



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03164/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 November 2015

Decision and Reasons Promulgated  
On 16 November 2015

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MI

(Anonymity order made)

Respondent

**Representation:**

For the Appellant: Ms A. B. Weller, Home Office Presenting Officer

For the Respondent: Mr. S. Saeed, Aman Solicitors

**DECISION AND REASONS**

**History of Appeal**

1. The Respondent, who was born on 8 March 1971, is a national of Iraq. He moved to live in the United Arab Emirates in 1997. In June 2013 he entered the United Kingdom as a visitor and then returned to the UAE. On 25 October 2013 he returned to the United Kingdom, as a visitor, with his wife and children.
2. On 10 December 2013 he applied for asylum. He said that he feared persecution in Iraq because his father and uncle had belonged to the Ba'ath

Party and because he was a Sunni Muslim. His application was refused and he appealed on 16 May 2014. In his grounds of appeal, he said that he was feared persecution if he returned to Iraq as he would be perceived as being wealthy.

3. First-tier Tribunal Judge Obhi dismissed his appeal in a judgment promulgated on 16 July 2014. First-tier Tribunal Judge Saffer granted the Respondent permission to appeal on 5 August 2014 on the basis that First-tier Tribunal Judge Obhi should have granted the Respondent an adjournment in order to obtain an expert report given the changing situation in Iraq. At the subsequent error of law hearing, Deputy Upper Tribunal Judge Pickup did not agree that an adjournment should have been granted but he did find that First-tier Tribunal Judge Obhi had made a material error of law. This was because his findings in paragraphs 31 and 32 appeared to have derived from his own research on which the Respondent had not been provided with an opportunity to comment. Therefore, the appeal was remitted for a re-hearing.
4. First-tier Tribunal Judge Grimmett allowed the Respondent's appeal in a decision and reasons promulgated on 14 April 2015. The Appellant appealed on 22 April 2015 but First-tier Tribunal Judge Colyer refused her permission to appeal on 5 May 2015. However, on 23 July 2015 Upper Tribunal Judge Southern granted permission, stating that it was arguable that First-tier Tribunal Judge Grimmett's approach was legally flawed and that the grounds identified a number of plainly arguable challenges.

#### Error of Law Hearing

5. At the start of the hearing, Ms Weller sought permission to amend the Appellant's ground (iv) to include reference to paragraph 306 of *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)*. She said that she had not been able to make her application at an earlier stage as she only received all of the papers at 4 pm the day before the hearing. The Respondent's representative opposed the application on the basis that it had only been made at the beginning of the hearing but accepted that the paragraph was relevant. I exercised my case management powers under rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and permitted the amendment on the basis that *HM and Others* is a country guidance case within the public domain and that the amendment only served to clarify the case being made against the Respondent and did not amount to a new point which could be said to have taken him by surprise.
6. Ms Weller then argued that the First-tier Tribunal Judge had failed to take into account the country guidance provided in *HM and others*. She noted that in paragraph 92 of *HM and others* Dr George had explained that when he had said that there was a real risk of a returnee being kidnapped he meant that the risk was something more than genuine and also something slightly more than nothing. At paragraph 187 Dr George referred to a 2009 report which said that Iraqis who returned from Western countries walked, talked and dressed differently, were perceived to be financially privileged and were at risk of kidnapping.

