Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00864/2010

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 January 2018	**On 26 February 2018**

Before

MRS JUSTICE LAING DBE
UPPER TRIBUNAL JUDGE P D KING TD

Between

HA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Faruk, Counsel instructed by Direct Public Access
For the Respondent: Mr N Sheldon, Counsel, instructed by the Government Legal Department

DECISION AND REASONS

1. The appellant is a citizen of Iraq, born on [ ] 1976. He seeks to appeal against a decision of the respondent dated 6 October 2010, making him the subject of a deportation order following his conviction for possessing class A drugs with intent to supply, for which he was sentenced to four years' imprisonment.

2. The appeal process in relation to that decision has been one of considerable procedural complexity, there having been hearings in the First-tier Tribunal, the Upper Tribunal, the Court of Appeal and finally in

the Supreme Court. The hearing in the Supreme Court was on 12, 13 and 14 January 2016 and judgment was given on 16 November 2016. Essentially, the previous decision of the Upper Tribunal allowing the appeal in a determination promulgated on 11 February 2013 was set aside.

3. It was directed that the Upper Tribunal consider the appeal *de novo*. Thus it is that the matter comes before us to determine the issues presented.

4. In summary, the appellant entered the United Kingdom unlawfully in 2000. He made an asylum claim in July 2002 which was refused and a subsequent appeal was dismissed. He remained in the United Kingdom and on 10 November 2005 was convicted of possessing class A and class C drugs for which he was fined. On 4 December 2006 he was convicted at the Crown Court, sitting at Snaresbrook, of two counts of possessing class A controlled drugs with intent to supply and was sentenced to four years' imprisonment. He sought to appeal against the convictions but was unsuccessful in that challenge. On 4 April 2007 he was served with notice of liability to deportation. Further submissions were presented as a fresh claim for asylum which were rejected by the respondent on 22 January 2008. A subsequent decision to make the appellant the subject of a deportation order was withdrawn because the appellant's nationality had not been established. Further interviews were conducted on that aspect and in due course the relevant decision of 6 October 2010 was made.

5. The appellant seeks to claim that his personal safety were he to return to Iraq. As a Sunni Muslim he fears attack from the Shia inhabitants. He is tattooed, particularly to the body and hands and contends that that would be viewed in any event as un-Islamic and would also expose him to violence. As a person who has been out of Iraq for many years he would also be perceived to have been westernised and that would expose him to the risk of abduction for the purposes of financial gain. Further, he would be unable to obtain the necessary documentation to live in Iraq and that would expose him to danger or destitution.

6. As a separate head to his claim he maintains that he is in a committed and genuine relationship with JW, with a child expected shortly. He contends that his removal from the United Kingdom would be disproportionate and would in any event be in breach of his fundamental human rights.

7. The appellant gave evidence before us, relying upon his witness statements of 3 April 2017 and 15 January 2018.

8. The appellant stated that he was born in Palestine and that his mother died at childbirth, as did his twin brother. He and his father travelled to Iraq, and lived in region of Masa and Yamouk, a district of Baghdad. There his father married a woman who became, for all intents and purposes, his mother. She had a son by a previous relationship. At some stage the appellant's real father left and his stepmother married again. He and his

stepfather did not enjoy a good relationship and indeed he claims that he was abused by him.

9. The appellant lived in the family setting until he was 9 years old. He left home because of the abusive stepfather and for three years worked in or around Yamouk as a mechanic and, when aged 12, moved to Jordan. He worked in various restaurants until he was 19. He did not have any identification papers. He would visit his stepmother every two years, crossing the border by clandestine means. On one such occasion, when he was aged 16 or 17 he was arrested by the army in Iraq for draft evasion. Although under age he was unable to confirm his age. He was sent for army training and escaped after eight months. At some stage his mother moved to Basra.

10. Whilst in Jordan he formed a relationship with an Irish woman and they had a child together, K, who is a British citizen. The appellant claims to have been in contact with him since he was 17.

