Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07979/2009

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
on 14th January 2014	**On 21st March 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

M W
(Anonymity order in force)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Worthington of Parker Rhodes Hickmotts Solicitors.
For the Respondent: Mrs Pettersen – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This appeal was remitted to the Upper Tribunal by the Court of Appeal in an order sealed on the 17th August 2012. The relevant part of the Statement of Reasons which accompanied the order is in the following terms:

    3. The Respondent accepts that this appeal should be remitted to the Upper Tribunal for reconsideration under Article 15 of the

Qualification Directive only. The Upper Tribunal may wish to consider whether this appeal should be stayed pending the outcome of the reconsideration of HM (Iraq)

2. MW was born in 1987 and left Iraq in April 2009. He entered the UK on 5th May 2009 and claimed asylum two days later. His claim was refused by the Secretary of State and an appeal against the refusal dismissed on all grounds by Judge Brennen in September 2009. Reconsideration of that decision was ordered and the appeal re-heard, but again dismissed by Upper Tribunal Judge Taylor on 27th September 2010. It is Judge Taylor's determination which was challenged before the Court of Appeal although her factual findings have not been set aside. They can be summarised as follows:

   i. MW is a national of Iraq born and raised in Mosul. He is not at risk on return as a result of his fathers activities [18].

   ii. It is difficult to rely on what MW says as being objectively true. MW has never been harmed and it is not the style of terrorist organisations such as Ansar Al Sunna to warn people of potential harm over a lengthy period and take no action against them [19].

   iii. Throughout the period MW worked at a local shop on the same street as his own home. He would not have done so if the thought he was at risk as clearly anyone who wanted to find him would have been able to do so [20].

   iv. There is a reasonable degree of likelihood that his mother is dead, but not because of the death certificate which is not written in medical language [22].

   v. MW's evidence that his brother died as a result of targeting by Ansar Al Sunna is not accepted [23].

   vi. MW's account of his brother helping the coalition forces is not consistent with his claim that his father was a supporter of Saddam Hussein [24].

   vii. MW's evidence at interview was so unreliable as to the nature of the threats that it cannot be relied upon. MW's claim that Ansar Al Sunna combined with the Kurds to attack his family is not consistent with the objective evidence [25].

   viii. MW's brother was one of those unfortunately caught up in the indiscriminate violence in Mosul but was not specifically targeted [27].

ix. MW has not established that he has a well founded fear of persecution on return either as a result of his fathers former activities with the army or because his brother worked for the Coalition forces [28].

x. According to the psychotherapeutic report from the Sankofa Foundation MW functions as an immature 12-year-old capable of limited independent living but heavily dependent upon his older friends [37].

xi. The evidence in the psychotherapeutic report on the evidence from his many supporters is consistent with the appellant's confused behaviour at interview i.e. that he is functioning at the level of a 12-year-old child [38].

xii. There has never been any evidence adduced by the respondent that MW has any form of support network in Iraq outside his home area. In the circumstances it would not be reasonable to expect him to relocate [39].

xiii. MW has been in contact with a friend Mohammed who lives in Iraq when he obtained documents in 2009. MW claimed his friend could not help him in Iraq although it was found he was able to assist him in obtaining the death certificates from the hospital and will be in a position to offer support [40].

xiv. MW is able to function independently in the United Kingdom. His evidence was that he had had a job as an ice cream seller in Iraq for a number of years. He is now living in his own home and does his own shopping and cooking and attends college [41].

3. Domestic country guidance case law remains HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC) (October 2012) in which the Tribunal decided that:

(i) Whilst the focus of the present decision is the current situation in Iraq, nothing in the further evidence now available indicates that the conclusions that the Tribunal **in HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC)** ("HM1") reached about country conditions in Iraq were wrong;

(ii) As regards the current situation, the evidence does not establish that the degree of indiscriminate violence characterising the current armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninewah, Salah Al-Din, is at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat;

(iii) Nor does the evidence establish that there is a real risk of serious harm under Article 15(c) for civilians who are Sunni or Shi'a or Kurds or have former Ba'ath Party connections: these characteristics do not in themselves amount to "enhanced risk categories" under Article 15(c)'s "sliding scale" (see [39] of Elgafaji);

(iv) Further evidence that has become available since the Tribunal heard **MK (documents - relocation) Iraq CG [2012] UKUT 126 (IAC)** does not warrant any departure from its conclusions on internal relocation alternatives in the KRG or in central or southern Iraq save that the evidence is now sufficient to establish the existence of a Central Archive maintained by the Iraqi authorities retaining civil identity records on microfiche, which provides a further way in which a person can identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq.

