



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08042/2015

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 29th January 2019

Decision & Reasons Promulgated
On 6th March 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AQ (Iraq)
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Bayati, Counsel instructed by Thakrar & Co Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1986. He seeks international protection.
2. By his decision handed down on the 3rd August 2018¹ the Hon. Mr Justice Lane found the decision of First-tier Tribunal Judge M Davies to dismiss the Appellant's protection appeal defective for error of law and set it aside. By

¹ Written decision sent to parties on the 7th September 2018

order of Principle Resident Judge O'Connor dated the 17th January 2019 the matter now comes before me for remaking.

3. The basis of the Appellant's claim for protection is that he faces a real risk of persecution in Iraq for reasons of his imputed political opinion/religious belief. His case, in summary is that:

- His father was a high-ranking Ba'athist who directly served Saddam Hussain from 1980 until the regime fell in 2003;
- His father fled Iraq in 2004 after a warrant was issued for his arrest;
- Other members of the family lived in the Al-Mansour district of Baghdad, but 'kept a low profile'. The Appellant worked in construction and subsequently started to study law at the University of Baghdad;
- In March 2008 the family home was raided by Iraqi security officials who dragged the Appellant and his brother outside and physically mistreated them before they were released. The officers were looking for the Appellant's father;
- The Appellant and his family leave Baghdad fearing further arrest and move to Fallujah. The Appellant starts working with a cousin in his car sales business;
- In 2009 a close friend of the Appellant was kidnapped and killed. After this the Appellant became depressed. He started drinking alcohol and smoking;
- In April 2014 received a threatening telephone call. His 'un-Islamic' behaviour had come to the attention of Islamic militants ('ISIS') who were running what purported to be a Sharia court in the area. He is told to present himself within three days;
- The Appellant goes into hiding. On his way back to his family home, some ten days later, his car is intercepted by other vehicles. He is kidnapped by a group of masked men whom he believed to be members of ISIS. He was kept in a room for 10-11 days with other prisoners. He managed to escape when the building he was imprisoned in was bombed, and local villagers freed him;

- His brother subsequently took him to Baghdad. Whilst there the Appellant spoke with his father who advised him to leave the country. The Appellant left Iraq with the assistance of an agent in July 2014;
 - In August 2016 the Appellant's brother S is kidnapped by an armed group in Baghdad. They make derogatory remarks about his father and his Sunni faith. Another brother, A, pays a \$50,000 to secure his release.
4. On the basis of this historical narrative the Appellant asserts a fear of harm because of his own identity and association with his Ba'athist father, as well as a fear of harm visited upon him by Islamic militants.

The Matters in Issue

5. The first issue is whether the claim is credible, that is to say whether the Appellant has established, to the lower standard of 'reasonable likelihood', that his account, as summarised at paragraph 3 above, is true. The Respondent had originally challenged the entire account, but by the date of the hearing before Judge Davies had accepted, in the face of not-inconsiderable documentary evidence, that the Appellant's father is who he says he is, namely the former director of the Presidential Bureau of Saddam Hussain. I note that this tranche of evidence includes photographs of the Appellant's father with Saddam Hussain.
6. Before me the Appellant attended the hearing with a view to giving live evidence. Mr Diwnycz and Ms Bayati were able, in pre-hearing conference, to agree that there was little utility in that. The Appellant has been extensively interviewed by representatives of the Secretary of State. He has twice been subjected to cross-examination by experienced Home Office Presenting Officers (the hearing before Judge Davies was the second before the First-tier Tribunal, an earlier determination by First-tier Tribunal Judge EMM Smith having been set aside in its entirety by Upper Tribunal Judge C. Lane on the 17th July 2017). No material discrepancies emerged from any of that evidence. Indeed the record of the evidence summarised in the First-tier Tribunal decisions indicate that the Appellant has consistently maintained his account. Mr Diwnycz wisely concluded, therefore, that there was no point in going through the exercise for a third time.
7. Instead the Respondent asked me to consider whether the account was plausible, given what we know about the behaviour of ISIS. In particular the Respondent did not find it credible that Islamic militants would summons the Appellant to court, rather than simply executing him; nor was it plausible that villagers would assist ISIS prisoners in the aftermath of a bombing raid. I was

asked to weigh the account, and the supporting documentary evidence, in light of the country background material.