11. At some stage his stepbrother died in the Iraqi army. His mother did not want the same fate to happen to him so she decided to sell her house in Iraq, which took some three years to be completed. That raised 12,000 US dollars and smugglers thereafter brought him to the United Kingdom in 2000, when he was some 23 years of age, since when he has worked as a dancer in nightclubs and has spent much time training young people in martial arts such as Jiu Jitsu.

12. The appellant contends that, having lived for so long in the United Kingdom, he has become westernised both in mannerisms and in language. That would result in his being kidnapped upon return, it being perceived that he would be someone who may have money.

13. In terms of his private life, he has had a number of relationships, one with CH lasting from 2005 until 2013. That relationship ended because of his lack of settled status, especially when his successful appeal had come under challenge. He is now in a relationship with JW and a baby is expected in April 2018.

14. When questioned by Mr Sheldon, the appellant indicated that his stepbrother was killed when he was about 15 or 16. At some stage his stepmother had divorced his stepfather and moved to Basra, living by herself. He knew little of her family circumstances. He had not met her parents nor indeed had he ever asked about them. He had no idea as to her friends.

15. It was suggested to the appellant that he had not given a consistent account of his experiences. His attention was drawn to paragraphs 10 and 11 in particular, of the determination of Upper Tribunal Judge Perkins promulgated on 11 February 2013. In that determination it is recorded that he had attended a screening interview, where he had identified

himself as having been born in Baghdad. He had returned to Iraq from Jordan when aged 14 or 15 and had been intercepted by the Iraqi authorities for avoiding military service. He was detained in prison for two days and released when his mother proved his age. The appellant indicated that his mother had produced false documents in order to establish his age. He returned to Jordan but later, when he had returned in 1995, he again had been taken into detention. This time his mother was unsuccessful in securing his release because he was of an age when people were required to join the Iraqi army. He did some military training but absented himself from the camp after three months, returning briefly to Jordan before fleeing to the United Kingdom. It was suggested that that evidence, as recorded, contrasted with his evidence that he escaped after eight months and went to Jordan and remained there for a number of years until coming to the United Kingdom. He agreed that the account as recorded was more accurate.

16. The appellant repeated that his mother had sold her house in Basra to pay for him to come to the United Kingdom. He did not know where she lived thereafter but believed she lived with friends. He had no contact with her but it was his understanding that she died in 2004. He had met people by chance in the United Kingdom, who came from the same area of Basra who gave him that information.

17. A statement (A1), extracted from the court file, seems to set out details as to his early life in the Yamouk district in Baghdad. It speaks of the fact that his mother raised the funds for him to come to the United Kingdom by mortgaging her house. The statement concludes, “the Home Office do not believe I am from Iraq. I have explained the street I lived, the area I am from, the school I attended. I have named countries close to Iraq.” The appellant denied that this was a statement relating to him or prepared on his instructions. He points out that the signature on that statement does not match his signature as can be seen from his most recent statements.

18. The appellant indicated that he had worked as a mechanic from the age of 9 to 13. He could not, however, remember the name of the employer or precisely where he had worked. He conceded, however, that he had worked in the region of Yamouk, near to Baghdad.

19. Finally the appellant’s attention was drawn to details of the interview which was conducted on 29 August 2002. At question 19 of that interview the appellant was asked:

> “Q: When did you first receive your military service papers?
>
> A: Since I was 18, my mother received. I was not in Iraq at that time.”

He went on to say in that interview that he had lived in Yamouk in Baghdad but had left Iraq because his mother did not want him to stay in Iraq because of the troubles there.

20. In reply to question 28 the appellant indicated that he lived sometimes in Amman, sometimes in Petra and "when I called my mother she tells me don't come now, cos they send you letters".

21. At question 27 he was asked "how many times did the authorities send your call-up papers" he answered "many times for that reason I left Iraq". The appellant did not agree that what was recorded in the interview was what he had said. He was insistent that no military call-up papers were sent to his mother and, in relation to the question at question 27, he said that that was not asked.