4. In **HF (Iraq) and others v Secretary of State for the Home Department [2013] EWCA Civ 1276** the Claimant failed asylum seekers unsuccessfully challenged the most recent country guidance decisions relating to Iraq. Although the case of MK was remitted to the Upper Tribunal on its facts, the country relevant findings were not set aside.

5. Paragraph 339C of the Immigration Rules states:

A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
(ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
(iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
(iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

(i) the death penalty or execution;
(ii) unlawful killing;
(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
(iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Discussion

6. MW's case is based upon an alleged risk on return by reference to the levels of violence generally in Iraq and specifically in his home city of Mosul. It is also said that his personal circumstances support his claim to be entitled to a grant of international protection. Mr Worthington referred to a report prepared by Dr Cowan, a consultant psychiatrist, who has diagnosed MW as suffering from social phobia, panic disorder, and generalised anxiety disorder. Dr Cowan is of the opinion MW is somebody who is barely able to support himself and she believes that he will have great difficulty in doing so if returned to Iraq. It is said that this contradicts Judge Taylor's finding that in 2010 MW was able to live independently in the United Kingdom.

7. Before the Court of Appeal MW was assisted by his McKenzie friend Mr Ilbarudi. This individual is referred to by Dr Cowan who is also said to have tried to help MW by attempting to relocate his family in Iraq but the home in Mosul was found to be empty. Mr Worthington submits that as MW does not have contact with his family and no means of contacting them at the family home he has no support network in Mosul.

8. MW's case can be summarised as follows:

   a. That he cannot relocate and so the assessment of risk has to be assessed in relation to his hometown of Mosul.

   b. The family home is empty and it is claimed he has no way of contacting his family and no support network in Iraq.

   c. It is submitted MW is childlike and erratic in his behaviour, socially phobic and has panic disorders and would therefore not be able to access other support and is more likely to run into trouble than ordinary civilians on the Elgafaji analysis.

   d. MW is unable to apply for a CSID in the UK because he has no identification documents. He has no family in Iraq to assist him to apply for one and is likely to find a procedure on return too complicated.

   e. MW faces a real risk of serious harm if returned to Iraq.

9. The submission MW will be unable to obtain a CSID such as to enhance the risk he will face on return, or to support the claim that such a return is unreasonable, has no arguable merit. In **MK (documents – relocation) Iraq CG [2012] UKUT 00126 (IAC)** the Tribunal held:

   (i) Since the lack of documentation relating to identity in the form of the Civil Status ID (CSID), Iraqi Nationality Certificate (INC) and Public

> Distribution System (PDS) card (food ration card) is not ordinarily an insuperable problem, it is not a factor likely to make return to any part of Iraq unsafe or unreasonable. (a) The CSID is an important document, both in its own right and as a gateway to obtaining other significant documents such the INC and the PDS. An inability to replace the CSID is likely to entail inability to access the INC and PDS. (b) Although the general position is that a person who wishes to replace a lost CSID is required to return to their home area in order to do so, there are procedures as described in this determination available which make it possible (i) for Iraqis abroad to secure the issue of a new CSID to them through the offices of the local Iraqi Embassy; (ii) for Iraqis returned to Iraq without a CSID to obtain one without necessarily having to travel to their home area. Such procedures permit family members to obtain such documentation from their home areas on an applicant's behalf or allow for a person to be given a power of attorney to obtain the same. Those who are unable immediately to establish their identity can ordinarily obtain documentation by being presented before a judge from the Civil Status Court, so as to facilitate return to their place of origin.

10. There is insufficient evidence that MW has attempted to approach the Iraqi authorities in the United Kingdom requesting them to issue him with a new CSID which he could do with the assistance of his legal representatives or his friend in the United Kingdom, or if such an application has been made it has been refused, and on what basis.

11. It has not been established that he will therefore be required to return to Iraq without this important document or access to a PDS card, or even if it is so, that his difficulties will impair him to the extent that he will not be able to engage with the Civil Authorities who could make reference to the Central Archive containing civil identity records, which will enable him to obtain a copy of his CSID.

