Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/11486/2012
AA/00353/2013
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THE IMMIGRATION ACTS

Heard at Glasgow
on 3rd September 2013

Determination promulgated
on 6th September 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

Mrs HJMF, and her four children

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellants: First 4 Appellants – Mr A Devlin, Advocate, instructed by Quinn, Martin & Langan, Solicitors

5th Appellant – Mr R Gibb of Quinn, Martin & Langan, Solicitors

For the Respondent: Mr M Matthews, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are a mother and her four children, all citizens of Iraq. An anonymity direction is in place.

2. The husband and father of the family is an Iraqi academic. Around 2006 to 2007 the family lived in Jordan, while the husband continued to work as a lecturer in Iraq.

They returned to Iraq in December 2007. The husband was accepted on a "scholarship rescue fund programme" in 2008 and continued working in Iraq until he secured a placement at the University of Glasgow in October 2010. The appellants followed him to Glasgow once they obtained visas in March 2011. The Appellants' visas expired on 24th September 2011 and were not renewed, but they continued to live in Glasgow. The husband returned to Iraq to renew his visa in November to December 2012. On return to the UK he was refused entry. The reason appears to be that the Appellants had by then claimed asylum, and he was thought to be seeking to enter the country for a purpose other than as stated in his visa. He did not seek asylum, but returned to Iraq. He continues there in his academic post.

3. The Appellants give a history of threats and various incidents from 2004 onwards, arising mainly from the husband's position as an academic, and also because of the fifth Appellant wearing non-Islamic clothing. They claim to be at risk of persecution from *Ansar Al-Haq* and other militant or terrorist groups in Iraq.

4. The Respondent refused the claim by letters dated 7th and 12th December 2012. The Respondent thought it unlikely that *Ansar Al-Haq* or other militants would have an adverse interest in the Appellants, and did not find it credible that they had been threatened as claimed. The Respondent also considered that even if the claims were taken at their highest they would fail on grounds of legal sufficiency of protection, or of availability of internal relocation. The Respondent gave specific examples of another part of Baghdad; Doura, Erbil, Basra or another area of southern or central Iraq; or the Kurdish Regional Government area (KRG).

5. First-tier Tribunal Judge Boyd dismissed the Appellants' appeals, on all available grounds, by determination dated 8th April 2013. The case was rejected essentially on credibility grounds, although there is brief reference to internal relocation at paragraph 47.

6. The Grounds of Appeal to the Upper Tribunal for the first four Appellants are set out in ten paragraphs. The first paragraph is introductory, and Mr Devlin referred to paragraphs 2 to 9 as Grounds 1 to 8.

7. Separate Grounds of Appeal for the fifth Appellant, in seven paragraphs, adopt the Grounds of Appeal of the other Appellants and add criticism of findings about her purchase of a t-shirt. They also allege absence of protection due to the links between the authorities and terrorist organisations; absence of reasoning for declining to accept that the fifth Appellant received threats; and failure to have regard to an expert report stating the Appellants' testimony to be plausible in accordance with the historical record and Iraqi conditions, including targeting of the families of academics.

8. Further to paragraph 2/Ground 1, directed to paragraph 35 of the determination, Mr Devlin submitted that the legal error here was of the same nature as brought out by most of the grounds, failure to take account of all relevant considerations. The judge

found it inconceivable that the husband would have taken two years and eight months to leave Iraq and continue to work at the same university and live at the same address if there were any threat. This overlooked his explanation that it took substantial time, for administrative reasons, to find a host institution and an academic post abroad. The judge overlooked a letter sent by the representatives of the Appellants after asylum interview, setting out those circumstances. That explanation showed that the husband "had not simply sat by and done nothing".

9. Paragraph 3/Ground 2 is directed to paragraph 36. Mr Devlin said that the judge plainly found it adverse that threats were not reported to the authorities, and that there was no documentary evidence of a threat from students being notified to the Dean of the University. This overlooked the evidence that the first Appellant considered the police of no use due to their links to terrorist organisations, and that a report would increase their problems, a belief supported by background evidence. Therefore, the conclusion could not be reasonably drawn from absence of reporting that there was absence of risk. The judge failed to take into account the expert report by Dr George on this issue, which relied on information from UNHCR, as set out in the Grounds of Appeal. To draw an adverse inference also amounted to the legal error of requiring corroboration.

10. On paragraph 4/Ground 3, directed to paragraph 37 of the determination, Mr Devlin submitted that the judge erred in fact by founding on delay by the Appellants in seeking visas until four months after the husband came to the UK. This was not correct, because documents in the Respondent's bundle showed that applications were first made in September 2010.

11. Paragraph 5/ground 4 complains of error at paragraph 39 in founding on the husband returning to Iraq to renew his visa in late 2011/early 2012, because the renewal was granted in Jordan.

