



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number:  
AA086742015

THE IMMIGRATION ACTS

Heard at: Manchester  
On: 11<sup>th</sup> January 2017 and  
10<sup>th</sup> May 2017

Decision & Reasons Promulgated  
On 27 June 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HH  
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Galvin, Rogerson Galvin Solicitors  
For the Respondent: Mr McVeety (January) and Mr Harrison (May),  
Senior Home Office Presenting Officers

DETERMINATION AND REASONS

1. The Appellant is a national of Iraq born in 1984. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Alis) dated 29<sup>th</sup> February 2016 to dismiss his appeal<sup>2</sup> against a decision to refuse to grant him protection.

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<sup>1</sup> Permission was granted by First-tier Tribunal Judge Osbourne on the 7<sup>th</sup> April 2016

## **Anonymity Order**

2. This case concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

## **Background and Matters in Issue**

3. The Appellant came to the United Kingdom in January 2014 with leave to enter as a Tier 4 (General) Student Migrant. He claimed asylum in December of that year. The Appellant claimed to have a well-founded fear of persecution in Iraq for reasons of his imputed political opinion. He is a medical doctor and comes from a family of highly educated professionals. His father was a prominent academic pharmacist who was assassinated in 2004. The Appellant believes that this was because he was a scientist, a member of the Ba’ath party and known for his secular lifestyle. The Appellant now fears that Islamist militias will do him serious harm because of his association with his father and the Ba’athist regime, his own agnostic attitudes and the fact that he is a doctor. He claims to have personally received threats or faced attack in 2011, 2013 and 2014. His claim for asylum was prompted by an attack on the family home in Basra in December 2014.
4. The Respondent accepted that the Appellant was an Iraqi doctor. The remainder of the account was rejected and asylum refused.
5. By the time that the appeal came before the First-tier Tribunal there had been a development in the case. On the day of the appeal the Appellant relied on the evidence he had given to the Respondent, but added that he had now converted to Christianity. In addition to his own testimony the Appellant relied on a number of documents, and the *Dorodian* evidence of three Christians, including two Church of England vicars who attested to their belief that the Appellant

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<sup>2</sup> Decision under appeal was the decision dated 29<sup>th</sup> April 2016 to refuse asylum

was a genuine believer in the Christian faith. The Appellant further relied on an expert report by Dr Rebwar Fatah.

6. In its assessment of the alleged conversion the First-tier Tribunal found the three *Dorodian* witnesses to be sincere and credible. It expressly accepted that they genuinely believed the Appellant to have converted. The Tribunal found, however, there to be factors which pointed in the other direction: these were the timing and the fact that the Appellant had insisted on being baptised very quickly. Taking all of this evidence in the round, the Tribunal was not satisfied that the Appellant had discharged the burden of proof in respect of his claim to have become a Christian. As for the claim as originally advanced, the Tribunal found there to be inconsistencies in the evidence and the documents provided, but proceeded to assess the claim about the Appellant's father 'at its highest' [§69]. The Tribunal found there to be a significant difference in the country conditions between 2004 and the present day. It records the evidence of the expert report as making clear that "problems for people connected to the Ba'ath party are now minimal and the expert also accepts that there was no evidence of who killed his father or why". Noting that the Appellant managed to continue with his studies after the death of his father and to then obtain work as a doctor without experiencing any problems the Tribunal concludes: "there is nothing in the expert report or background material that would have placed this appellant in any risk category for being his father's son as evidenced by the fact that he was able to study and to go to work" [§71]. The documentary evidence is found to be "limited", with the Tribunal noting that police reports referred to elsewhere have not been supplied. Overall the Tribunal concluded there to be no risk of harm to the Appellant and the appeal was dismissed.

7. The grounds of appeal are:

- i) that the Tribunal has misconstrued, ignored and made contradictory findings on the evidence of alleged Christian conversion; and
- ii) committed the same errors in respect of the expert report and documentary evidence.

### **Discussion and Findings**

8. I heard submissions on the grounds, and the Secretary of State for the Home Department's defence of the determination, on the 11<sup>th</sup> January 2017. The challenge that was made related to three areas of the evidence: the Appellant's claimed conversion to Christianity, the risk he might face through association with his Ba'athist father and the risk he might face himself as a secular or 'westernised' doctor in Basra. I adopt that thematic approach in my findings.