12. The country guidance case law also clearly identifies a procedure for obtaining the necessary travel documents with which it is reasonable to expect MW to cooperate. As such it has not been established that he faces risk on return as an undocumented failed asylum seeker, sufficient to engage any of the international protection provisions.

13. In relation to MW's claim that the level of violence is currently so high in Iraq that he cannot be expected to return, and specifically not to Mosul, I mentioned to the advocates at the hearing a number of cases decided in the European Courts of Human Rights involving Sweden, to which I have not been referred, even though judgment was handed down in December 2013.

14. In BKA v Sweden (Application no. 11161/11) ECtHR (Fifth Section) (December 2013), it was held that although the Applicant would face a real risk of being subjected to treatment contrary to Article 3 of the ECHR if returned to Baghdad or Diyala, the Court found that he could reasonably settle in another governorate, for instance, the Anbar governorate, where it had not been shown that he would face such a risk. Neither the general situation in that governorate nor any of the Applicant's personal circumstances indicated the existence of said risk.

15. In TA v Sweden (Application no. 48866/10) ECtHR (Fifth Section), 19 December 2013 it was held that there was insufficient evidence to conclude that the Applicant would face a real risk of being subjected to treatment contrary to Article 2 or 3 of the ECHR upon return to Iraq.

16. In TKH v Sweden (Application no. 1231/11) ECtHR (Fifth Section), 19 December 2013 it was held that the Applicant would not face a real risk of being subjected to treatment contrary to Article 2 or 3 of the ECHR upon return to Iraq. Moreover, his health status was not of such a serious nature that his deportation would give rise to a breach of those provisions.

17. In relation to Mosul it is accepted that statistically this is an area where there has been a number of attacks and incidents of violence, a large number of which appear to have occurred as a result of their victims being targeted [Iraq Bulletin (body count) - page 13]. This is a case, however, in which there is no evidence of MW having been targeted or of adverse interest being taken in him in the past and the evidence does not substantiate his claim to be at risk as a result of being specifically targeted. A lot of his evidence as to the foundation of the alleged risk was found not to be credible.

18. Mrs Pettersen submitted that even if the family were no longer living in their home there was no evidence MW could not take up residence and no evidence that he would be of adverse interest to anybody if this occurred. I find such a submission sustainable on the facts

19. I accept that an individual's characteristics may be relevant to assessing whether they are entitled to a grant of humanitarian protection as the more an applicant is able to show that he or she is specifically affected by reason of factors particular to their personal circumstances, the lower the level of indiscriminate violence required for them to be eligible for subsidiary protection. Such characteristics that MW has have to be considered in light of the preserved findings and situation in Iraq generally, which I have done. It is not disputed before me that MW could resume occupation of the family home but it is maintained that he has no contact with family members although the evidence relating to this is not contemporaneous with this hearing. In any event Mr Worthington's submission is that he cannot be returned as a result of the current

levels of indiscriminate violence which would make it very difficult for him to settle safely in that locality.

20. Since hearing the Court of justice of the European Union (fourth chamber) has handed down its judgment in the case of Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides, case C-285/12, in which the Court were asked for a preliminary ruling concerns the interpretation of Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. It was held that on a proper construction of Article 15(c) of Directive 2004/83/EC, an internal armed conflict existed, for the purposes of applying that provision, if a State's armed forces confronted one or more armed groups or if two or more armed groups confronted each other. It was not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor was it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict. The decision contained a reminder that the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.

21. It must be borne in mind that the existence of an internal armed conflict can be a cause for granting subsidiary protection only where confrontations between a State's armed forces and one or more armed groups or between two or more armed groups are exceptionally considered to create a serious and individual threat to the life or person of an applicant for subsidiary protection for the purposes of Article 15(c) of Directive 2004/83 because the degree of indiscriminate violence which characterises those confrontations reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would – solely on account of his presence in the territory of that country or region – face a real risk of being subject to that threat (see, to that effect, *Elgafaji*, paragraph 43).

22. I find it not to be established on the evidence that the confrontation between the armed forces of Iraq and the armed groups referred to by Mr Worthington can be exceptionally considered to create a serious and individual risk to MW on return as a result of the degree of indiscriminate violence reaching such a high level, leading to substantial grounds being proved to exist for believing that if returned MW will be subject to such a threat solely on account of his presence in his home area.