22. His previous relationship with CH had ended at Christmas 2013 and his long-term friendship with JW had become a serious relationship towards the end of 2014. He entered into an Islamic marriage on 12 May 2017.

23. The appellant's wife, JW, also gave evidence and adopted her witness statements of 3 April 2017 and 15 January 2018.

24. Prior to her becoming pregnant she had worked as a salon manager in a number of prestigious venues. She had worked since 16 and had acquired very good qualifications in laser treatment and in the sector of beauty therapy.

25. Her pregnancy is not an easy one. It is painful and there are several medical complications which necessitate her having to attend hospital on a regular basis. She had suffered a previous miscarriage. The anxiety caused by the uncertainty of the appellant's position was also badly affecting her health. She has a mother aged 71 years of age, living in a council flat nearby,whom she sees on a regular basis. She spoke in glowing terms of the quality of the appellant as a husband, indicating that if he were to be removed from the jurisdiction that would cause her difficulty in returning to work as there would be no support for her in looking after the baby. Her experience has been in the United Kingdom. If the appellant could remain she would then be able to resume work and support the family or alternatively that he could work and support her. She indicated that she depends upon the appellant emotionally and in every other way and has no other source of support.

26. Both parties made their representations. We are grateful for both the depth and attention to detail which has been given. On behalf of the appellant considerable weight is placed on the decision of the Upper Tribunal in **BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)**. The appellant in that case claimed to face similar circumstances to those clamed by the appellant in this. Such are set out in paragraph 10, as follows:-

> "The appellant's current fear of return to Iraq is based on a combination of factors. He fears that he would be at real risk of serious harm on return because (i) having worked for a western international company might be perceived as a collaborator; (ii) as a Sunni Muslim

> he might be targeted by Shia militia; (iii) as a person who has spent time living in the west he might be at heightened risk of kidnapping, and (iv) these risks are enhanced in the context of general insecurity and high levels of violence in Baghdad."

In that connection our attention was drawn to paragraph 75 of the Judgement, which is concerned with trends in Iraqi kidnapping and its nature.

27. The decision in **BA** is also relevant as to the risk posed to Sunni Muslims by Shia militias. This is also discussed in considerable detail in the decision itself. Mr Faruk relies upon the decision as supporting his submissions that there is a significant and serious risk of kidnapping to those who would be perceived as from the west. He also submitted that that decision is authority to support his contention of significant risk also from the Shia militants and of indiscriminate violence in or around Baghdad. In fact he adopts the argument as submitted to the Tribunal at paragraph 111, namely that, although one factor if taken alone may not be sufficient, there is a real risk on a cumulative basis.

28. Our attention was also drawn to the decision of **AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944** which highlights potential difficulties in relocation to the Baghdad area and in obtaining an Iraqi civil status identity document (CSID). Mr Faruk submits that the lack of contact in the area by the appellant and indeed his long separation from any potential sponsor or support, rendered it almost impossible to obtain such a document, the absence of which would have a significant impact upon his ability to live or work or indeed to survive in that environment.

29. In terms of family and private life, it is submitted that it is a committed relationship, and that the removal of the appellant would be devastating for his wife. Mr Faruk submits that, in these particular circumstances, there are very compelling circumstances which would enable us to find that the appellant's Article 8 claim is sufficiently strong to outweigh the strength of public interest in deportation. He invites us to find that the appellant's offending is now of some antiquity and that he has adapted well to society, contributing to the welfare particularly of the young people in the activities which he runs with them. Mr Faruk invites us to find that the public interest is not such as would require his removal in all the circumstances.

30. On behalf of the respondent Mr Sheldon relies upon his skeleton argument of 10 January 2018.

31. In terms of the protection claim he invites our attention to the Country Policy and Information Note, Iraq: Sunni/Arab Muslims June 2017, which assesses the risk of reprisals by Shias against Sunni individuals to be low. In terms of kidnapping we are invited to consider the authority of **BA** in its

full context. He submits that there is little evidence concerning the risk posed by tattoos.