12. Paragraph 6/ground 5 attacks the finding at paragraph 41 that there was no reasonable explanation of the Appellants' delay in claiming asylum. The ground says that the first Appellant explained why her husband was reluctant to claim, and that she had not known that she and the children could claim in their own right. The explanation was capable of being found a reasonable one, and it was therefore an error not to mention it.

13. As to paragraph 7/Ground 6, going to paragraph 45 of the determination, Mr Devlin submitted that the judge fell into conjecture and speculation in finding that the husband would not have put his academic career ahead of the safety of himself and his family.

14. As to paragraph 8/Ground 7, Mr Devlin submitted that at paragraph 46 the judge erred in declining to accept that the family of any academic in Iraq was at real risk, whereas this was a proposition supported by the Respondent's Country of Origin Information Report, by country guidance, and by the expert report of Dr George.

15. Paragraph 9/Ground 8 also attack paragraph 46 of the determination insofar as it reaches a finding on internal flight. Mr Devlin submitted that the Appellants could not relocate to the KRG without a Sponsor. Although the Appellants had relatives in the KRG it did not appear that they could sponsor the Appellants, as they were themselves Arabs who had been sponsored for residence in the KRG. The essential point is that there would be difficulty for the Appellants in obtaining sponsorship, without which internal relocation would not be available to them. Mr Devlin acknowledged that this challenge became relevant only if the credibility challenges were also established.

16. Mr Gibb for the fifth Appellant submitted that the additional factors in her case were that she might be required to conceal her personal identity through conformity to norms such as the hijab and other dress rules. Gender is an immutable characteristic.

17. I observed that it was difficult to see how the case for the fifth Appellant was to be made out in law, even if her allegations had been found credible. Mr Gibb submitted that her case was based on an actual threat in her individual case from terrorist groups.

18. Mr Matthews submitted that paragraph 35 of the determination was a rational resolution of a major credibility point, and that the grounds showed no error therein. Paragraph 36 of the determination narrated that threats were not reported to the authorities and that there was no documentary evidence of the particular threat from students. The narration was accurate and could give rise to no complaint. The background evidence showed problems in the police, but just because all background evidence was not recited did not mean that the judge was not well aware of it. There is no obligation to set out every item of evidence. The nature of the Iraqi police is well-established and was not contested at the hearing. That evidence did not compel a conclusion that reporting the incidents would have adverse consequences for the Appellants. The ground was only disagreement with a factual finding. There was no error of imposing a legal requirement of corroboration, particularly in a case where the principal object of alleged persecution, the husband, is living in Iraq and there would be no difficulty in securing evidence through him. Although Mr Devlin argued to the contrary, an absence of corroborating evidence which should readily be available can detract from credibility. There was a factual error at paragraph 37, but that was not material to the overall conclusions. There was also error at paragraph 39 over whether the husband returned to Iraq at the end of 2011, but Mr Devlin now accepted that was not material. Paragraph 6/Ground 5, going to paragraph 41, showed only disagreement with conclusions properly reached. The judge was not required to set out slavishly all evidence before him, and said that no "reasonable explanation" had been given. That showed that he had in mind that an explanation had been offered. He was entitled to reject it. Paragraph 7/Ground 6, going to paragraph 45, was only another disagreement. At paragraph 46 of the determination, the report by Dr George did not require the conclusion by the judge that all academics were at risk, let alone their families. The Appellants

could not succeed simply by showing that they were members of the family of an Iraqi academic. The principal findings in the determination were all sound. The credibility challenges were not made out. The evidence about entry to the KRG did not state that the Sponsor had to be Kurdish, and the Appellants accepted they had family there. They could presumably obtain sponsorship from the same sources as their relatives had. The separate submission regarding the fifth Appellant went much too far. She had not come near to making out a case based on her preference for western-style clothing. In any event, the credibility of her particular claims had rightly been rejected.

19. Mr Devlin in response said that although he accepted there was no obligation on a judge slavishly to recite all matters, the error here was failure to mention relevant considerations. Those did have to be set out, and if not, there was a clear implication that they were not taken into account. On Ground 1, the history of threats against the Appellants was that they had not suffered any incidents from 2008, when they returned from Jordan, until 2010, when they were preparing again to leave Iraq. In that context, they were making efforts to leave and the apparent delay of two years eight months should be seen in a different light. On Ground 2, the issue was again not now whether the Appellants' explanation was entitled to credit, but whether it had been taken into account. **TK Burundi** was authority that the absence of documentary corroboration could not go to the credibility of evidence, only to the weight to be given to it. Ground 3 had been acknowledged to be sound. On Ground 5, the Presenting Officer correctly observed that judge said no reasonable explanation had been offered, but the error remained of failing to give any reason for rejecting the explanation. It was not an obviously incredible one. Paragraph 7/Ground 6 showed more than disagreement, because the judge failed to evaluate the circumstances of the husband in reaching his adverse conclusion. As to paragraph 8/Ground 7 the judge could reach conclusions which differed from those of Dr George, but he had to give reasons for doing so. The whole thrust of the appeal was that the judge reached his conclusions out of context of relevant considerations.