*Risk as a Christian*

9. In respect of the claimed conversion the ratio of the First-tier Tribunal decision was that notwithstanding the good faith shown in the Appellant by his *Dorodian* witnesses, the timing of his claim was such that the Tribunal could not accept it to be genuine. The relevant chronology is as follows. The Appellant claimed asylum in December 2014 and by the end of April 2015 had been interviewed and refused. The Appellant states that he became interested in Christianity as early as July 2015, and was baptized in November 2015. The Appellant informed his solicitors of his conversion in November. The Respondent was informed about it in a letter dated 1<sup>st</sup> December 2015, but full witness statements and corroborative evidence were not supplied with the bundles that were lodged on the 22<sup>nd</sup> February 2016. They were filed and served over the days that followed.
10. The First-tier Tribunal identified two potential negative inferences that could be drawn from that chronology. The first was the suggestion that the Appellant and his representatives had taken a tactical decision not to furnish the Respondent or Tribunal with the particulars of their case until very shortly before the hearing: the evidence started arriving on the 22<sup>nd</sup> February 2016, and the hearing was on the 26<sup>th</sup>. The effect of this was to deprive the Respondent of an opportunity of testing the Appellant's evidence before the matter came to trial. This is what the determination alludes to at §62 where the First-tier Tribunal states "I do have concerns about this behaviour and his failure to raise this part of his claim with the respondent prior to the current hearing but I have not held this against him when assessing the genuineness of his conversion". The second negative inference that was drawn relates to relative haste with which the Appellant managed to get baptised. This was a matter that did very much trouble the Tribunal: see §61.
11. It is perhaps evident from the foregoing that I find there to be no contradiction in the findings at §61 and §62. The point was that the Tribunal was not going to take any procedural issue with the late disclosure, but found as a matter of substance that the very quick conversion was not worthy of belief. That was a finding rationally open to the Tribunal. Four months from nascent interest to official recognition was, by any standards, a fairly speedy transition from agnosticism to a faith that the Appellant had hitherto had no interest in. I find no material error in the First-tier Tribunal's miscalculation that the relevant period was three, nor four months. The decision would unarguably have been the same either way.
12. Mr Galvin placed some emphasis in his submissions on the alleged failure of the Tribunal to take into account the evidence of 'Reverend T'. Reverend T is said to have given evidence that for someone like the Appellant, the church

would normally look for evidence of six weeks' church attendance before baptism, plus completion of the 'Alpha course'. It is submitted that in making its assessment the Tribunal appeared to overlook that evidence, concentrating on the alternative view expressed by 'Reverend A' that the church would normally expect six months' attendance. It is submitted that in analysing the latter and omitting to consider the former, the Tribunal erred in law. I am not satisfied that this is so. First of all, the record of evidence does not bear out what is said in the grounds to be Reverend T's evidence. Her evidence is recorded at §41 to be that the period would be three months. Secondly it is very difficult to see how the decision would have been any different, even if the shorter period of church attendance had been taken as the norm. Judge Alis had plainly concluded that the Appellant had done all he could to secure a baptism with a view to being able to reply upon it at his asylum appeal. This view was informed by the uncontested evidence of all of the *Dorodian* witnesses that the Appellant *was* baptised quickly and that this had been upon his own insistence.

13. The final complaint under this head was that the Tribunal misconstrued the evidence of the *Dorodian* witnesses about how well they knew the Appellant. In particular it is submitted that the Tribunal made a mistake of fact in its recording of their evidence at §61(iv), where the Tribunal gives the following reason for declining to place any significant weight on their evidence:

"The fact the witnesses knew nothing about the appellant's activities outside of the church and that they believe that everyone who approaches them is genuine"

14. Mr Galvin asked me to look carefully at the evidence that the witnesses gave. The grounds submit that Reverend A had said that he meets the Appellant outside of Church on Fridays when they would go to a café or go for a walk; Reverend T in her evidence had stated that she fully understood that people can come to Church with ulterior motives such as getting their child into a church school; the team in the church have meetings about new members of the congregation in order to discuss such concerns. In response Mr McVeety agreed that it was important that I looked at the actual evidence. This, he submitted, would reveal that in fact the evidence was not as it is portrayed in the grounds. He has a point. The witness statements say nothing at all about any of the matters touched upon at §61(iv). The typed transcript in the Record of Proceedings shows that Reverend T gave evidence that she only has contact with the Appellant at church and in response to cross-examination agreed "I can't say what he does away from me". Whilst Reverend A does confirm that he met the Appellant for a coffee on a Friday the remainder of his evidence is, in essence, as it is recorded in the determination. Asked whether he knew anything about the Appellant Reverend A said that he attends the church and is one of its members. Asked again "you have no idea if he leads a Christian life outside of Church?" the Reverend replied "all I can comment upon is his

attendance". The record further shows that Reverend A believes the incidence of fraud in these cases to be "rare". Having had regard to that record and the statements I am not satisfied that the determination can be shown to have misrepresented the evidence. Judge Alis was entitled to place some weight on the fact that these witnesses, however well intentioned, knew relatively little about the Appellant.

