



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

Appeal Number: AA/05612/2014

THE IMMIGRATION ACTS

**Heard at: Columbus
Newport
On: 3 February 2015**

House,

**Decision and Reasons
Promulgated
On: 25 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HA

(anonymity direction made)

Respondent

Representation

For the Appellant: Mr I Richards, Home Office Presenting Officer

For the Respondent: Ms S Latimer, Duncan Lewis & Co

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Archer in which he allowed the appeal of HA, a citizen of Iraq, against the Secretary of State's decision to refuse asylum. I shall refer to HA as the Applicant, although he was the Appellant in the proceedings below.

2. The Applicant arrived in the United Kingdom on 19 October 2012 and claimed asylum the same day. His application was refused on 22 July 2014. The Applicant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Archer on 9 September 2014 and was allowed both under the Refugee Convention and the Human Rights Convention. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Reid on 6 October 2014 in the following terms

The grounds argue *inter alia*: the judge materially misdirected himself in law by failing to consider any of the relevant Country Guidance or Appeal Court decisions; there is no reference to any CG case law including HM and others (family members of Ba'athists and KRG relocation), HF (Iraq) and Others (relocation to KRG), ZQ (serving soldier) Iraq (applying Fadli); the judge attached undue weight to the report by Dr George whilst ignoring the findings of the Tribunal; the judge failed to give adequate reasons for findings on material matters including internal flight.

Having found at [34-35] that the Appellant's account was reasonably likely to be true the judge then went on to consider sufficiency of protection and internal relocation at [36-42]. However in doing so the judge attached weight to the report by Dr George but completely omitted to demonstrate that he had considered it with reference to the Country Guidance case law. The judge did not set out if or why he chose to depart from it.

The grounds disclose an arguable error of law.

3. At the hearing before me Mr Richards appeared to represent the Secretary of State and Ms Latimer represented the Applicant. Ms Latimer submitted a rule 24 response.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in Iraq on 1 December 1983 and was employed as a policeman in Baghdad. He arrived in the United Kingdom on 19 October 2012 and claimed asylum on arrival.
5. At the First-tier Tribunal hearing the judge accepted the credibility of the Applicant's account (see paragraphs 35 to 40). In doing so the Judge accepted that the Applicant is an Arabic speaking Sunni Muslim whose father, a senior member of the Ba'ath party in Erbil (KRG), was murdered in 1991 when the Applicant was a child. The Applicant lived in Baghdad where he served as a policeman between 2007 and 2012. Having been approached by a member of Al Mujahadeen and having reported this approach to a senior officer causing the detention of the Al Mujahadeen member the Appellant's brother was killed when the Al Mujahadeen sought the Applicant. This incident caused the Applicant to leave the country, he fears return to his home area because of adverse interest from Al Mujahadeen and his father's association with the Ba'ath party causes him to fear relocation within Iraq to the KRG.

Submissions

6. On behalf the Secretary of State Mr Richards relied on the grounds of appeal to the Upper Tribunal. He said that it was not simply a failure of the Judge to cite the relevant case law; he had departed from country guidance authority without giving reasons for doing so. Other than that there was not a lot to be added to the grounds. The finding in HM concerning family members of former Ba'athists is clear enough. In respect of relocation to the KRG the Judge gives undue weight to the expert's report of Dr George. Mr Richards said that the state of emergency in Iraq pertaining at the date of the hearing was not mentioned in the Home Office Operational Guidance Note of 22 August 2014.
7. For the Applicant Ms Latimer referred to the rule 24 response. She pointed out that HM and others (Article 15(c)) Iraq CG [2012] is, as the citation suggests, a 15(c) case dealing with the risk of indiscriminate rather than targeted violence. In his report Dr George specifically deals with the likelihood of violence being targeted against the Applicant. The Judge made positive credibility findings in this respect. The First-tier Tribunal Judge gives clear reasons why the Applicant cannot be expected to relocate to the KRG. So far as ZO (serving soldier) Iraq CG [2009] UKAIT 00048 is concerned the decision specifically excludes policemen from its ambit. The Judge was entitled to give weight to Dr George's report and having done so to allow the appeal.

Error of law

8. The grounds of appeal to the Upper Tribunal are almost exclusively concerned with the issue of internal relocation. There is no specific challenge to the Judge's credibility findings. Under the heading 'Making a material misdirection of law on any material matters' the Secretary of State submits that the Judge failed to consider any of the country guidance and Court of Appeal decisions. The first submission, paragraph 1(a) of the grounds, is

"Its (sic) is respectfully submitted that the Immigration Judge has materially erred in law by failing to consider any of the country guidance and Court of Appeal decisions relevant to this case. It is respectfully submitted that no reference is made to any country guidance cases in the determination and as such the Immigration Judge has materially erred in law as a result"

These submissions are manifestly incorrect. There is no requirement to quote or refer to country guidance cases or Court of Appeal decisions in a determination. For there to be a material error of law in failing to consider country guidance or Court of Appeal decisions both the fact and the effect of such failure must be identified. These submissions fail in both respects.