20. Mr Gibb submitted that the fifth Appellant could have a discrete case along the lines of **HJ and HT** [to which no reference was made]. He said that he recalled some authority that females from Somalia might be at risk in similar circumstances from extremists, who were of much the same nature as those in Iraq. A more significant error was in founding on non-production of the threatening letter from the school. As the fifth Appellant had said that she handed the letter to her head teacher, that amounted to the error of seeking corroboration. I observed that if there were any error therein, it was not in a misconception that there is a legal requirement for corroboration, but in misapprehending the nature of the case put.

21. I reserved my determination.

22. Although Mr Devlin categorised his grounds as disclosing failure to take account of material matters, there was no material matter which the Judge failed to resolve. The issues raised seem more of the nature of attacks on the adequacy of reasoning, while

trying to import a requirement to deal with every facet of the evidence. I remind myself of some authorities on challenges to adequacy of reasoning.

23. The dictum of Lord President Emslie in Wordie Property Co Ltd v Secretary of State for Scotland 1984 SLT 345 at 348 may be taken as a starting point:

> The decision must, in short, leave the informed reader and the court in no real and substantial doubt as what the reasons for it were and what were the material considerations that were taken into account in reaching it.

24. The Court of Appeal in England and Wales gave general guidance in R (Iran) and Others v SSHD [2005] Imm AR 435 at 542. (The regulatory framework has since changed, but the principles remain the same.)

> 13. … Adjudicators were under an obligation to give reasons for their decisions (see reg 53 of the Immigration and Asylum Appeals (Procedure) Regulations 2003), so that a breach of that obligation may amount to an error of law. However, unjustified complaints by practitioners that are based on an alleged failure to give reasons, or adequate reasons, are seen far too often. The leading decisions of this court on this topic are now *Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119 and *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409. We will adapt what was said in those two cases for the purposes of illustrating the relationship between an adjudicator and the IAT. In the former Griffiths LJ said at p 122:
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> "[An adjudicator] should give his reasons in sufficient detail to show the [IAT] the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on [an adjudicator], in giving his reasons, to deal with every argument presented by [an advocate] in support of his case. It is sufficient if what he says shows the parties and, if need be, the [IAT], the basis on which he has acted, and if it be that the [adjudicator] has not dealt with some particular argument but it can be seen that there are grounds on which he would have been entitled to reject it, [the IAT] should assume that he acted on those grounds unless the appellant can point to convincing reasons leading to a contrary conclusion."
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> 14. In *English* Lord Phillips MR said at para 19:
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> "[I]f the appellate process is to work satisfactorily, the judgment must enable the [IAT] to understand why the [adjudicator] reached his decision. This does not mean that every factor which weighed with the [adjudicator] in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the [adjudicator]'s conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the [adjudicator] to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

25. I also have regard to HA v SSHD [2007] CSIH 65, in particular paragraph 17:

> In the light of the cases cited to us it is convenient at this stage to formulate some propositions about the circumstances in which an immigration judge's decision on a matter of credibility or plausibility may be held to disclose an error of law. The credibility of an asylum-seeker's account is primarily a question of fact, and the determination of that question of fact has been entrusted by Parliament to the immigration judge (*Esen*, paragraph 21). This court may not

> interfere with the immigration judge's decision on a matter of credibility simply because on the evidence it would, if it had been the fact-finder, have come to a different conclusion (*Reid*, per Lord Clyde at 41H). But if the immigration judge's decision on credibility discloses an error of law falling within the range identified by Lord Clyde in the passage quoted above from *Reid*, that error is open to correction by this court. If a decision on credibility is one which depends for its validity on the acceptance of other contradictory facts or inference from such facts, it will be erroneous in point of law if the contradictory position is not supported by any, or sufficient, evidence, or is based on conjecture or speculation (*Wani*, paragraph 24, quoted with approval in *HK* at paragraph 30). A bare assertion of incredibility or implausibility may disclose error of law; an immigration judge must give reasons for his decisions on credibility and plausibility (*Esen*, paragraph 21). In reaching conclusions on credibility and plausibility an immigration judge may draw on his common sense and his ability, as a practical and informed person, to identify what is, and what is not, plausible (*Wani*, paragraph 24, page 883L, quoted with approval in *HK* at paragraph 30 and in *Esen* at paragraph 21). Credibility, however, is an issue to be handled with great care and sensitivity to cultural differences (*Esen*, paragraph 21), and reliance on inherent improbability may be dangerous or inappropriate where the conduct in question has taken place in a society whose culture and customs are very different from those in the United Kingdom (*HK* at paragraph 29). There will be cases where actions which may appear implausible if judged by domestic standards may not merit rejection on that ground when considered within the context of the asylum-seeker's social and cultural background (*Wani*, paragraph 24, page 883I, quoted with approval in *HK* at paragraph 30). An immigration judge's decision on credibility or implausibility may, we conclude, disclose an error of law if, on examination of the reasons given for his decision, it appears either that he has failed to take into account the relevant consideration that the probability of the asylum-seeker's narrative may be affected by its cultural context, or has failed to explain the part played in his decision by consideration of that context, or has based his conclusion on speculation or conjecture.