15. Overall I am satisfied that the decision in respect of the alleged conversion cannot lawfully be disturbed. The Appellant failed to discharge the burden of proof. There was no error in approach to the question of whether the Appellant has converted to Christianity and those findings of the First-tier Tribunal are preserved.

*Risk through association with father*

16. Mr Galvin submits that the Tribunal erred in its conclusion that there was "nothing" in the expert or country background material to place the Appellant in any risk category. Issue is taken with that finding, at §71, with reference to the following:

- UNHCR guidelines are that Ba'ath party members may still be targeted in individual cases, and that doctors can be targets
- Dr Fatah provides a list of murdered Ba'athists and confirms that doctors have been targeted, although the motive remains unclear
- Dr Fatah offers several explanations for why the frequency of anti-Ba'athist attacks have declined

17. Dr Fatah does, as the grounds contend, provide a list of murdered Ba'athists. He also prefaces that list by the remark: "it should be noted that the reported instances of ex-Ba'athists being killed today are very rare today". The evidence in this case was that the Appellant's father was murdered in 2004. The Tribunal has, for the purpose of its risk assessment, accepted that to be the case: see §69. Although it could not be said with any certainty why he was assassinated, the Tribunal appears to accept at §70 that it may have had something to do with his connections to the Ba'ath party. What happens after that date is that the Appellant completes medical school and embarks on his career. On his own evidence nothing else happened until 2011. There was therefore a seven year period in which no adverse attention was shown to him as a result of his own connection to the party, or that of his late father. This was the context in which Dr Fatah's evidence about risk and "prominence" had to be read. The Tribunal was entitled to conclude, as it does at §71, that the absence of real risk on account of Ba'ath association is demonstrated by Appellant's lack of any problems in those years immediately following the overthrow of Saddam Hussain. The fact that there are isolated instances of people still being targeted

does not alter the Tribunal's reasoning. The Tribunal was entitled to find that there was not sufficient risk arising simply from the family name: there were no recorded instances of any member of his family being targeted in the aftermath of his father's murder. Although I accept that his father was a Ba'athist (much documentary evidence of this is supplied) and that he was murdered in 2004, I am unable to find that the First-tier Tribunal erred in its approach to the question of current risk arising purely from that connection. I accept, as did Mr Harrison, that this family context may be relevant, insofar as it might be one contributing factor, to any current risk faced by the Appellant.

*Risk as a 'westernised' Doctor*

18. Having discounted the contention that the Appellant faced a real risk of serious harm simply for some historical association with the Ba'ath party the First-tier Tribunal determination proceeds to assess the claim based on the Appellant's "own fears". I took this to be a reference to the suggestion that the claimed assaults in 2011, 2013 and 2014 were targeted at the Appellant because of his status as a doctor and a scientist. The analysis appears at paragraph 75 onwards. Four reasons are given for rejecting this aspect of the claim:

- i) That there are no police reports, contrary to the information supplied by the Ministry of the Interior, and no good reason has been advanced for their absence [§75 and 76].
- ii) The Appellant's departure from Iraq on the 30<sup>th</sup> January 2014 is inconsistent with his claim that his residence was attacked by ten armed men just a few days earlier. Had that event occurred the Appellant would have been too concerned for the welfare of his young family to leave them behind [§77].
- iii) The Appellant's claim to have had no contact with his family since September 2015 was contradicted by that of the *Dorodian* witnesses, who were all under the impression that he retained contact with his family [§78].
- iv) There was a delay in making the claim. The Appellant arrived in the United Kingdom in January 2014 and did not claim asylum until his student visa was about to expire, some eleven months later [§79].

19. The primary subject of the challenge in the grounds is the conclusion at (i) above. The absence of the three police reports, numbered 398, 48 and 903 was clearly a matter that weighed heavily in the Tribunal's assessment. Reference is made to ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119. The

grounds submit that the Tribunal misunderstood the evidence. It is submitted that the documents in the Appellant's bundle read together establish a trail of reports, starting with the Appellant's mother making a complaint, followed by the National Police Force in Basra and Qi Dar making reports to the Ministry of the Interior, which finally compiled the information it received into a composite report. It is submitted therefore that these police documents *were* in fact produced and had the Respondent or Tribunal had asked for clarification, the 'paper trail' could have been explained, and the documents identified.