8. The second matter in issue is whether, on the facts as found, the Appellant faces a real risk of persecution or serious harm if returned to Iraq today. For the purposes of my decision I am invited to treat his Baghdad as his 'home area'. His family originate from Baghdad, that is where he would be returned to, and his CSID, issued in 2008, identifies his place of origin as Al-Mansour (a district of Baghdad known for its association with the Ba'ath party: see 4.2.9 of the June 2017 CPIN). I do note that the Appellant has also produced a torn residency card which indicates that when it was issued, his home area for the purpose of that registration was recorded as Fallujah: see paragraph 177 Dr Fatah's report. It is however apparent from the chronology set out at §3 above that his move to Fallujah was an attempt to avail himself of an internal flight alternative.
9. Ms Bayati acknowledged that since the Appellant left Iraq the threat from ISIS has considerably diminished. She could not, for instance, show me today that the Appellant would be at risk in Baghdad from members of that self-proclaimed 'caliphate'. As such she did not seek to persuade me that the Appellant was at any risk because he failed to attend his Sharia court hearing, or that he would be at risk from this group in the future. She did however submit that the account was wholly plausible and that there was no good reason, applying the lower standard of proof, to reject it.
10. She instead identified, with reference to the extant country guidance BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC) the following risk factors going forward:
 - i) Sunni
 - ii) Kidnapping risk- been in the west of 4 years
 - iii) Association with a "particularly high-ranking Ba'athist"

To these factors I must further weigh in the balance the fact that the Appellant has exhibited a

- iv) 'Non-Islamic' lifestyle.

The Appellant's Evidence

11. The Appellant has been interviewed twice, has provided three witness statements and has been cross examined twice. He has also produced a good deal of documentary evidence. Given the Respondent's concession in respect of the Appellant's father's position I need not set the documents relating to that issue out here.

12. In respect of the abduction and assault on the Appellant's brother S, he has provided a signed witness statement dated 17th December 2017. He explains that he was on his way to university on the morning of the 3rd August 2016 when he was abducted by a group of armed men in a white Toyota pickup truck. He was taken to an unknown destination where he was locked in a room. They insulted his religious beliefs – their comments about his Sunni faith led him to conclude that they were a Shi'a militia. They beat him and make references to his father being part of the former regime. They called him "dirty names". He was released on the 9th August 2016 after a ransom was paid. S is now residing in Turkey with the rest of the family.
13. In support of this statement the Appellant's brother has provided a number of documents. There are five which appear to relate to an investigation conducted by officers at al-Doura police station in Baghdad. The first is dated the 3rd August 2016. It is a copy of the original report filed by the Appellant's brother A with the police. The second is dated 9th August 2016. This appears to be a copy of a police record showing that on that date the Appellant's other brother A attended the police station in Al-Doura to inform them that his brother S had been released by his abductors. The third is a statement from S himself giving officers his account of what happened. The fourth and fifth, dated the 14th and 28th August 2016, appear to be official receipts given to the family by the court after they requested copies of the aforementioned items from the investigation file. Finally there is a forensic medical report dated the 10th August 2016 issued by al-Yarmouk hospital in Baghdad, confirming that S attended on the 9th August 2016 with extensive bruising and a head injury.
14. I was further provided with a tenancy agreement relating to the family's accommodation in Turkey, and Turkish residence cards for the Appellant's father and mother.