26. On Ground 1, I commented during submissions that the explanation offered went to the time taken to find an academic opportunity abroad, not to any difficulty in escaping from danger. Mr Devlin replied that the husband had indeed been trying to leave Iraq and that a person might show fortitude in the face of adversity, but that could not be held adverse to credibility. It might have been open to the judge to conclude as he did, but there was a legal error of failing to take account of all material points in coming to that decision.

27. I see no error in view the judge took. It was good common sense. A slow process of finding an academic placement is an explanation only worth mentioning to show how feeble it is. The Appellants did not rely on cultural or other evidence that Iraqi academics are more heedless of the safety of their families than Scottish lawyers or anybody else.

28. No direct reference was made to **TK** Burundi. Its case reference is [2009] EWCA Civ 40. Thomas LJ, with whom Moore-Bick and Waller LJJ agreed, said at paragraph 21:

> The circumstances of this case in my view demonstrate that independent supporting evidence which is available from persons subject to this jurisdiction should be provided wherever possible and the need for an Immigration Judge to adopt a cautious approach to the evidence of an appellant where independent supporting evidence, as it was in this case, is readily available within this jurisdiction, but not provided. It follows that where a Judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be

> supporting evidence and there is no credible account for its absence commits no error of law when he relies on that fact for rejecting the account of an appellant.

29. I cannot see any meaningful or useful distinction between matters which may be adverse to credibility and matters which can go only to the weight of evidence. **TK** does not appear to me to support the submission by Mr Devlin. If anything, it shows that the judge was entitled to give some significance to absence of documentary corroboration, although I do not think that was a major factor in his decision.

30. Mr Matthews acknowledged that the Judge went wrong on the question of when the appellants sought visas (Ground 3/paragraph 4). Looking at the determination again after the hearing, I observe that at paragraph 10 the judge set out that the Appellants did not follow the husband immediately because they were refused visas in September 2010, after which they remained in Baghdad until they obtained visas in March 2011. Either the judge forgot about this when he returned to the matter at paragraph 37, or he had in mind that they might have reapplied more promptly, or that they would not have remained in Baghdad if at any real risk. However, it is safest to regard this as an error in the determination, and to consider whether it can survive excision of the point.

31. As to paragraph 5/ground 4 I pointed out that although the judge erred, the fact is that the husband has returned to Iraq twice at least, and in December 2012 was returned there from the UK without choosing to make an asylum claim. This error could therefore hardly be said to be material. Mr Devlin accepted that observation, and withdrew that ground.

32. Mr Gibb developed no meaningful separate case for the fifth Appellant either on her individual claims, or by reference to authority, or by analysis of legal error. There is nothing to establish that her case required any more consideration from the judge than it received, or that she might have succeeded where the other Appellants failed.

33. A distinction has to be drawn between those appeals which involve questions of law and those which are essentially argument about findings of fact, presented in some language of legal error. Fault should not be found by burrowing out areas of the evidence which have been dealt with less fully than others, and presenting that as a legal flaw. The Grounds in this case do not amount to more than a series of factual disagreements, and those disagreements which have been found to have any substance are on unimportant points. Reading the FtT determination fairly and as a whole, it makes it clear enough to the Appellants and any other reader why their evidence has not been found probative in its essential features.

34. There is little reason to think that the Appellants might be kept out of the KRG by difficulty of finding a sponsor, but even if they were, that would be far from decisive. The challenge on internal relocation overlooks that the Respondent's decisions are

extensively based on the possibility of relocation *throughout the rest of Iraq, including even Baghdad,* not only in the KRG. The Appellants have not shown risk elsewhere in the country, and have not refuted the Respondent's thorough analysis of availability of internal relocation. The First-tier Tribunal Judge said little about it, the Appellants having focussed on credibility, but this was a case plainly defeated upon the alternative of internal relocation, an issue from which the Appellants sought to shift the focus.

35. No error has been shown such as to require the determination of the First-tier Tribunal to be set aside, and it shall stand.

6 September 2013
Upper Tribunal Judge Macleman