32. In terms of obtaining a CSID, we were invited to find that the appellant, contrary to his contentions, has relations in and around Baghdad or indeed elsewhere in that region, or contacts, who could afford him assistance in obtaining such document.

33. In terms of family and human rights our attention was drawn to the statutory regime as set out in Part 5A of the Nationality, Immigration and Asylum Act 2002 Sections 117B- 117D in particular. We were invited to find that the statutory regime is such that it is in the public interest for the appellant to be deported, notwithstanding the difficulties for JW which such would or may create.

34. In considering the protection issues that have been raised, we remind ourselves that the central issue for determination in this appeal is whether there is a "reasonable degree of likelihood" or "substantial grounds for believing" that there is a real risk of such serious harm. Clearly matters should be considered holistically, which will require in this case an assessment of a number of cumulative factors.

35. It seems to us that it is important in such consideration of context to determine the nature of the appellant's former involvement with the area; his familiarity with its customs and community, and of any potential network of accommodation or support.

36. The appellant in his evidence, as we so find, has been less than forthcoming on those matters and untruthful in material aspects concerning his connection with Baghdad and the surrounding area. Although he claims to have been born in Palestine of a Palestinian father, such is not the position as set out in the interview in 2002. He indicated in clear terms in that interview that he was born in Baghdad and certainly lived in that area and grew up in a household during his formative years. We do not understand why it is that in his written statement of April 2017 he seeks to suggest that he grew up in or around Mosul and not in or around Baghdad.

37. The appellant was at pains to indicate that he had little knowledge of where he had lived or of his family situation, because he left when very young. We do not find him to be credible in that matter. It was his account, as highlighted in the determination of the Upper Tribunal, that although he may indeed have lived and worked in Jordan for a number of years, nevertheless he grew up and worked in the area of Baghdad and would make visits to his mother in Iraq from Jordan. As he left for the United Kingdom when aged 23 or 24, it is entirely reasonable to assume that he was familiar with precisely where he lived. When pressed as to his community involvement he indicated that he did not go to school but

attended Islamic teaching and therefore had little contact with the community.

38. We regard the statement A1 as being a significant document. We do not accept that the appellant was unaware of that document. There was a period, particularly after 2008, when the issue with his nationality was an important one and clearly he would have been motivated to persuade the authorities that he was indeed from Iraq. Although the appellant denies that the statement is about his circumstances it contains so much information that is common or potentially common to his case as to leave us in no doubt that it was prepared for him or on his behalf.

39. In that statement it is said that the appellant was born in Baghdad. He lived at a named street in the Yamouk district of Baghdad. He went to the local school in Yamouk. He remembered that school and his two teachers. He stopped going to school when 9 years old and worked in a local garage, cleaning engines. The garage owner was Hajisaif who paid him two or three dinar per week. He worked there until he was about 12 years old and then he left Iraq and went to Jordan.

40. His mother had encouraged him to leave Iraq because the situation was so bad. He worked in restaurants and coffee shops in Amman for a few years, then went to Petra to guide tourists who wanted to visit the desert. He would visit Baghdad once in a while and such visits were to see his mother and give her money. He was called for military service at the age of 18 but by then he was in Jordan. When he was about 21 he travelled between Basra and Baghdad on a minibus and was stopped at a checkpoint by police. He had no identification and was transferred to prison. He was there for two months. He was sent to the desert for military training. He was there for three months and escaped. He hitchhiked to Baghdad. He went to his mother, collected money and went to Jordan.

41. He had stayed in Jordan working between Amman and Petra and saving money. He went back to Baghdad after his escape to deal with arrangements to leave the country and find a safe place. His mother made arrangements for him to go to Europe. She mortgaged her house to raise some money to obtain some false papers. The appellant went to Cyprus from Amman, travelling on a false passport.

42. The statement concludes that this was explained in the interview recorded. The statement is clearly to persuade the authorities that he was indeed from Baghdad.