The Country Background Material

15. I was asked by both parties to have regard to relevant country guidance. I have in addition been assisted by Ms Bayati's preparation of a reference index to the 'objective' bundle. She referred in particular to the following:
 - the 'Country Information and Policy Notes' (CPINs) published by the Secretary of State in November 2018, October 2018, January 2018, September 2017, June 2017, August 2016
 - a report by Dr Rebwar Fatah, prepared specifically for this appeal, dated the 1st December 2016
 - The UNHCR position paper on the return of refugees dated the November 2016

- Human Rights Watch report dated 2018

16. Some of the information before me is now, it is agreed, out of date. It has been adduced however to support the Appellant's case in respect of the overall plausibility of his historical account. In particular the UN position paper confirms (and I do not perceive this to be in contention) that by early 2014 Fallujah and its environs had fallen to Islamic militants.
17. Some of the information before me, it is agreed, is relevant background, but not determinative. For instance the evidence would tend to indicate that a Sunni male in post-ISIS Fallujah may now encounter real difficulties from those that defeated that group:

"The UN and human rights organizations have documented extensive abuses committed by elements of the PMUs [popular mobilisation unit], and in some cases the ISF [Iraqi security forces], against fleeing civilians, particularly Sunni Arab men and boys, who are broadly perceived as supporting ISIS, irrespective of the existence or absence of evidence linking an individual to ISIS. Reported abuses include arbitrary arrest, abduction, physical abuse, enforced disappearance, summary killing and mutilation of corpses, 68 including, for example, during military operations to retake the town of Fallujah (Al-Anbar) and surrounding areas from ISIS in May/June 2016. Hundreds of men and boys reportedly remain missing after having been taken into custody by forces affiliated with the PMUs. The media also reported arson and looting after forces affiliated to the PMUs entered Fallujah. Despite public announcements by the Iraqi authorities on the accountability of those involved in abuses against civilians, it often remains unclear if investigations have been conducted or prosecutions initiated."

[UN Position Paper, para 20]

Since it is not proposed that the Appellant return to Fallujah, such evidence is only of limited assistance, and would only be relevant to any consideration of internal flight.

18. In respect of current risk I was asked to take as my starting point the decision in BA. Insofar as it is relevant to the Appellant, the Tribunal found that no one factor is going to give rise to a real risk of serious harm in the city. It was however satisfied that a combination of risk factors could discharge the burden of proof. In particular it found:

Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away

from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.

Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.

19. The conclusions in BA are mirrored by (and in some instances are drawn from) the material in the bundle before me. The June 2017 CPIN notes:

2.2.7 A Sunni may be able to demonstrate a real risk of persecution or serious harm from a Shia militia, but this will depend on their personal profile, including their family connections, profession and origin.

And this evidence must be read in light of the following:

4.2.3 Several sources indicated that, since 2003, Baghdad has become more segregated and Shia-dominated. The Finnish Immigration Service's report, 'Security situation in Baghdad – the Shia militias' ('the FIS report'), dated 29 April 2015, which cited various sources, summarised the situation: 'Following the Iraqi civil war (2006–2007), the previously peaceful coexistence of Sunni and Shia communities came to an end, and Baghdad was gradually split into more clearly defined Sunni or Shia districts. Thousands of people died during the civil war, with Shia and Sunni militias killing each other. Shiites took over several parts of the city that had been occupied by Sunnis and other minorities, turning Baghdad into a predominantly Shia city.'

