attack on the Appellant's son by local youths shortly before the family left Iraq.
24. The Appellant believes that the interest by her by the National Guard is because of her work with a foreign NGO. She believes that in the registration details provided in 2009 the organisation's employees were named and there was increasing hostility to them as a result of the growing influence of Mukhtada Al Sada's militia which had moved into the premises next door to the NGO, Premiere Urgence shortly before the visit took place.
25. The Appellant's mother and two of her sisters live in Malaysia. Her father is deceased. She has a remaining sister in Iraq but is not on good terms with her following the break up of her marriage and she can no longer trust them because she believes that they are on her husband's side. She has had no direct contact with them since leaving Iraq. Again this evidence is unchallenged.
26. The Appellant would therefore be returning to Iraq as a Sunni single female head of household with no family members to turn to who has worked for an NGO for an extended period of time and who has already been targeted for threats, harassment and violence in the past.
27. The Appellant relies on the decision in MK (Documents - relocation) Iraq CG [2010] UKUT 00126 which held, inter alia,

“Whilst the situation for women in Iraq is, in general, not such as to give rise to a real risk of persecution or serious harm, there may be particular problems affecting female head of households where family

support is lacking and jobs and other means of support may be harder to come by. Careful examination of the particular circumstances of the individual's case will be especially important."

28. The Appellant relies on the Human Rights Watch Report "At A Crossroads, Human Rights in Iraq Eight Years After the US Led Invasion" dated 21st February 2011, which states:

"Militias promoting misogynist ideologies have targeted women and girls for assassination, and intimidated them to stay out of public life. Increasingly women and girls are victimised in their own homes, sometimes killed by their fathers, brothers and husbands for a wide variety of perceived transgressions that allegedly shame the family or tribe. If they seek official protection from violence in the home, women risk harassment and abuse from Iraq's virtually all male police and other security forces. Iraqi law protects perpetrators of violence against women: Iraq's penal code considers honourable motives to be a mitigating factor in crimes including murder. The code also gives husbands a legal right to discipline their wives."

29. It also states:

"Today armed groups continue to target female political and community leaders and activists. This threat of violence has had a debilitating impact on the daily lives of women and girls generally and has reduced their participation in public life. It has had profound consequences for women's economic participation, as many female professionals, including doctors, journalists, activists, engineers, politicians, teachers and civil servants are forced to cease working fearing for their safety."

30. The most recent evidence shows a sharp increase in the number of civilians being killed in acts of random violence with at least 4,137 civilians killed and 9,865 injured since the beginning of 2013. More than 800 people were killed in incidents in Iraq during August 2013. The international crisis group report for 14th August 2013 states that Iraq is on the verge of a relapse into a general sectarian conflict. According to the UNHCR Eligibility Guidelines for Assessing The International Protection Needs of Asylum Seekers from Iraq, dated 31st May 2012, women have also been singled out for attacks, as well as men, if they have assumed a public role as politicians, government officials, rights activists or professionals. Women without support and protection provided by their family or tribal network are particularly vulnerable to being harassed, kidnapped or sexually assaulted. The UNHCR report that attacks against NGO workers, which at the height of the violence in 2006 to 2007, were becoming less frequent until 2011 when the killing of several NGO workers and rights activists in what appeared to be targeted attacks were noted. The US Department of State recorded that place conducted unannounced and intimidating visits to some NGOs which Miss Plimmer argues is

corroborative of the Appellant's belief that members of the National Guard have shown interest in her.

31. She submits that cumulatively, the Appellant meets the threshold of establishing real risk. She also faces risk of violence from her husband. It would be unduly harsh to expect her to relocate to another part of Iraq. She relies on the independent social worker's report of Christine Brown and in particular her assessment of the impact of removal on the children. The Appellant's son F suffers from chron's disease and described to the social worker both his fear of his father and his concern about returning to Iraq. The Appellant's daughter N was also extremely fearful about the prospect of return. She concluded that removal would be to their personal detriment and that she was sufficiently concerned about the family that she decided to recontact them after the report was completed in order to assist them to obtain therapeutic help.
32. Again, Mr Diwnycz made no challenge either to Miss Brown's expertise or to her concern.
33. Mr Diwnycz states that the Respondent accepted that the Appellant's story was true but submitted that it would be reasonable to expect her to relocate to the KRG where she would be safe.
34. Miss Plimmer submitted that the Appellant's evidence was that an uncle from her father's side was the leader of the Iraqi armed forces, a general in Saddam Hussein's army, who led the Iraqi armed forces in Kurdistan. He fought against the Kurds until he was arrested and killed by the resistance. This family history would jeopardise her safety and would make it difficult, to say the least, for her to re establish herself in the KRG. She relied on the evidence in the witness statement that unless the Appellant cut herself off completely from any personal whom she knew, including her mother and sisters in Malaysia, that she had returned to Iraq it would only be a matter of time before her husband found that she had returned and she would be fearful that he would come and find her.

Findings and Conclusions

35. It was not argued by Mr Diwnycz that the Appellant would be at risk of harm on return to her home area. She is a person whose accepted history includes targeting in the past and in whom members of the National Guard have shown a particular interest as a consequence of her extensive work for an NGO. The only issue which he raised was the reasonableness of relocation.
36. I accept Miss Plimmer's argument that in these particular circumstances, relocation to the KRG would not be reasonable. Her family has a history of violence against the Kurds. The evidence of on going interest in her by her husband is unchallenged and I accept that the Appellant would always be fearful that he would discover her whereabouts and indeed it is in all likelihood only a matter of time before the family were located. The evidence from the independent social worker about the effect on the children of a return is powerful and unchallenged. The diagnosis of chron's disease, whilst no doubt treatable in the KRG, is an additional factor.

Decision

37. The decision of the First-tier Tribunal Judge has been set aside and is remade as follows. The Appellant's appeals are allowed on asylum grounds.

Signed

Date

Upper Tribunal Judge Taylor