43. The coincidence of that statement with what is contained in the 2002 interview leaves us in no doubt that AI is a statement relating to the appellant

44. In the screening interview the appellant indicated that he went to Cyprus from Jordan, the date of the interview being 11 September 2002. He used a Jordanian passport. His mother had sold the house for US$13,000 which is precisely the amount set out in paragraph 7 of AI.

45. We have already made reference to the interview itself, conducted on 29 August 2002, in which the appellant indicated that he lived in Yamouk in Baghdad, leaving Iraq to avoid the troubles, working in restaurants in Amman and Petra. He indicated that he had travelled many times between Baghdad and Amman. He called his mother who told him not to return because of the conscription papers. Since then he had been stopped in the minibus at the checkpoint. He was put in prison in Baghdad for two months eventually escaping from military service. The interview speaks of his arriving in Baghdad and his mother giving him money which he used to escape to Jordan.

46. He speaks of his mother's friends issuing him with a false passport which he then used to go to Cyprus. In answer to a question from Mr Sheldon, he indicated that he thought then they were his mother's friends but they were in fact smugglers. He had been too young to appreciate that difference.

47. What emerges from the generality of such matters, as we so find, is that the appellant had a fixed address in Baghdad region for many years where his mother lived which was known to the authorities. When the appellant was 19 or older call-up papers were dispatched to that address.

48. Whether or not his mother moved to Basra is less clear than the financing of his trip to the United Kingdom which would seem to have been put in train by his mother. It seems to us to lack credibility that if the appellant's mother had sold her house in 2000, the appellant would not have made enquiries as to her wellbeing and whereabouts thereafter. We do not find it credible that he only came to know about her death by reason of chance meetings with people from the area after 2004 in the United Kingdom. Given his long association with his mother and with the area we find more likely than otherwise, that the appellant had maintained close contact with his mother and with the region in which he grew up. We do not find it credible that he has since then lost all contact with the region. We find that the appellant continues to have family and/or friends in the Baghdad or Basra areas.

49. In the general situation of return we have regard to the latest country guidance decision, **AA (Iraq) [2017] EWCA Civ 944**. That decision is relevant to the question as to whether there are any grounds for considering that humanitarian protection arises having regard to Article 15(c) of the Qualification Directive. It is to be noted that the guidance in relation to that is set out in the Annex that:

> "The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence

> amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c)."

Similarly it is set out also that decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.

50. Internal relocation within Iraq, particularly to Baghdad, was considered in the decision. Matters which make it unreasonable/unduly harsh to relocate to Baghdad include the ability to obtain a CSID; whether the person can speak Arabic, whether there are family friends or family members in Baghdad able to accommodate him; his finding employment and whether there is support available.

51. It is to be noted that there is no real risk of an ordinary civilian, travelling from Baghdad Airport to the southern governorates, suffering serious harm en route, so as to engage Article 15(c). In one sense of course this is not a relocation of the appellant but his return to an area known to the appellant and in which he grew up and maintained contact with as a young adult. We do not find that he has discharged the burden of showing, albeit to the lower standard, that he has ceased contact with friends or family members within it.

52. In considering the possibility of a safe return, it is necessary for us to decide whether the appellant would be able to obtain a CSID, reasonably soon after arrival in Iraq. Such is generally required in order for an Iraqi to access financial assistance to the authorities; employment; education; housing and medical treatment. As indicated the appellant has failed to demonstrate that there are no friends or family members able to support or accommodate him. We do not find that he would have any undue difficulty in satisfying the authorities as to his identity, particularly given the call-up papers that were delivered to his address, and his knowledge at the exact address in which he lived. We are not persuaded otherwise than that there are family members or other individuals still in the area with whom the appellant is in contact who can vouch for him and lend support. We do not find therefore that were he to be returned to Baghdad he would be unable to obtain a CSID.