20. Following the 'error of law' hearing in January I was able to find the letter from the Ministry of the Interior (in translation) at page 61 of the Appellant's bundle. This does, as the Tribunal notes, refer to a series of police reports. At page 291 there is a letter from the National Police Force addressed to the Ministry of the Interior, introducing enclosures: "we hereby attach the documents relating to all detail concerned with incidents reported to Al Basra Police and Qi Dar part of our Fourth Force Division, for your attention with regards". It is dated 17<sup>th</sup> December 2014. A further letter, in similar terms, from the NPF in Qi Dar is dated the 27<sup>th</sup> December 2014.
21. Since these documents were possibly the 'police reports' that the First-tier Tribunal had found to be absent, I considered it arguable that the ground was made out, and asked that the parties come back for a further hearing to make submissions on the matter. I was unable to make a more resolute finding at that stage since it was not at all clear to me whether these were in fact the missing reports. At that initial hearing Mr Galvin had relied simply on the "grounds as drafted by Counsel" which were unfortunately hard to understand. They were drafted in maddeningly confusing terms, providing, for no good reason, multiple references to the same document.
22. When the hearing resumed Mr Galvin was able to take Mr Harrison, and then the Tribunal, to each document and its translation. Both Respondent and Tribunal were satisfied that these were the police reports referred to in the Ministry's letter, and that they had been in the bundle before the First-tier Tribunal. There was therefore an error of fact in the determination and that ground of appeal was made out.
23. I should record that I was deeply uneasy about finding an error of law here. It is plain from the determination that the First-tier Tribunal was in no way assisted by Counsel who appeared before it: "Mr Sills did not refer me to the police reports in the bundle and having gone through those papers to see if such documents have been submitted I can find no trace of them". Where parties are legally represented it is no part of the Judge's job to trawl through the documentary evidence in a bundle of 343 pages and to work out which translation relates to which original document, and what the relevance of each



item might be. The proper course would have been for the documents to be introduced, and explained, by the Appellant in his evidence-in-chief.

24. All of that said the bundle did contain confirmation from police forces in Basra and Qi Dar that the events described were reported. The blame for the poor presentation of the case cannot be laid at the door of the Appellant and it would plainly be in the interests of justice that he be given an opportunity to restate his case on the claimed risk in Basra. I so find because I am not satisfied that the remaining reasons given in the First-tier Tribunal determination are, on their own, enough to justify the overall conclusion that the events in question did not take place. The Appellant might have left his family behind under the impression that the danger would be removed if he took himself out of the equation. If the Appellant has lied about his current contact with his family, that is not to his credit but it does not necessarily indicate that he was lying about the events that occurred in 2011-2014. The section 8 point is only a good one if the claimed events in December 2014 did not occur.
25. At the resumed hearing I heard further submissions and evidence on whether the Appellant was, or is, at risk of persecution for reasons of his membership of a particular social group, *viz* a 'western' or 'secular' doctor.
26. The evidence, set out in the Appellant's asylum interviews, witness statements, oral evidence and supporting documents is as follows:
  - i) The Appellant was born in Basra into a middle class academic family. His father was a professor of pharmacology, and a member of the Ba'ath party. The Appellant has produced a copy of his party membership cards [at E2 & F4 Respondent's bundle], letters of appointment signed by Saddam Hussain and documents showing that he was the Dean of Basra university [E4]. He has produced numerous letters relating to his father's various academic appointments [pages 118-246 Appellant's bundle]. The Appellant states that his father's family are a prominent family well-known throughout Iraq for their religious affiliations. His father was a "black spot on a white coat" because he was not religious. He was secular and nationalist in his outlook, and so were his immediate family.
  - ii) On the 22<sup>nd</sup> November 2004 the Appellant's father was murdered. His pharmacy was surrounded by armed men in cars who fired multiple shots into the building. Witnesses report that the men were dressed as police officers and that they called their victim's name before they shot him;

The Appellant has produced a death certificate issued for his father stating the cause of death to be gunshot wound [E7]. In oral evidence he explained that this is a copy produced by the local registrar at the request of his mother. The Appellant has produced a google search of murdered academics/scientists in Iraq, which features his father's name [E70];

The police carried out an investigation but it led to nothing. The Appellant believes that his father was targeted because he was secular and had been a member of the Ba'ath party.