23. It is noted when considering this test that the Court in the case of TKH v Sweden, when considering an appellant from Mosul in December 2013, concluded in relation to the general situation in Iraq and whilst international reports attested to a continued difficult situation, including indiscriminate and deadly attacks by violent groups, discrimination as well as heavy-handed treatment by the authorities, it appears that the overall situation has been slowly improving since the peak in the violence in 2007. It was noted that in the case of FH v Sweden (no. 32621/06) the Court, which had at its disposal information and material up to and including 2008, concluded that the general situation in Iraq was not so serious as to cause, by itself, a violation of Article 3 of the Convention in the event of a person's return to that country. I have considered with care the international and national reports made available and relied upon by MW and, although they report an escalation in attacks and acts of violence within Iraq, such levels are still below the peak of the violence in 2007 and do not substantiate the claim that the situation has deteriorated to the extent that it is appropriate for me to depart from the position accepted by the European Court.

24. As such evidence is lacking it is necessary to identify personal characteristics or circumstances that give rise to a "serious and individual threat" to the MW's "life or person" to enable him to succeed. The fact MW's accommodation may have been untidy and he has not turned the heating on at all times in winter and acted in a way that others may consider to be illogical, combined with the assessment of his level of functioning, indicates that MW may be more vulnerable than others when coping with day to day routines and activities. I find it not substantiated, however, that the degree of any difficulties he has enables him to establish that such circumstances exist on the facts of this case. It is a preserved finding that MW's level of functioning is that of a 12-year-old child but also a preserved finding that he has a friend in Iraq who is in a position to offer support. He functions in the UK as a result of the combination of personal ability and assistance and it has not been substantiated that a similar model is not available for him in his home area. Judge Taylor's finding in paragraph 43 of the determination that he has support and protection from his family including his father brother and his friend is challenged on the basis of a letter from a named individual who reportedly found their property to be empty. Judge Taylor's determination was promulgated on 7 October 2010. Mr Ilbarudi has filed a witness statement dated 20th December 2013 in which the following is recorded:

> 4. In 2010 I contacted a friend called Tahseen Baig and asked him to go to the Appellants home area in Masaraf Province (which is a neighbouring province to my province of Zuhoor) and then go to a big traffic light in Masaraf and there is a mosque and an allotment. Beside the allotment you walk around for five minutes and then ask for the Appellants father's house. His fathers name is [WA].

5. After around two weeks I called Tahseen Baig to see if he had been to the Appellants home area. He then told me that he had been and that the house was empty. He asked neighbours on the same street about the Appellants family. Some of them said they do not know where the family are and some did not want to talk as they were afraid. They did not know why Tahseen was enquiring and therefore did not want to give any information.

25. Whilst it is understandable that people may be hesitant to disclose information if it is thought that terrorist group's enquire about people they wish to kidnap and are therefore afraid, this evidence is to the effect that on one occasion when a visit was made in 2010 the appellant's family home was unoccupied . There is insufficient evidence of further enquiries being undertaken since 2010, through the Red Cross or any other available organisation, especially if the enquiry in 2010 preceded the hearing before Judge Taylor. I note the detail of the content of the alleged communication between Mr Ilbarudi and Mr Baig but very imprecise details of the date when this alleged conversation is said to have occurred. I find such a statement relating to a situation that is said to have existed in 2010 is not determinative of the claim that the family are not able to provide support. Judge Taylor's finding was made on the basis of the evidence she was asked to consider and it appears the contents of the witness statement may have been produced to rebut that finding.

26. I do not find it substantiated on the evidence that at the date of this hearing, some years later, such support as is required would not be available from family members or others in MW's home area.

27. The evidence clearly indicates that MW has some degree of functioning but it has not been shown that if returned he is at a greater risk of suffering harm as a result, sufficient to entitle him to a grant of humanitarian protection based upon Article 15 C or Article 3 ECHR. Difficulties may be faced as a result of the lower level of functioning and his style of living that may not be acceptable to the majority, but this does not establish that he is able to cross the required threshold and does not entitle him to remain in the UK per se.

28. Having given this case the most anxious scrutiny in light of the information that is available, it is my primary finding that MW has failed to discharge the burden of proof upon him to the required standard to prove that he is entitled to a grant of humanitarian protection or to any other form of international protection, on the evidence made available.

Decision

29. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

30. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed…….
Upper Tribunal Judge Hanson

Dated the 11th March 2014