20. One of the primary fears of the Sunni community in Baghdad is kidnapping (again from the June 2017 CPIN):

7.3.1 The FIS report noted: 'Men identified as AAH members kidnapped Sunni men in the districts of Sha'ab, Baya'a, Za'franiyya and Ghazaliyya. The kidnappers were dressed in civilian clothing and drove an army vehicle with no number plates. In both cases, the kidnapped men were found a few days later, shot in the head. AAH is also claimed to be kidnapping Sunnis in the Sunni districts of Ma'alif, Ameriyya, Khadraa, Dora and Saidiyya. In July 2014, AAH kidnapped Sunni civilians on Palestine street in the al-Mohandeseen region. AAH is suspected of kidnapping local business men... 'Sometimes, the militias release the Sunnis they have taken if they manage to convince their kidnappers that they are Shiites. Similarly, Sunnis may pose as Shiites in Shia-dominated residential areas. Many Sunnis say that their Shia neighbours saved their

lives by falsely identifying them as Shiites. Sunnis are forced to pose as Shiites in certain areas to avoid problems and being driven away from their homes. In conclusion, it seems that religious beliefs are not making ordinary Shiites violent towards their Sunni neighbours...'

21. Dr Fatah's report was prepared at a time when the Appellant's family connections were in dispute. As they are now accepted I need not set out his evidence on this point. In terms of risk arising from those connections Dr Fatah notes that the number of former Ba'athists killed in Iraq in recent years is relatively, perhaps surprisingly, low. The exact number of those targeted is however unknown. The chaos and insecurity that has prevailed since 2003 has meant that many deaths and injuries have gone unreported; such was the scale and frequency of such deaths that the press and human rights observers have been unable to identify the cause of each individual attack. Dr Fatah points out for instance that the huge wave of attacks against academics was consistently reported in that terminology: in fact such attacks were fuelled by the fact that in order to attain a high level of professional advancement under the former regime, one had to join the Ba'ath party. These individuals were not therefore killed simply because they were lawyers, professors, scientists etc; they were killed because they must have been allied to the government. It is also true to say that a great number of those associated with the former regime have already fled the country. Dr Fatah did however manage to identify, in a trawl through the evidence recorded on the website 'Iraq Body Count' 19 examples of Ba'athists, and by extension their family members, being attacked in the past five years. The attacks included bombs placed on the road outside homes, shootings, and magnetic car bombs. The victims included Ba'ath party members, former members of Saddam's armed forces, policemen and a judge; in one instance the son of a Ba'athist was killed by a bomb, and in another a man was killed for 'suspected' Ba'athist links.
22. Of the Appellant's specific circumstances Dr Fatah considers the following matters to be relevant to the assessment of personal risk:
- His father worked in Saddam's personal office for 23 years, indicating a high level of loyalty and that Saddam must have been fond of him
 - His position was such that he would have acted as link between the President and his Ministers and as such may be regarded as complicit in the various campaigns of repression against, for instance, the Kurds and Shi'as, and as a "particularly high ranking" Ba'athist
 - The fact that he is identifiable as a Sunni, formerly resident in Fallujah, brings its own risks. There have been serious abuses against Sunni civilians there since it was recaptured from ISIS in June 2016, and this is consistent with the pattern of violence seen across all areas liberated from ISIS