53. In assessing the appellant's ability to adapt back to life in Baghdad, to access accommodation and find work, we bear in mind that he has been throughout a very resourceful person, working when he was still a teenager and being able to live seemingly without too much difficulty in Jordan, undertaking a variety of tasks. The appellant was at pains to indicate that he is still very active within his local community in the United Kingdom and teaching martial arts is part of that practice. Care must obviously be taken in placing undue weight upon demeanour. However, it is our observation of him at some length at the hearing that he is articulate and able to give responses, not necessarily credible ones, to suit his purposes. He is someone who is "streetwise" and not unfamiliar also

with criminal elements in society. We have no doubt that he would be able to apply his mind to obtaining the requisite documents from the authorities and would have no difficulty in establishing himself in terms of support and employment. It is to be noted that the Civil Status Affairs Office is situated in Baghdad. There is a National Status Court also in Baghdad to which the appellant could apply for formal recognition of identity.

54. In terms of the suggestion that the appellant, as a Sunni, would be at risk from the Shia population, we pay regard to the Country Policy and Information Note of June 2017 to which reference has been made. It is to be noted Sunnis, although marginalised by the Shia population in Baghdad, are still represented in society and government. We note that which is set out at 2.2.2 that although there are sectarian tensions, the Haider-Al-Abadi's Government has attempted reconciliation with the Sunni population.

55. The appellant in his evidence has sought to indicate that he has also had contact with Basra, the area to which his mother had gone at some stage in her life. It is to be noted from 4.1.2 that there are Sunni communities in that area as well.

56. In terms of statistics, those from the CIA World Fact book estimated that in 2010 the population of Iraq was 99% Muslim with 60-65% Shia and 32-37% Sunni. In the year 2014, the US State Department International Religious Freedom Report published in October 2015 stated that Arab and Kurdish Sunni Muslims made up 31-37% of the population. Jane's Sentinel Security Assessment in May 2016 estimated that Arabs form 77% of the population, Shias representing 62.5% and Sunnis 34.5%. This is in terms of a total population in the region of 34 million. It would seem also that generally, although Baghdad is Shia dominated, there are areas in which Sunni members live, in particular Mansour and Abughraib.

57. In terms of the Policy Guidance, it was considered that in general the treatment of Sunnis by the state is not sufficiently serious by its nature and reputation to reach the threshold of being persecutory or inhumane or degrading. Whether a Sunni will be able to demonstrate a real risk of persecution or serious harm from the Shia militia will depend upon his/her own personal profile including family connections and origin. It is perhaps also in that connection that we consider **BA (returns to Baghdad) Iraq CG [2017] UKUT 0018 (IAC)**.

58. The headline of that decision indicates that although the level of general violence in Baghdad city remains significant, the current evidence does not justify departing from the conclusion of the Tribunal in **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**. The appellant is not someone who would be perceived as having collaborated with foreign coalition forces or having worked for non security western or international companies. Although a returnee from the west is likely to be perceived as

a potential target for kidnapping in Baghdad, this may depend on how long he or she has been away from Iraq. In principle however, the longer a person has spent abroad the greater the risk but the evidence does not show a real risk to a returnee in Baghdad on this ground alone. Similarly, a Sunni identity alone was not considered sufficient to give rise to a real risk of serious harm. The appellant relies upon the combination of factors as indicated at the outset of this decision. It is in that context that the assessment of the past ability of the appellant to have survived in community, relatively successfully, often in difficult circumstances, is a relevant factor to determine how he will adapt, indeed cope, with the various demands that present themselves. We note that the appellant actually bears a Shia name. He does not present himself as someone involved in the wider politics of Sunni culture. He is someone, as we find, who is very adaptable, able to look after himself and if necessary giving a good or plausible account of himself, if challenged.

59. It is significant to note the comments made by the Tribunal in paragraph 81 of the determination in BA that there was no specific evidence showing targeting of recent returnees to Baghdad. Dr George, whose report was considered, was unable to give any specific examples. It was noted in paragraph 82 of that decision that, on a purely statistical analysis, it cannot be said that there is in general a real risk of kidnapping to a returnee from abroad given the population of Baghdad. In terms of a statistical assessment of the numbers of Sunnis and reported killings as conducted, the number of killings only form a small percentage of the overall population of Sunnis in Baghdad.