7. The Home Office Presenting Officer also relied on paragraph 306 where the Upper Tribunal said that in its judgment the evidence on risk to returnees from the West really does no more than establish a possible or remote risk. It does not establish a real risk or a reasonable degree of likelihood that returnees will face serious harm or ill-treatment. In response the Respondent's representative noted that the Upper Tribunal had relied on reports from 2004 and 2009 but that the First-tier Tribunal Judge had had the benefit of an expert report by Dr George, which was dated 9 March 2014. At paragraph 76 of his report Dr George relied on a US State Department report entitled *Iraq: Country Specific Information* posted on 26 March 2014, which stated that "Iraqi citizens are targets of kidnapping. Kidnappers often demand money but have also carried out kidnappings for political/religious reasons. Many hostages have been killed". He also said at paragraph 81 that "kidnappings remain very much a current problem" and that "disappearances and kidnapping were regular occurrences". This evidence post-dates *HM & Others* and given the duty to apply anxious scrutiny and the low standard of proof in asylum cases I find that the First-tier Tribunal Judge was entitled to find at paragraph 17 of her decision and reasons to find that "the Appellant and possibly his family members would be at risk of kidnapping having spent time abroad which would mean that they would be perceived as relatively wealthy according to the evidence of Dr George which was not challenged by the" Home Office Presenting Officer.
8. Ms Weller also submitted that the First-tier Tribunal Judge had failed to give cogent reasons for departing from the conclusions contained in paragraph 306 of *HM & Others*. However, in paragraph 17 she did refer to relevant extracts from the expert and objective evidence and analysed it in the context of the Appellant's particular individual characteristics.
9. Ms Weller then submitted that the First-tier Tribunal's reasoning in paragraphs 18 and 19 of her decision and reasons were inadequate. However, at paragraph 127 of his report relied on in the current case, Dr. George concluded that the Appellant would be at risk in Iraq on account of his Sunni religio-political identity and would be especially vulnerable in mixed Sunni-Shi'a communities in central Iraq, including Baghdad. (At the hearing it was confirmed that the Appellant would be returned to Baghdad.) Then at paragraph 128 he said that in his view the Respondent "could be regarded by armed criminals and by insurgents in central and southern Iraq as a prime target for kidnapping because, having spent a considerable time abroad, he could be perceived as being relatively wealthy". He then referred to his sources for this view. This was the evidence which the First-tier Tribunal Judge referred in paragraph 18.
10. In paragraph 19 the First-tier Tribunal Judge had accurately recalled that in paragraph 163 of his report Dr. George had concluded that the Respondent and his family "would presently face only relatively low risks because of their Sunni religio-political identity and as returnees from abroad". However, when considering their overall risk it is trite law to say that this should be considered in the context of relevant country evidence and the evidence as a whole. One of these was the context in which they ran a real risk of violence just because of the general circumstances prevailing in Iraq. In my view this was a finding

which was open to the First-tier Tribunal Judge, albeit one that not all judges would have reached.

11. The grounds also argue that the First-tier Tribunal Judge had failed to provide adequate reasoning for her conclusion that the Respondent faced persecution as a Sunni. However, she was entitled to rely on the expert report and at paragraph 121 of that report Dr. George quoted from the 2014 Annual Report of the bipartisan US Commission on International Religious Freedom, which stated that in the past year the government failed to stem egregious and increasing violence by non-state actors against Iraqi civilians, including attacks on individuals for their actual or assumed religious identity. He also noted at paragraph 123 that Sunni-Shia tensions in Iraq have hardened dramatically in recent months. The examples given were of murders outside Baghdad but other reports indicated that murders also occurred in Baghdad.
12. The grounds also assert that the First-tier Tribunal Judge did not give sufficient reasons for departing from *HM & Others*. However, the Judge did rely on an updated expert report and a number of pieces of objective evidence and read as a whole the grounds cumulatively amount to one complaint that the reasons given by the First-tier Tribunal Judge were not adequate. The Respondent's representative relied on the case of *R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982* and, in particular, an extract from a judgement of Griffiths LJ in *Eagil Trust Co Ltd v Pigott- Brown [1985] 3 All ER 119* in which he said that an immigration judge "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 had acted...". I find that the First-tier Tribunal Judge's decision and reasons complied with these requirements.
13. For all the reasons given above I find that the First –tier Tribunal Judge did not make any material errors of law in the light of the evidence before her and that her decision allowing the Appellant's appeal should stand.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

Date: 10 November 2015

Nadine Finch  
Upper Tribunal Judge Finch