Discussion and Findings

23. As I note above Ms Bayati accepted that the Appellant cannot today make out a real risk of harm from ISIS. She submitted that it is instead the confluence of the factors she has identified which would place the Appellant in danger in Baghdad today. The Appellant is not just identifiable as a 'Sunni' Muslim, he is a Sunni whose father played a significant role in the regime of Saddam Hussain, a regime vilified and loathed by the Shi'a who continue to live in the city. His non-Islamic behaviour, including a failure to pray and drinking alcohol, may be relevant in a number of ways. It serves to underline that he is someone who is 'westernised', and has in fact spent a number of years in the 'west'. It may incur the wrath of Sunni extremists of the sort who affiliated themselves with ISIS; similarly it may attract the attention of Shi'a groups, who would further associate that kind of secularism with the family's support for the Ba'ath party. I must also take into account the Appellant's evidence that his entire family have now fled Iraq and that as such, upon return to Baghdad, he would be on his own.
24. For the Respondent Mr Diwnycz agreed with Ms Bayati's concession in respect of ISIS. That group has lost whatever influence it might have had in Fallujah: Mr Diwnycz referred me to a map produced by the Institute of War in October 2018 and reproduced in the November 2018 CPIN. Although they did appear to have considerable influence in that area in 2014 they were defeated militarily by mid-2016. In respect of the submissions on current risk in Baghdad Mr Diwnycz accepted that the Appellant's personal characteristics are as they are described by Ms Bayati, but submitted that applying the guidance in BA the Appellant had not demonstrated that the threat to his person reached the requisite, albeit it low, standard.
25. I begin by considering the historical narrative presented by the Appellant, and summarised at my §3 above. As I note above the Appellant has retold his story on several occasions. He was extensively interviewed by the Home Office in November 2014. He has given detailed witness statements to his solicitor on three occasions, in 2015, 2016, and 2017. He has twice been cross-examined on his account, in separate hearings in December 2016 and April 2018. As Mr Diwnycz accepted, the Appellant has consistently maintained his account, and the Respondent has been unable to identify any material discrepancies therein. I attach some weight to the fact that the account has remained consistent.
26. The Appellant has produced a number of documents capable of corroborating parts of his account. It is now accepted, as a result of those documents, that his father was a senior figure in Saddam Hussain's regime. I have further had regard to the documents relating to the residence of his family in Turkey, and to the documents relating to the alleged abduction of the Appellant's brother in

2008 (which I deal with in greater detail below). Having examined those documents I can find no internal inconsistencies within them. Nor do I find there to be any discrepancy between the documents and the Appellant's own evidence. I attach some weight to this factor, weighing the documents in the round with the remaining evidence.

27. In respect of the plausibility of the account I find there to be nothing particularly startling in the Appellant's narrative. It is wholly plausible that his father, a high ranking Ba'athist, would have fled the country shortly after the fall of the regime. It is also plausible that his family would at that stage continue to live in the affluent suburb of al-Mansour, where many senior government figures had their homes. The claim that the family home was raided in early 2008 is again consonant with the country background evidence: the city was at that time in the grip of extremely serious "tit for tat" sectarian violence and I am satisfied that it is reasonably likely that security officials would at that time have still had an interest in the Appellant's father. As to the move to Fallujah, this again is credible, given the large Sunni population in that city. The claim that a close friend of the Appellant's was kidnapped and killed in 2009 is in no way inconsistent with the breakdown of law and order that occurred in post-Saddam Iraq. I find the claim to this point to be entirely plausible within the context of what is known about Iraq at that time.

28. The crux of the Respondent's case relates however to the claimed events between early 2014 and 2016.

29. The Appellant claims that whilst living in Fallujah in early 2014 he received a telephone call from someone purporting to represent the Sharia court and demanding that he present himself to answer to charges of "unIslamic" behaviour. I note, and indeed it does not appear to be disputed, Dr Fatah's evidence that ISIS did indeed have a substantial presence in the Fallujah area at that time. The Respondent however says of this evidence:

"ISIS are well known for their aggressive and barbaric acts of violence, your claim that ISIS called your phone is entirely inconsistent with any information relating to ISIS"

30. I have given careful consideration to this submission. ISIS were indeed well known internationally for acts of senseless barbarism but it is important to note that many members of that group regarded themselves not as a rampaging gang (as we might perceive them) but as guardians of the "true" Islamic faith. They regarded themselves as laying the foundation for a Caliphate. In those circumstances it cannot be said to be inherently implausible that they operated what they regarded as Sharia courts, or that they would summons perceived transgressors before them. I find the account given to be wholly plausible, in the context of the individual members of ISIS defining themselves as an Islamic

“state”. Similarly I can find nothing inherently implausible in the claim that tribesmen assisted ISIS prisoners escape from a bomb damaged building.