- iii) The Appellant married in 2008. His wife is a pharmacist. In December 2008 he qualified as a medical doctor. He has produced numerous documents attesting to his qualifications and experience which are not in issue.
- iv) On the 21<sup>st</sup> April 2011 armed men dressed in "Arab robes" entered the Appellant's place of work, a primary healthcare centre in Basra. They told staff that the Appellant should leave his post otherwise he would be killed. They were saying that he was the "son of a Ba'athi". The manager of the centre informed the health directorate in Basra of this incident and the Appellant was given a new role in Al-Naseriyah;

The police were informed but were unable to do anything.

- v) The Appellant moved to work in Al-Naseriyah. He would visit his wife at her parents' home in Basra.
- vi) In 2012 the Appellant decided that he would apply to come and take some further study in the UK. He made some preliminary enquiries into dermatology courses.
- vii) On 14<sup>th</sup> May 2013 the Appellant left his workplace in his car. He approached the junction on al-Rubaie Street where he usually bought fish from a teenage boy who sold them there. Two middle aged men in police uniform had set up a checkpoint just beyond the vendor. The Appellant slowed his vehicle to go round their cones. He was asked to leave the car and when he produced his ID he was told to turn around. He was beaten over the back of the neck with an object. He does not know what it was but it was very hard. The Appellant was bent double and vomited. The men jumped back away from the vomit and the Appellant took his chance - he ran and got back into his car. Another vehicle had pulled up at the checkpoint in between his

car and the men so he was able to drive away. He returned to the hospital and informed the manager there. The police came and took a statement. They also took a statement from the boy who sold fish. The Appellant stayed in a different part of the hospital from where he normally worked for about 12 hours, until a colleague drove him to his father-in-law's house;

The Appellant stayed there for two days. He was still in pain and had numbness in his arm – he was terrified that he was going to suffer paralysis and decided to get an MRI scan at a private clinic. He was told that he has severe cervical spinal stenosis; the Appellant believes that this resulted from the attack;

The Appellant told the officer at his asylum interview that he had not recognised the men at the checkpoint but he believes that they were after him. He thinks that because there are “thousands” of doctors in that area and yet he is the only one to have been targeted;

After this incident the Appellant arranged for his mother and sister to go and live with an aunt in her house on the university campus.

- viii) The Appellant subsequently travelled to Jordan and Lebanon for treatment. Whilst in Jordan he decided to see if he could pursue his idea of studying in the UK. He wanted to get out of Iraq just until things had “calmed down”. He emailed the University of Hertfordshire who accepted him into a course;
- ix) On the 25<sup>th</sup> January 2014 the Appellant's wife gave birth to their second child;
- x) On the 26<sup>th</sup> January 2014 the Appellant was at the hospital with his wife when he received telephone calls from security staff at the local radio station close to his house. They told him that more than ten armed men had broken into his house and were asking people where the Appellant was. The security guard had asked them why they wanted to speak with the Appellant: a man just told him that they were looking for him. The Appellant immediately arranged for his wife and the baby to be discharged. They went to her father's house. The Appellant and a friend who was a police officer went to the house. The men had gone. They had broken the front and kitchen doors but had taken nothing.

After this incident the Appellant's mother insisted on moving back into her home. She did not want it to be empty. The Appellant and his brother tried to dissuade her but she would not have it.

- xi) On the 27<sup>th</sup> January 2014 the appellant received visa DHL his passport with the UK visa endorsement inside it. He and his wife agreed that it would be safer for the family if he left Iraq until the situation had calmed down;
- xii) He arrived in Manchester on the 29<sup>th</sup> January 2014;
- xiii) On the 10<sup>th</sup> December 2014 his family home (i.e. his father's home) was targeted by armed militiamen. They demanded to know where the Appellant was. The Appellant's mother told them that he had gone abroad. They said that if he did not show his face, his brother would be killed. The Appellant asked a friend who is a police officer to investigate this incident. He went to the house and reported to the Appellant what damage had been done, ie they had broken down the door and smashed the microwave. This friend gave the Appellant a different version of events from what his mother had told him - she had tried to hide the true extent of the incident from him

The Appellant's brother has now left Iraq, and his whereabouts are unknown;

