



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02863/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 27th February 2018

**Decision & Reasons
Promulgated
On 20th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

A A S

(ANONYMITY DIRECTION IS MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes instructed by Howells Solicitors
For the Respondent: Mrs R Petterson

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge O'Hanlon made following a hearing at Bradford on 7th February 2017.

Background

2. The appellant is a citizen of Iraq born on 11th May 1969. He was born into the Sabeen faith and grew up in Baghdad. He converted to Islam in 2007, and his parents objected. His wife is a Sunni Muslim and her family objected to the marriage. The appellant said that he suffered a number of attacks from both his family and his wife's family which resulted in serious injury.

3. The respondent accepted that the appellant was a convert from the Sabeian faith but not that he had had any difficulties with either his family or his wife's family.
4. The judge agreed with the respondent and dismissed the appeal.
5. The appellant sought permission to appeal on the grounds both that the judge had not properly considered his claimed risk as a convert from the Sabeian religion.
6. Judge Scott-Baker granted permission to appeal on that basis, and also observed that it was arguable that the judge had failed to give sufficient weight to the medical evidence which was before him in finding that he was not credible as to his past ill-treatment.
7. On 10th July 2017 the respondent served a reply defending the determination.

Submissions

8. Mr Holmes submitted that it was clear from the determination that the appellant had argued that he would be at risk as a Sunni convert, particularly since his identification documents all showed that he was originally Sabeian, but the judge had not properly engaged with the argument which was put before him. He also argued that the judge had erroneously failed to give any weight to the medical evidence.
9. Mrs Petterson submitted that the determination was sustainable and that the judge's conclusions in relation to past maltreatment were open to him. There would be no enhanced risk to the appellant since he had been a Sunni convert for over ten years. The judge was not obliged to outline every piece of evidence before him.

Findings and Conclusions

10. So far as the observation made by Judge Scott-Baker is concerned, I am not persuaded that the judge made any error in his treatment of the medical evidence.
11. The evidence was considered in the light of his findings in relation to the threats from the families. The judge set out clearly why he did not consider those threats to be plausible, and none of those findings per se are under challenge. Moreover it is wrong to suggest that the judge put no weight upon the medical evidence. What he did say was that he could not place great weight upon the medical reports in considering the appellant's overall credibility. He was entitled to do so, particularly since, as the judge pointed out, there is no reference in the medical reports to the doctor's opinions on the causation of the injuries.
12. There is more merit in the challenge to the judge's consideration of risk on return as a Sunni whose identity documents would identify him as Sabeian. It is quite clear from the determination that this was specifically argued

before him. The judge accepted that the appellant was credible in his evidence as having been formally of the Sabeian religion. He was able to give sufficient details of it both in his asylum interview and before the Tribunal, and his identity documentation described his religion as Sabeian. The judge also accepted that the appellant did convert to Islam in 2007 and accepted that he continued to practise his religion as a Sunni Muslim.

13. So far as the risk on return on that basis is concerned, the judge said that he applied the case of BA (returns to Baghdad) Iraq CG [2017] UKUT 0018 which indicated that Sunni identity alone would not be sufficient to satisfy the requirements of a real risk of serious harm. The fact that the appellant was a Sunni Muslim was not of itself a reason why he would not be able to return to Baghdad. He then said that his conversion to Islam was not, on the basis of the country guidance case of HM & Others (Iraq) CG [2012] UKUT 00409, a reason for considering that he would be at an increased risk.
14. What he did not do was engage with the specific arguments made on the appellant's behalf. The appellant is not a person who is returning simply as a Sunni Muslim. The judge does not say why he rejected the submission that his former Sabeian faith would not put him at risk.
15. Failure to make a decision on a ground of appeal which was argued before him is an error of law.
16. Mrs Petterson argued that the error was immaterial because there was no evidence that of an enhanced risk.
17. However there was some evidence in the respondent's Country Information Report on Iraq dated 26th July 2016.
18. At paragraph 4.5.1 it states:

"USSD 2014 noted 'Estimates of the size of the Sabeian Mandeian community vary. According to Sabeian Mandeian leaders about 1,000 to 2,000 remain in the country, predominantly in southern Iraq, with small pickets in Kurdistan and Baghdad. The Heartland Alliance Report noted that, since 2003, almost 90% of Iraqi Mandeians left the country. They are concentrated in Baghdad and southern Iraq (Amarah City in particular).

The World Directory of Minorities and Indigenous Peoples, dated October 2014, noted Sabeian Mandeians face extinction as a people. As their small community is scattered throughout the world, Sabeian Mandeians' ancient language, culture and religion faces the threat of extinction ... Since the outbreak of violence in 2003 most Sabeian Mandeians have either fled the country or been killed. Today there are fewer than 5,000 remaining in Iraq'."

19. In BA, the Upper Tribunal concluded that, whilst individual Sunni identity alone was not sufficient to give rise to a real risk of serious harm, the evidence indicated that Sunni men are more likely to be targeted as

suspected supporters of Sunni extremist groups such as ISIL. Moreover individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis.

20. The assessment will depend on the facts of each case.
21. Mr Holmes referred me to the Finnish Immigration Service security situation in Baghdad. The Shia Militias Report dated 28th April 2015 recorded that at that point there were approximately 200 checkpoints in the streets of Baghdad. Sunnis were inspected more thoroughly than Shi'ites. AAH members have been seen at the checkpoints helping the security forces to check identities and vehicles, and it was very difficult to make a distinction between armed militias and the security forces. There was also an increasing risk of kidnap. Indeed the Tribunal in BA stated that kidnapping remains a significant and persistent problem contributing to the breakdown of law and order in Iraq, although there was not a real risk to a returnee in Baghdad on this ground alone.
22. This is a difficult case. The appellant has been found partially credible, although not in relation to the specific causes of his decision to leave Iraq. He has suffered significant injuries, but the judge has sustainably found that they were not caused in the way described by the appellant. On the other hand he undoubtedly has Sabeen identity documents and he would not be returning to Baghdad simply as a Sunni Muslim.
23. The Tribunal in BA made it clear that they considered that risk must be considered cumulatively. Whilst Sunni identity in itself was not sufficient, individual characteristics might amount to a real risk for the purpose of the Refugee Convention. There is very little information indeed about the Sabeen minority other than the respondent's own information, which states that 90% of them have been killed or have fled. That in itself must be an indication of risk. Fewer than 5,000 remain in Iraq today.
24. The appellant's Sabeen lineage is likely to be disclosed either at a checkpoint or when the appellant would have to use his identity documents to get work or housing. In these circumstances I am satisfied that the appellant has established that he would be at real risk of persecution on return since it is most unlikely that he would be able to conceal his Sabeen heritage.
25. The original judge erred in law. His decision is set aside. The appellant's appeal is allowed.

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.

Deborah Taylor

Signed
Deputy Upper Tribunal Judge Taylor

Date 19 March 2018