60. As indicated at paragraph 98:

> "Both parties are in agreement that the evidence does not show that a person would be at real risk of serious harm solely on account of his or her religious identity if returned to Baghdad at the current time."

61. It is also relevant in our consideration to note that the connection which the appellant had with the area was not confined to Baghdad City itself but to the wider areas such as Yamouk and indeed as far afield as Basra.

62. In terms of tattoos, the appellant has significant tattoos which are well-hidden by his normal clothing although there are tattoos visible to his hands. There is little direct authority as to the dangers posed simply by having such tattoos and we have been addressed to no specific evidential or background authority or report which deals with that matter. They may possibly be regarded as un-Islamic by certain fundamentalists. It is far from clear to what extent the appellant would be in proximity to such individuals or involved with them. If need be the tattoos can be concealed by clothing. As indicated already, we find the appellant to be very streetwise such that he has the ability very well to read a situation and to make an assessment upon it. That assessment is also relevant to potential situations where the appellant might be at risk of kidnapping. He has many skills and abilities including martial arts. We find that he is not without support in the areas to which return would be made. In conclusion

we find to the requisite standard of proof that the appellant may safely return to the Baghdad area and that his claimed fears of doing so are unfounded.

63. We turn therefore to the issue of family and private life, particularly family and private life with JW. No challenge has been made to the genuineness of the relationship, although it is of short duration as a committed relationship. JW in her statement of 3 April 2017 indicated that there had been friendship of five years before the more committed relationship; said to have existed for over a year.

64. In her evidence JW indicated that that the committed relationship had started two years ago, that would have been in 2015 whereas the appellant sought to indicate that it had started in 2014. What is entirely clear, however, from the account of the appellant is that his relationship commenced when his future in the United Kingdom was entirely uncertain. Although he had succeeded in his appeal before the Upper Tribunal that appeal was soon under challenge and was set aside. As the appellant indicated, it was that factor which led to the breakdown of his previous relationship.

65. It is to be recognised that there would certainly be some hardship for JW were the appellant to removed. Her health is not good and it is understandable that the support of the appellant is important to her with a baby shortly to be born. We find that JW seeks to stress her isolation perhaps over much. She is well-qualified as a beautician and laser treatment specialist and has worked in a number of salons, some of prestigious nature. She thus clearly has the means to work and find a livelihood. We would be surprised in these circumstances where her work obviously involves considerable interaction on a personal level with colleagues and customers, that JW is without friends/colleagues to help or share her concerns. Although she helps look after her mother, her mother is not an invalid and could no lend some support in helping care for the child. It is not of course a comfortable situation, but is a situation which would be true of most separations of this nature. We bear in mind the difficulties with the pregnancy but note that that is something which can be monitored and supported by health specialists, particularly at the hospital.

66. It is in these circumstances that the statutory and legal framework for consideration of such appeals is of utmost importance. Since the appellant's appeal was last before the Tribunal Part 5A of the Nationality, Immigration and Asylum Act 2002 has come into force.

67. The definition of foreign criminal in Section 117D is materially the same as the definition under the 2007 Act. The proper application of Section 117D to deportation appeals brought to the Tribunal by foreign criminals has been considered in a number of recent cases. The position is conveniently

distilled in the judgment of Sales LJ in **NA (Pakistan) v Secretary of State for the Home Department [2017] 1WLR 207**:-

> "35. The Court of Appeal said in **MF (Nigeria) v Secretary of State for the Home Department [2014] 1LR 544** that paragraphs 398-399A of the 2012 Rules constituted a complete code. The same is true of sections 117A-117D of the 2002 Act, read in conjunction with paragraph 398-399A of the 2014 rules. The scheme of the Act and the rules together provide the following structure for deciding whether a foreign criminal can resist deportation on Article 8 grounds."

