



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

Appeal Number: AA/11850/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 4 May 2016

**Decision & Reasons
Promulgated
On 1 July 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MM
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Walker, Senior Home Office Presenting Officer
For the Respondent: Miss Harrison, Immigration Advice Service

DECISION AND REASONS

1. I shall refer in this decision to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal). The appellant MM was born in 1988 and is a citizen of Iraq. He appealed against a decision dated 17 December 2014 of the

respondent refusing him asylum and making directions for his removal from the United Kingdom. The First-tier Tribunal (Judge Buchanan) in a decision promulgated on 7 April 2015 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal. There are two grounds of appeal. The first challenges the decision on the basis that the judge failed to give adequate reasons to establish a risk to the appellant. The respondent's position was that the appellant could return to Iraq and reside in an uncontested area to avoid any risk from ISIL. The judge found that ISIL had approached and threatened the appellant at his shop in Baghdad on two occasions. The judge made an error by referring to an anonymous threatening telephone call having been made from Nineveh as a "non-contested" area of Iraq. The judge failed to refer to any evidence which established that the appellant would, as he claimed, be at risk from ISIL throughout the country of Iraq. Further, the judge had failed to consider the motivations of ISIL and why they might "pursue the appellant to such a degree given the resources required and the difficulties they may face in so doing".

2. It is clear from any reading of the decision that the judge was well aware that there were areas of Iraq where the appellant (who claimed to have been threatened by ISIL) might be at a real risk of ill-treatment by that organisation whilst in other areas the risk *prima facie* would not appear to be so great. The main argument adopted by the respondent is that: (a) the appellant cannot be said to be at risk throughout Iraq including areas where ISIL are not in control, and (b) there is no reason to suppose that ISIL would devote scarce resources to hunting down and harming this particular appellant. I find that the ground is without merit. Quite correctly, the judge has sought to define the particular characteristics of this appellant and has used the resulting factual matrix to conduct his analysis of risk on return. At [7.10] the judge found that "the appellant's family background heightens the risk which he would face ... on return to Iraq whether that return be to Baghdad or to Basra (as determined as a place reasonable for relocation by the respondent)". The appellant has close associations with the United Kingdom (two of his brothers live here). The judge accepted the evidence of the witness (brother) who had "given an independent assessment of distinguishing features which would alert ISIL to the appellant's whereabouts in Iraq". The judge had attached "significant weight to [the brothers'] evidence that they had spoken directly to their mother about the receipt of a death threat from ISIS". The judge found that ISIS (ISIL) "may issue death threats and may warn people of their interest in them prior to taking action against them". That finding was based on the background material. The judge found that the appellant had received a death threat and found that the appellant was likely to be perceived by ISIL members as having been "associated ... with western allies". Ultimately, the appellant's "family associations, family history and his own background of visiting the UK and his father's background of previously living in the UK" exposed him to a risk of ill-treatment at the hands of IS throughout Iraq.

3. I am also not persuaded that the ground concerning the judge's comments about Nineveh and Basra take the respondent's challenge very far. Likewise, the second ground of appeal (that the judge failed to refer to or apply Section 8 of the 2004 Act) does little to assist the respondent. It is true the judge failed to deal with Section 8 but, in the light of his very firm findings (which I have summarised above) as to the appellant's past problems in Iraq and the likelihood of a real risk of ill-treatment upon his return to any part of that country, it is difficult to see how the application of Section 8 in this instance will have dislodged those firm findings.
4. For the reasons I have given, this appeal is dismissed.

Notice of Decision

5. The appeal is dismissed.

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 their 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 30 June 2016

Upper Tribunal Judge Clive Lane