9. In seeking to identify the nature and effect of what is said to be a failure to follow such authorities the grounds go on (paragraph 1(b)) to identify a failure to take into account HM and others (Article 15(c)) Iraq CG in finding that the Applicant will be at risk as a result of his father's role in the Ba'ath party some 23 years previously on relocation to the KRG. This ground

identifies, correctly, that HM and others holds that family members of former Ba'athists are not at risk in Iraq per se.

10. However the finding of the First-tier Tribunal was not that the Applicant was at general risk or risk of indiscriminate violence in Iraq because of his family's association with the Ba'ath party. It was that the Applicant was at specific risk in the KRG of targeted violence because of the senior position that his father held in the Ba'ath party in Erbil and that as a result he cannot safely relocate to the KRG (see paragraph 40 of the determination). In making this finding the Judge took into account not only the role played by the Applicant's father and that it was reasonably likely that the Applicant would be identified as his son but also the current climate in the KRG based upon the security situation at the time of his decision. Paragraph 3390 of HC395 provides

The Secretary of State will not make:

a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country;

... the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

In his determination the First-tier Tribunal Judge found, and the factual basis of his finding in this respect is not challenged, that the Applicant was at risk of persecution on a return to his home area of Baghdad. It is, to say the least, implicit in the reasoned finding of the First-tier Tribunal that the Applicant cannot reasonably be expected to relocate to the KRG and indeed that it would be unduly harsh to expect him to do so given the finding that he cannot safely relocate there. There is no error of law in failing to refer to HM and others given that HM and others is authority for the fact that there is no a risk per se to individuals caused by family connections with the Ba'ath party whereas the clear finding in this case is that there is a specific risk to the Applicant and it is that specific risk that makes it unreasonable or unduly harsh for him to be expected to relocate.

11. The submissions in paragraph 1(c) of the grounds are essentially the same as those in paragraph 1(b) and do not identify an error of law for the same reasons.
12. Paragraph 1(d) of the grounds submits that the Judge erred by failing to take into account the principles outlined in ZQ (serving soldier) Iraq CG [2009] UKAIT 00048 when considering the Applicant's role as a policeman and the protection afforded to him under the Convention. The grounds do not expand upon this assertion other than to submit that it was a material error of law for the Judge to find that the Applicant would be at risk from terrorist groups as a result of his duties as a policeman. In fact, and as the rule 24 response points out, the principles outlined in ZQ (serving soldier) Iraq CG as the case title suggests relate to serving soldiers and not policeman. Paragraph 2 of ZQ makes this clear.

For the most part our focus is on persons who are ordinary soldiers, i.e. members of their country's armed forces and we do not as such address the sometimes more complex situation of irregular fighters. Nor do we seek to deal with persons who are members of the police or intelligence services except to the extent that IHL would treat them as forming part of a country's armed forces.

13. The grounds go on to say that the Judge attached undue weight to the expert's report whilst ignoring the findings of the Tribunal. In fact the findings of the Tribunal referred to, being ZQ were not for the reasons given above relevant and the grounds do not seek to explain why the weight given to the expert report of Dr George could otherwise be described as 'undue'. Indeed Dr George is an expert well known to this Tribunal whose qualifications and experience carry great weight. Indeed Dr George gave evidence to this Tribunal in HM and others. Dr George's report (pages 6-55 of the Appellant's bundle for the First-tier Tribunal) is meticulously sourced. It includes reference to the upsurge in violence between 2013 and 2014 and considers the risk to the Applicant based on the facts put forward by him and accepted as credible by the First-tier Tribunal. Dr George analyses the situation and concludes that in his 'very firm opinion' the Applicant would have an insufficiency of protection in Baghdad, central and southern Iraq. So far as internal relocation is concerned Dr George expresses the clear view that entry to the KRG and the granting of permanent residence in that region are uncertain. Further Dr George opines that KRG society and suspicion of strangers is such that family and personal background are quickly exposed. There is in my judgement no basis for the assertion that too much weight was given to Dr George's report.
14. The second ground of appeal asserts a failure to give any reasons or any adequate reasons for findings on material matters. This assertion again refers to internal flight and quotes paragraph 40 of the determination. The submission is that the Judge failed to give adequate reasons as to how the Applicant would be identified as a family member of his father or why if he was so identified this would prevent him entering the KRG given the Tribunal authorities.
15. There is no material error of law identified here for the reasons already given. The Tribunal authorities cited are not relevant to this Applicant's situation based upon the credibility findings. Dr George's report explains how the Applicant is likely to come to attention. The decision of the First-tier Tribunal is clearly and adequately reasoned.
16. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to allow the appeal. The appeal of the Secretary of State is therefore dismissed.

Summary

17. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Secretary of State's appeal and the decision of the First-tier Tribunal stands.

Signed:

Date: 24 March 2015

J F W Phillips
Deputy Judge of the Upper Tribunal