31. Applying the lower standard of proof I am prepared to accept that these events did occur as they are described by the Appellant.
32. The final element of the account concerns the events surrounding the Appellant’s brother in Baghdad in 2016. I am mindful that the Appellant himself had already left Iraq at that stage, and that this matter is only relied upon insofar as it is material to any future risk to the Appellant. What I lack here in direct evidence from the Appellant is made up for in that I have a statement from his brother, supported by several items of documentary evidence.
33. First there is the gentleman’s own statement, which although straightforward and fairly detailed is of course untested: there is therefore a limit to the weight that I can place on that.
34. Second is a report filed at al-Doura police station on the 3rd August 2016 by the Appellant’s brother A. The record shows that he is reporting his brother S as missing. He had left home as usual to attend university but did not return home. Several attempts had been made to contact him by telephone but his mobile was switched off. A had been to all the places where he could think that S might be, but had not been able to find him.
35. The third document is another report from al-Doura, this time dated the 9th August 2016. It is short and to the point. It serves to record that on that date the Appellant’s brother A came into the station to report that he had secured the release of their brother S from an “unidentified group”, by paying a ransom of \$50,000. The officer making the report, Captain Mohamed O. Dowaij, notes that the victim had to be taken to Al- Yarmouk hospital for treatment following his release. The document gives six directions in respect of the investigation: that the statement of the kidnapping victim be taken after his recovery, that the description of the car used in the abduction be circulated, that a medical report is requested, that efforts are made to identify the perpetrators, that the case is brought before the public prosecutor and that the decision is to be recorded.
36. I can see from the original Arabic version that both of these documents have been stamped by three officials, and from the translation that these are Captain Dowaij, Judge Munzer Ibrahim Hussain and Judge Mohamed Abdul Ghafor Aziz, Deputy Prosecutor. Looking at the two ‘receipt’ documents I consider it likely that these stamps are placed on the document because it is being given over to the family at their request, to certify that these are genuine copies from the police file.

37. The report from the hospital is issued pursuant to a request from al-Doura police station. It states that S entered the hospital on the 9th August 2016 “in full awareness” with an injury to his scalp and bruises on his face, back and leg. The Deputy Hospital manager who provided the report, Mr Abdulmalek Mohammed Amin, records the doctor’s opinion that these injuries were caused by “external violence”.
38. As I note above I have considered these documents in the round with the remaining evidence. I find that I am able to attach significant weight to them for the following reasons. First, the documents themselves are internally consistent and fit with the narrative S has given in his statement. Second, having examined the documents I can find nothing in them which might indicate that they have been produced simply for the purpose of supporting this claim. The initial report from A says nothing, for instance, about a possible kidnap. He has simply given the officers a report that S is missing and asked them to investigate. The reports from the 9th August 2016 are similarly restrained. On that date S was taken first to hospital for a check-up, and then to the police station to give his statement. The remarks of the officer as to what should now be done, reproduced from the file, appear to be plausible and consistent with what might be expected in these circumstances. Third, it is clear from the country background evidence, in particular the findings of the Tribunal in BA, that kidnappings were rife in the city at that time. The Appellant’s brother fitted the profile of a potential victim: a Sunni male from an affluent family, with family living abroad. The additional matter of his Ba’athist heritage would no doubt be further incentive for a quasi-sectarian criminal gang. The narrative is also consistent with the evidence of Dr George, recorded at paragraph 70 of BA, that families will often negotiate directly with kidnappers rather than relying on the police to do so.
39. Having considered all of the evidence in the round I am satisfied to the appropriate standard that the Appellant’s brother was indeed kidnapped in Baghdad in August 2016 in the manner described. This led him and any remaining family members to leave the country. I am satisfied that the Appellant’s family are all now outside of Iraq.
40. I therefore turn to the forward-looking risk assessment. The Appellant has the following personal characteristics. He is from Baghdad, but has not lived there himself since 2008 when he was assaulted under questioning by security officials who were looking for his father. He has no family members remaining in the city. He has lived in the United Kingdom since 2014. Although he is not particularly observant, he is identifiably Sunni. He is the son of a high ranking Ba’athist. On at least two occasions the Appellant and/or his brothers have encountered instances of serious harm with some causal nexus to that family history. In 2008 the Appellant and another brother were dragged out of their home in al-Mansour and beaten by officers looking for their father. In 2016 the

Appellant's brother was kidnapped by men who taunted him about his father's role in the former regime.