Insofar as Article 8 is concerned the considerations involving foreign criminals are those set out in 117C, namely:

> "that the deportation of foreign criminals is in the public interest. In the case of a foreign criminal, who has not been sentenced to a period of imprisonment of four years or more, the public interest requires deportation unless Exception 1 or Exception 2 applies. Perhaps Exception 2 is the most relevant, in these circumstances, namely where the appellant has a genuine and subsisting relationship with a qualifying partner or a genuine and subsisting parental relationship with a qualifying child, and the effects of deportation on the partner or child would be unduly harsh."

117C(6) provides:

> "In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2."

68. The approach to that matter as set out in **NA** perhaps can be shown in the paragraph 37 which provides:-

> "In relation to a serious offender, it will often be sensible first to see whether his case involves circumstances of the kind described in Exceptions 1 and 2, both because the circumstances so described set out particularly significant factors bearing upon respect for private life (Exception 1) and respect for family life (Exception 2) and because that may provide a helpful basis on which an assessment can be made whether there are 'very compelling circumstances, over and above those described in Exceptions 1 and 2' as is required under Section 117C(6). Although it will be necessary to look to see whether any of the factors falling within Exceptions 1 and 2 are of such force, whether by themselves or taken in conjunction with any other relevant factors not covered in the circumstances described in Exceptions 1 and 2, as to satisfy the test in 117C(6)."

69. As the appellant was sentenced to imprisonment for four years he falls to be considered as a serious offender.

70. It is to be noted that the correct approach to the test of undue harshness requires that account be taken of the extent of the public interest and the deportation of the foreign criminal when determining whether the effect of his deportation would be unduly harsh. As explained in the judgment of

Laws LJ in **MM (Uganda) v Secretary of State for the Home Department [2016] EWCA Civ 450** at paragraph 22-25:

> "What is due or undue depends on all the circumstances, not merely the impact on the child or partner in the given case. In the present context relevant circumstances certainly include the criminal's immigration and criminal history."

71. It is relevant in that connection also to bear in mind Section 117B of the 2002 Act that little weight should be given to a private life or relationship formed with a qualifying partner that is established by a person at a time when the person is in the United Kingdom unlawfully and little weight should be given to a private life established by a person at a time when the person's immigration status was precarious.

72. We note also the comments by the Supreme Court in **R (Agyarko) v Secretary of State for the Home Department [2017] UKSC 11** at paragraph 57:-

> "In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control."

73. Those remarks of course are made in the context of relationships in general and not those involving foreign criminals and certainly not those that involve serious offenders, as is the appellant.

74. We do not find, even looking at Exception 2, that the appellant's deportation would have an unduly harsh effect on his partner. Clearly there will be difficulties and emotional upset. As we have indicated we are not persuaded that JW would be without the means of support, both financially in terms of employment, or in terms of emotional support from her mother and from friends and colleagues. She has sought to paint a very dark picture as to her future, which we do not find necessarily to be made out in all the circumstances. She embarked upon her relationship knowing of the immigration position of the appellant. Thus we do not find that the circumstances of the appellant and JW meet the circumstances of Exception 2 nor do we consider that there are any other compelling circumstances over and above those described in Exception 2 that apply in this case, so as to render removal disproportionate. There is little in the situation and circumstance of the appellant, such as health, which can be placed in the balance in his favour. We bear in mind that he has not reoffended and the significant time that has elapsed in the course of this protracted appeal process. We note his community work with young people. Although he has other children by other relationships he has no connection with them otherwise than with K who is serving in the armed forces. There is no reason why that connection cannot continue from elsewhere.

75. Overall, and having clearly some sympathy with JW, we find nothing within the statutory framework or otherwise, to over- ride the public interest in the appellant's deportation.

76. In all the circumstances therefore the appellant's appeal is dismissed in all respects as to the Immigration Rules, asylum and humanitarian protection. Similarly the appeal is dismissed as to Articles 3 and 8 and human rights.

Notice of Decision

The appeal is Dismissed in respect of all issues and grounds as advanced.

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 20 February 2018

Upper Tribunal Judge King TD