After this incident the Appellant's mother reiterated her complaints to the police about the various assaults on her family. This resulted in a letter from the police in Qi Dar writing to acknowledge her complaint, which also refers to the earlier complaint made in respect of the Appellant's assault at the checkpoint in May 2013. The police letter confirms that the Appellant was taken to hospital for treatment on that occasion [at E11]. The police in Basra also wrote to acknowledge that she had filed a complaint with them, this time reiterating that her husband had been killed on the 22<sup>nd</sup> November 2004, that armed men had attended the hospital looking for her son in April 2011, and that on the 26<sup>th</sup> January 2014 armed men had raided their home. The police letter refers to statements taken from hospital nursing staff in the April 2011 incident who reported that the armed men had said that they wanted to kill the Appellant

[E18]<sup>3</sup>. These letters, from Qi Dar and Basra police forces, were forwarded to the Appellant's mother under cover of letter from the Ministry of Interior [E15]

- xiv) The Appellant and his wife are now divorced. The Appellant became visibly distressed at hearing when he talked about this. He said that she had done the best thing she could do to distance herself and their children from him. She and the children live in her parents' home in Basra. She runs a pharmacy that was owned by the Appellant's father (it bears his family name). She shares the profits with the Appellant's mother and sister; they all know what she has been through because of association with him, and they remain on good terms, but he finds it extremely distressing that they remain in Iraq. He is worried about them and misses his children a great deal.

27. The Appellant relies on two expert reports. The first was written by Dr Rebwar Fatah on the 2<sup>nd</sup> December 2015, the second by Dr Alan George on the 20<sup>th</sup> April 2017. The Respondent challenges neither the expertise nor objectivity of these reports.

28. Insofar as it is relevant to my enquiry the evidence of Dr Fatah is as follows:

- Attacks on ex-Ba'athists are very rare today but it is possible that a particularly well known family might be at risk, particularly in those communities with a particular animosity towards the former regime, viz Kurds and Shi'a. A suspected Ba'athist was shot dead in Basra on the 8<sup>th</sup> October 2013
- Dr Fatah opines that there is a low recorded incidence of former Ba'athists being discriminated against or persecuted in Iraq today because there are often other, additional, reasons why they were targeted which might feature more prominently in the reports; many high profile Ba'athists have been captured, killed or have left the country
- Many academics were killed following the overthrow of Saddam Hussain but it is not possible to say whether it was because of their work, or because of their inevitable association with the Ba'ath party (they would not have had jobs if they were not members)

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<sup>3</sup> There is a translation of this document at E13 of the Respondent's bundle. This states that the Appellant's father was killed because he was the Dean of the Faculty of Pharmacy and because he is a "Muslim cleric". The Appellant was asked about this at his asylum interview. He denied that his father was a cleric, or that the police had written that. He said that the translator employed by his solicitor had made a mistake; the Home Office interpreter looked at the Arabic original and agreed that this was so. The Arabic original simply states that he was a Dean at the university and says nothing about him being a Muslim cleric.

- Anti-Ba'athist rhetoric has been used as a cover for ulterior political motives. For instance those protesting against the Shi'a dominated government have been branded "pro-Ba'athist" and this has been used as a pretext to arrest them or otherwise suppress dissent
- The Appellant's family are a "noble and reknowned" family, producing many social, religious and political figures including a Grand Ayatollah of the Shi'a faith
- Publicly displaying beliefs or attitudes antithetical to Islam "can put one at serious risk" in a permissive security environment where armed groups have an opportunity to perpetrate acts of hostility against such individuals. This would be the case wherever the Appellant lived in Iraq

29. Dr George adds this:

- The account is plausible in light of what is known about the situation in Iraq at the material times. For instance, in the years following the fall of the regime "medical personnel were targeted relentlessly for murder and kidnap by insurgents as part of a wider campaign against professional people, with the apparent objective of hindering the Baghdad government's efforts to restore public services"
- In Iraq today there could be a risk to the Appellant as a doctor, but this risk would not be significant other than in areas controlled by IS
- There could be a risk to the Appellant as someone identified as Shi'a in Sunni-dominated areas such as Baghdad
- He would be regarded as a prime candidate for kidnapping, because having spent a considerable amount of time abroad he would be perceived as wealthy
- The security situation in Baghdad is "nothing short of dire"
- "The tribal and clan based nature of Iraqi society, and the associated tendency for people to live in close communities based on clan and tribe mean that newcomers to a locality attract attention. Residents tend to be curious about the background of newcomers and to ask questions. This tendency has become especially marked with the breakdown of law and order in Iraq since the 2003 invasion. The fear that now permeates Iraqi communities has made people acutely suspicious of strangers. The tribes and clans constitute highly effective channels of communication. By

means of tribal contacts, a pursuer can locate his quarry with relative ease...”