41. I note in that in BA the evidence about the 'epidemic' of kidnapping in Baghdad was that it was driven by various motives. Citing a report by the US Army War College's Strategic Studies Institute called '*Criminals, Militias, and Insurgents: Organized Crime in Iraq*' the Tribunal found the reason behind such abductions is often hard to determine [at 76]:

"Kidnapping in Iraq has several distinct dimensions. First is motivation. Different kinds of kidnapping are determined largely by the motivations of the perpetrators. Although the main focus in this chapter is economic or for-profit kidnapping rather than political kidnapping, the distinction between the two is not as clear as it initially appears. Sometimes it is impossible to determine whether a kidnapping is primarily about money or about politics. Indeed, it is often apparent only in retrospect - and sometimes not even then - as to which category of kidnapping is a particular abduction belongs. As one commentary noted, "abductions are sometimes lucrative criminal enterprises, sometimes brutal aspects of sectarian violence, and sometimes a tangled mix of the two."

42. This evidence fits very well with the statement of S, to the effect that his kidnappers appeared on the one hand motivated by political/religious enmity ("they insulted my religion"/"they insulted my father and called him dirty names...they were trying to figure out where my father is, or his address"), and on the other hand were clearly in the business of making money, S being immediately released upon payment of a \$50,000 ransom.

43. I bear in mind that the kidnapping of S occurred fairly recently. It is difficult to see how the Appellant would be any less at risk today. Unlike S at the time, he has no family in the city, and he would be returning there after a long absence, most recently in the west. He would be isolated, and as I have said, identifiably Sunni. There is no evidence before me to indicate that the security situation for Sunnis, or returnees from the west, has improved in the city since the Tribunal promulgated the decision in BA. Nor have I any reason to find that the family's Ba'athist connection would have diminished in the minds of potential persecutors over the past two years. Whilst it may be unlikely that the Appellant would be targeted simply because of his father, that was clearly some part of the motivation in the kidnapping of S; quite possibly because the criminals involved assumed that the family would be reluctant to seek the help of the authorities as a result.

44. I have considered whether there is anywhere in Iraq where the Appellant might be reasonably expected to relocate to avoid the risk of harm in Baghdad. Mr Diwnycz accepted that given his personal profile he could not be expected to go to either the Shi'a dominated south, or the Kurdish dominated north. There remains the possibility of moving, as the Appellant already once did, to town in

the Sunni triangle north of Baghdad. Although I have accepted that the Appellant was subjected to past persecution by ISIS in Fallujah that particular risk is accepted by Ms Bayati to have diminished. Unfortunately for the Appellant it has been replaced by the potential threat of ill-treatment by the Shi'a forces who displaced ISIS: see paragraph 17 above. I do not regard it as reasonable to expect a Sunni male on his own, with past Ba'athist association, and who remained in Fallujah through much of the ISIS occupation of Anbar, to expose himself to the risk of harm from vengeful Shi'a militias. Having considered all of the evidence I am satisfied that the Appellant has discharged the burden of proof and shown himself to face a current risk of harm in Iraq.

Anonymity

45. 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, we 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”

Decisions

46. The decision of the First-tier Tribunal contains material errors of law and for the reasons identified by Mr Justice Lane it is set aside.

47. I remake the decision in the appeal as follows:

“the appeal is allowed on refugee convention and human rights grounds. The Appellant is not entitled to humanitarian protection because he is a refugee”.

48. There is an order for anonymity.

Upper Tribunal Judge Bruce
28th February 2019