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**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/02254/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2015**

**Decision & Reasons Promulgated
On 5 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Respondent: Mr Burrett, counsel

For the Appellant: Ms Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq. She appealed to the First-tier Tribunal against the respondent's decision to refuse her asylum claim. Her appeal was allowed by First-tier Tribunal FTTJ D A Pears ("the FTTJ") in a decision and reasons promulgated on 22 June 2015.
2. An anonymity direction was made in the First-tier Tribunal and I maintain it in this Tribunal.

3. For ease of reference, I maintain the descriptions of the parties as appellant and respondent, as they were in the First-tier Tribunal and in the FTTJ's decision and reasons, although it is the Secretary of State who pursues this appeal.

Background

4. The appellant is an Iraqi citizen who, in 2003, worked for a company in Baghdad which transported goods for the American military there. In 2004 the company premises and staff were attacked by armed gunmen; the appellant sustained injuries. Whilst recovering at home, she received threatening telephone calls; the appellant was followed by unidentified men and her sister was threatened. The appellant continued to work for the company. After five months, as the appellant was continuing to receive threats, the company asked her to work for an Iraqi company. The appellant worked for that company for five months. The appellant subsequently moved to Jordan where she married. The appellant was granted asylum in Jordan by the UNHCR until September 2010. The appellant came to the UK in 2014 to support her parents-in-law. The appellant's relationship with her husband was abusive and she is now separated from him. She has a British daughter for whom she is the primary carer.
5. The respondent accepted the appellant's account of events in Iraq before her departure to Jordan. However, she asserted that there was sufficiency of protection and that the appellant could relocate within Iraq on return. As a result, the appellant pursued her appeal which was successful.
6. The respondent pursues this appeal against the decision of the FTTJ on the following grounds:
 - a. The FTTJ gave weight to immaterial matters, having referred to the travel advice issued to British nationals when finding that the appellant's British daughter could not be expected to return to Iraq; he had confused the nature and purpose of "travel advice" and the assessment of the risk on return. This was not relevant to the assessment of the appellant's asylum claim.
 - b. The FTTJ's finding at paragraph 34 that "there is no evidence to suggest that the risk she was under then ... would be any less" was unreasoned and reversed the evidential burden. The FTTJ had failed to engage with the fact that the passage of time had reduced the level of risk and the nature and reach of the threat.
 - c. The FTTJ's finding that the appellant could not internally relocate within southern Iraq or to the KRG was not reasoned.
 - d. The appeal was allowed on human rights grounds but the appellant had been granted discretionary leave to remain; her appeal could only be brought on asylum grounds under s83, Nationality Immigration and Asylum Act 2002.

7. Permission to appeal was granted by First-tier Tribunal Judge Pooler who noted there were arguable errors of law in relation to the adequacy of the FTTJ's findings on sufficiency of protection and internal relocation, taking British government travel advice into account, and allowing the appeal on human rights grounds. He considered it unlikely that the ground at b. above would amount to a material error of law, but indicated that "all grounds could be argued". Thus the matter comes before me.

The Submissions

8. Ms Everett, for the respondent, relied on the grounds of appeal and grant of permission. She accepted that a fair part of the appellant's claim had been accepted by the respondent. Nonetheless, with regard to the FTTJ's reference to the FCO travel advice, it was not known on what basis that advice had been drafted, whether it related to the same standard of risk as applied in asylum appeals. It was only of relevance to the appellant's British daughter. She said that, having spoken to Mr Burrett, prior to the hearing before me, she now understood the essence of the appellant's claim, namely that she would be returning to Iraq with a dependent British child. She said she could "see the merit and force of that argument" and that it "may make a significant difference". She accepted that it was an issue which had not been clearly set out in the FTTJ's decision but which was relevant and went to the materiality of any error of law.
9. Ms Everett submitted that the FTTJ's reasoning with regard to sufficiency of protection and internal relocation was inadequate. She submitted that he should have given more reasons as to why she remained at risk given the passage of time and that she no longer worked for the organisation she had done when last in Iraq. Having made this submission she then conceded that it was uncertain "how far that point would run".
10. Ms Everett accepted that the wording in paragraph 34, which appeared to suggest a reversed burden of proof, may not withstand scrutiny when seen in the context of the whole decision.
11. Mr Burrett submitted for the appellant that the findings and reasons were brief but, read as a whole, were sufficient. The FTTJ had identified the issues raised in the reasons for refusal and focussed on them. This was relevant because the respondent had accepted material aspects of the appellant's claim such as her employment history and her account of previous persecution. She had also accepted the appellant had a British child. Mr Burrett submitted that if the FTTJ had relied only on the FCO travel advice, the respondent's challenge would be sustainable. However, the FTTJ had also relied on the respondent's own operational guidance note (paragraph 28). In particular, the FTTJ had cited the conclusion in the guidance that "persons perceived to collaborate with or who have collaborated with the current Iraqi Government and its institutions, the former US/multi-national forces or foreign companies are at risk of persecution in Iraq..." This was, he submitted, of direct application to the appellant and it could be inferred that the FTTJ had based his findings on this background material amongst other factors.

