Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **PA/00964/2016**

THE IMMIGRATION ACTS

At **Field House** **Decision & Reasons Promulgated**
on **20.06.2017** **on 23.06.2017**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[W B]

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: *Joanne Rothwell* (counsel instructed by Fisher Jones Greenwood, Colchester)
For the respondent: Mr Sebastian Kandola

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Parkash Aujla), sitting at Taylor House on 10 January, to dismiss an asylum and human rights appeal by a citizen of Iraq, born 1982. The appellant is a Sunni Muslim, but married to a Shi'a.

2. The appellant's claim was based on an encounter he said he had had with some men in a café towards the end of July 2015. He said they had asked him whether he supported the Shi'a militia, or the [Sunni] so-called 'Islamic State', otherwise known as *Daesh*. The appellant said he supported neither, as both killed innocent people. Three days later the appellant's father's house was raided by the Shi'a militia, looking for him; but he was at his uncle's at the time. Then on 4 August the militia kidnapped and killed his brother; so he left by lorry for this country on the 8th, and claimed asylum on arrival on the 18th.

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

3. That account was supported, to an extent, by a statement obtained by the appellant's solicitors over the phone from his father-in-law, who he had told about the incident in the café. His father-in-law had warned the appellant about the danger of getting into such conversations, especially as both he and his wife had already had problems over their mixed marriage. The first-hand part of the father-in-law's evidence involved his finding the appellant's brother's body dumped on the street with gunshot wounds.

4. The judge gave considerable trouble and thought to his decision. At paragraphs 34 – 36, he expressed the view that the appellant was not reasonably likely to have had the trouble he did over simply refusing to support either side; but he disbelieved his account of the incident in evidence, on the basis of what were said to be contradictory answers he had given at interview. The judge said this at paragraph 35:

> "At one point [the appellant] stated that the men who asked him the question [about his allegiance] were not known to him but regularly visited the coffee house. He then stated that they were friends of his. If they were strangers, it begs the question why the Appellant would engage in conversation with them about such a sensitive issue, given the current atmosphere in Iraq, especially the capital Baghdad."

5. The problem with that is that the appellant had made his position clear in answer to Q63 at his interview:

> "I was sitting with my 3 friends. The other 4 were sitting at a sofa not far from us. These 4 knew my friends. They are friends with my friends but I never spoke to them before. They started shouting to my friends. I noticed their conversation became argumentative and political. I didn't engage with them and then they asked me that question."

If accepted, this explanation was clearly capable of dealing with the point raised by the judge at paragraph 35; but he did not consider it.

6. As Mr Kandola pointed out, the judge sensibly went on at paragraph 36 to deal with the appellant's case on an 'even if' basis, finding that the conversation would not in any case have exposed him to any real risk on return. The problem with this finding is that it did not take account of the appellant's father-in-law's evidence that it had led to very real trouble for the family, so that a valid credibility finding on that was also required.

7. The judge dealt with the father-in-law's evidence at paragraphs 32 – 33. Contrary to what he said there, there can be no criticism of the way it was obtained. Such statements are regularly taken over the phone by employees of an appellant's solicitors; and much better that way than being left to appellants themselves to narrate. One can well imagine the cross-examination of this appellant, if no attempt had been made to confirm his account.

8. The judge was fully entitled to point out that the identity of the speaker at the other end of the phone was not established by any other evidence than the details the appellant had provided himself; but he did not deal with the contents of the father-in-law's statement at all. It follows that his rejection of it is really based on his view that statements taken in this way could not amount to significant evidence. This is wrong, as explained at **7**.

9. The result is that, despite the great care taken by the judge over this case, there will have to be a fresh hearing before another judge.

Appeal allowed: first-tier decision set aside
Direction for fresh hearing in First-tier Tribunal, not before Judge Aujla

(a judge of the Upper Tribunal)
Decision signed: **22.06.2017**