30. The extant country guidance is AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC). Dr Fatah’s evidence that violence in the south of Iraq was rare (in comparison to the ‘contested areas’) was accepted; there were recorded to have been 128 deaths arising from “security incidents” in the city during 2014 [at 114].
31. The latest ‘Country information and Guidance’ issued by the Home Office in respect of Ba’athists was published in November 2016. It notes that since anyone with any job of influence under the old regime was required to be a member of the party, there is unlikely to be a risk arising from *any* association [6.4.1]. There may however remain a risk if the individual – or persons associated with him – had a particular prominence, and that this may be a contributing factor to current risk:

6.4.2 The DIS FFM were told that former membership of the Ba’ath party is not a determining factor when it comes to the question of whether or not a person would be targeted, and that: ‘There are only few examples of assassinations of former Baath party members and since 2008 this issue has been ‘minimal’’. The International Organisation for Migration (IOM), who were interviewed, were not aware of people currently being targeted for this reason. However, UNHCR Iraq considered: ‘Depending on function and level, former Baathists may still be targeted. A former Baathist affiliation could be an element that is cumulative in putting a person at risk of being targeted. However, some individuals have been targeted solely on the basis of former Baathist affiliation.’

6.4.3 The DIS FFM also noted:

‘Former Baathists who have been involved in human rights violations and where this is known could be at risk [of being targeted]. UNHCR - Iraq, Baghdad considered that relatives of pre-2003 prominent figures who have been involved in human rights violations would not consider it safe to return to Iraq.

‘Regarding former Baathists party members and affiliates, a reliable source [in] Iraq stated this issue is like opening a Pandora’s Box and it is very complex when it comes to assessing whether a person is at risk of being targeted for this reason.’

6.4.4 The same report also recorded that an international NGO in Amman stated that senior Ba’ath party members are targeted especially in south Iraq and some central parts. However, such a person would need to be well-known to others and other factors such as having occupied a particular exposed position are likely to have influence the risks as well.

6.4.5 It also cited a source who stated that in relation to ‘whether or not relatives to persons threatened or attacked due to their professional background or Baathist affiliation may be at risk from armed groups or criminal gangs as well’ and that ‘everything is possible.’

6.4.6 In its 2012 Eligibility Guidelines, the UNHCR identified perceived political opponents as a risk category, noting: ‘Political opponents are allegedly arrested arbitrarily on vague terrorism-related charges, often coupled with accusations of Ba’ath Party ties or corruption’.

Furthermore: ‘While armed Shi’ite groups have in the past publicly focussed on attacking the MNF-I/USF-I [Multi-National Forces-Iraq/US Forces-Iraq], there are reports that they also single out Iraqis of various profiles for kidnapping and assassination, including former Ba’athists...’

32. I have considered all of that evidence in the round and have applied the lower standard of proof applicable. In reaching my decision I have found that the following matters weigh in the Appellant’s favour:

- i) The detailed evidence that the Appellant has given about his experiences in Iraq has been internally consistent, across his asylum interviews, detailed witness statements and cross examination before the First-tier Tribunal and myself;
- ii) The evidence that the Appellant has given is corroborated by a very large volume of documentary evidence (not all of which has been referred to herein);
- iii) I am satisfied that the evidence that the Appellant has given is not inconsistent with the country background evidence. Although there is plainly not a high rate of violence in Basra, in comparison with areas in the north, there are still incidents of targeted violence (for instance, 128 deaths in 2014). The Respondent’s COIR highlights that the risk from association with the B’athist regime, such that it is, may be a particular risk in the south of Iraq

33. The matters that may be weighed against him include those matters raised in the reasons for refusal letter and that:

- iv) The First-tier Tribunal found that the Appellant had not, as he claimed, converted to Christianity;
- v) The general level of risk in Basra is lower than in other parts of Iraq



34. Having considered those matters in the round I am satisfied that the Appellant is telling the truth about his past experiences in Iraq. His asylum interview was long (over five hours) and I am struck by the level of detail that he was able to give. I have kept in mind that the Appellant is an intelligent man and that it is possible that he has concocted this account and had the myriad of supporting documents prepared by forgers in order to bolster it. He would however have to be a very accomplished liar to have remained consistent throughout and to have added vignettes such as the teenage boy who sold fish on the crossroads at the end of al-Rubaie Street. The situation in Basra is of course much better than in other parts of the country (where all-out war rages), and I have heeded the expert evidence that the risk to the Appellant, in any of the categories that he might be said to fall, is generally a low one. But that risk exists, and having considered his evidence with anxious scrutiny I am satisfied that he has been telling the truth.