12. Mr Burrett submitted that the content of the FCO travel advice was relevant to the fact that, if the appellant were removed to Iraq, she would be accompanied by her dependent British daughter. He submitted that the FTTJ had taken into account (Paragraph 40) the appellant's "status as a lone female with a foreign national child"; there was no suggestion in the decision that the travel advice was relevant to the assessment of risk to the appellant on return.

Discussion

13. The FTTJ's decision should be read as a whole. He cites the appropriate burden and standard of proof at paragraph 8. Whilst it could be inferred from paragraphs 34 and 37 that he had reversed that burden, I am satisfied that, taking the decision as a whole, he did not do so and that the unfortunate phrasing in those paragraphs, and paragraph 37 in particular, does not render the decision unsafe. Indeed, Ms Everett accepted as much in her submissions. Whilst it is further suggested that the FTTJ failed to engage with the respondent's assertion that the passage of time and the fact the appellant was no longer working for the organisation which had previously put her at risk of harm were factors to be taken into account in assessing current risk, these matters had been addressed by the FTTJ, albeit briefly, in his reference to the background material (his paragraphs 35 and 28): the FTTJ refers to the respondent's operational guidance and, in particular cites the following:

"3.10.6 ...individuals who **had cooperated with** ...those working for foreign companies ... including relatives to all the above-mentioned categories of persons could also be at risk of being targeted." [my emphasis]

...

3.10.9 Conclusion. Persons ... who **have collaborated with** ... foreign companies are at risk of persecution in Iraq. ... The case owner will need to take into consideration the particular profile of the claimant, the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate." [again, my emphasis]

14. In assessing the risk on return, the FTTJ took into account that the appellant would be accompanied by her dependent British daughter. He found that the appellant would not have family support and that she would be a lone single female on return. These were factors, together with the appellant's history of working with a foreign company, which would put her at risk. It was not unreasonable for the FTTJ to take into account the FCO travel advice (which had been placed before him) in assessing whether it would be unduly harsh for the appellant, accompanied by her British dependent daughter, to relocate within Iraq. The travel advice was of relevance to whether it would be safe for a British citizen to travel to the areas proposed by the respondent for relocation. Whilst not clearly stated within the decision, it is implicit that the appellant's status as a lone single female with a foreign national child was sufficient, with her previous employment history, to put her at risk of continued adverse interest.

15. I agree that the issue of sufficiency of protection could have been addressed more fully by the FTTJ. However, in paragraph 30, in setting out the appellant's evidence as to the risk of harm from the Shia militia "who are backed up by the government and the police force", the FTTJ states "That seems to chime with the background evidence". There is no suggestion by the respondent that this finding is perverse or unfounded and I find therefore that it is unchallenged. The FTTJ sets out in detail the appellant's evidence, including in relation to sufficiency of protection (paragraphs 30 and 31). At paragraph 33 he finds "(as did the Respondent) that the Appellant has provided a credible and internal consistent account that she worked with a company who transported goods for the American military and that she was attacked and suffered threats in Iraq as a consequence." He goes on to find "there is no evidence to suggest that the risk she was under then as a perceived collaborator or a traitor, as I find she would then have characterised [sic], would be any less". This phrasing calls into question the burden of proof applied by the FTTJ but, taking the decision as a whole, I find that he adopted the evidence of the appellant, which he found credible, to form the view that, together with the background material cited in full at paragraph 28, the appellant remains at risk as a person who had in the past worked for a company allied with the American military. Whilst the respondent submits the FTTJ had failed to take into account the passage of time and the appellant's current circumstances, it is implicit from the decision as a whole that the FTTJ did take these issues into account. However, he also considered there were further factors to be taken into account, namely the appellant's status as a lone single female with a foreign national child, the inference being that the existence of her foreign child strengthened the risk of perceived historical links with foreigners/foreign interests.
16. For these reasons, whilst the decision could be criticised for lacking detail, read as a whole, sufficient reasons are given for the findings that the appellant is at real risk on return, that there is not sufficiency of protection available to her and that it would be unduly harsh for her to relocate with her British daughter. I therefore find that the decision is sustainable and that there is no error of law.
17. Whilst the FTTJ misdirected himself in allowing the appeal on human rights grounds when it had been brought on asylum grounds only, under s83 Nationality Immigration and Asylum Act 2002, this error of law is immaterial given my findings above. Nonetheless it should be set aside given the lack of jurisdiction.

Decision

18. The making of the decision of the First-tier Tribunal did not involve any material error on a point of law.
19. The decision of the First-tier Tribunal to allow the appeal on asylum grounds shall stand.

20. The decision to allow the appeal on human rights grounds is set aside, the FTTJ having no jurisdiction to make such a decision.

Signed **A M Black**

Deputy Upper Tribunal Judge A M Black

Date

Anonymity Direction

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed **A M Black**

Deputy Upper Tribunal Judge A M Black

Date