35. I accept and find as fact that the Appellant has been targeted by armed men on four occasions. The first two incidents suggest that the Appellant was under attack because of his work as a doctor. In April 2011 armed men came to the health centre where he worked. In May 2013 he was assaulted whilst leaving the hospital to which he had been transferred. In January and December 2014 however, the men came to the Appellant's family home in Basra. References were made, on more than one occasion, to the Appellant's father. This suggests that there are a number of motivations for this persecution. I note the assessment of the Danish Immigration Service (cited at 6.4.3 of the COIR) that the reasons for risk can be complex. The Appellant is from a very prominent Shi'a family who are, Dr Fatah confirms, well known for their religious orthodoxy. It is possible that the Appellant is being targeted by Shi'a militias because he and his Ba'athist father are still considered to be "black spots on a white coat". It may be that both he and his father were victims to the anti-academic, anti-professional policy waged by insurgents who want to see the government fail.

36. Having found the Appellant to have suffered persecution in the recent past, I must apply paragraph 339K of the Immigration Rules to my forward-looking risk assessment:

339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

37. Are there good reasons to consider that the persecution would not be repeated? I cannot determine with any degree of certainty who the agents of persecution

are, nor the possibly “complex” reasons why they have pursued the Appellant. In the context of the Refugee Convention, and the lower standard of proof, neither of these lacunas in the evidence appear to be particularly important. Since there is no evidence before me to indicate that the situation in Basra has improved to any significant degree since 2014<sup>4</sup>, and no evidence that the police have managed to make any in-roads into their investigations into the attacks, I must assume that the terrorists in question remain at large, and remain able to operate. I find that the Appellant would continue to be at risk in the South of Iraq, having been targeted in both Basra and al-Nasiriyah.

38. The question then arises of whether the Appellant could safely relocate to another part of Iraq. The governates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din are currently found to be ‘contested’ by the applicable country guidance, and I must find that there exists there a real risk of serious harm for ordinary civilians. The Respondent accepted before me that the Independent Kurdish Region (IKR) would not be a realistic option for this appellant, coming as he does from the Arab south and with no discernible links to the region. It is however submitted that Baghdad would be a place of safety for the Appellant.
39. I have considered the Appellant’s personal characteristics. He is a medical doctor. His family name identifies him as being a Shi’a from the south. As Dr Fatah explains, this name is of a “very high profile”, with relatives of the Appellant having enjoyed a high degree of success in the religious, social and political spheres in Iraq. Their number would include his father, an accomplished academic publicly identified as a Ba’athist. The Appellant has no connections or family in Baghdad, and would be a returnee from the west. I therefore assess the likelihood of harm to someone with this profile in the city.
40. I bear in mind the evidence of both Dr Fatah and Dr George about the sense of fear that pervades communities in Iraq, where newcomers are readily identifiable. The expert witnesses in this case were in agreement that each of the individual personal characteristics of the Appellant placed him at some risk, albeit that none could on its own establish that risk to be substantial enough to warrant international protection: he faces *some* risk as a medical professional, he faces *some* risk as an incomer, *some* as a Shi’a, *some* as a returnee from the West, and *some* as a member of his family. Mr Galvin urged me to undertake a cumulative and holistic evaluation of all of these matters, and I am satisfied that that must be the right approach. This is a man who has already been deemed to have sufficient profile to attract the adverse attention of a militia in the south who have pursued him with malignant intent over a three year period and in two separate cities. He retains all of the characteristics that he had at that time,

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<sup>4</sup> Joel Wing (‘Musings on Iraq’) reports that in May 2017 there were 9 security incidents in Basra, resulting in 24 deaths and 44 wounded

and has the additional difficulty of being one returned from the west, with the attendant risk of kidnap. Applying the lower standard of proof I am satisfied that it would not be reasonable, or safe, to return him to Baghdad.

**Directions**

41. The decision of the First-tier Tribunal contains an error of law and is set aside to the limited extent identified above.

42. The decision is remade as follows:

“The appeal is allowed on asylum grounds.

The Appellant is not entitled to humanitarian protection because he is a refugee.

The appeal is allowed on human rights grounds.”

43. There is an order for anonymity.

Upper Tribunal Judge Bruce  
25<sup>th</sup> June 2017