Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11676/2016

THE IMMIGRATION ACTS

Heard at Taylor House	**Decision and Reasons Promulgated**
On 25 April 2017	**On 06 July 2017**

Before
DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR FAHAD HRAIZ SAIWAN ALNAWADI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adebayo a solicitor
For the Respondent: Mr Stanton a Home Office presenting officer

DECISION AND REASONS

Introduction and background

1. The appellant is a citizen of Iraq born on 1 July 1986.

2. The appellant came to the UK stowed on a lorry 11 April 2016 and claimed asylum.

3. The respondent refused the application for asylum/human rights protection on 7 October 2016. The appellant appealed that decision to the First-tier Tribunal on 25th of October 2016. Judge of the First-tier Tribunal O'Malley (the immigration judge) considered the appellant's appeal against the respondent's decision at a hearing on 13 December 2016. She decided that the appellant, who was from Nasiriya originally, had not given a credible account of his alleged assistance for the coalition forces via a private company or companies in Iraq. In particular, the immigration judge did not accept that the appellant had fled from Nasiriya in 2009 as a result of threats. Nor did the immigration judge accept that the appellant worked for British security in Basra until he was threatened by masked strangers at his door in 2015. The appellant's account of having left Iraq in 2015 was also rejected.

4. Furthermore, the immigration judge took account of section 8 (4) of the Asylum and Immigration (Treatment of Claimants) Act 2004 (section 8) which requires a deciding authority consider the weight to attach to a failure on the part of the claimant to take advantage of a reasonable opportunity to make an asylum or human rights' claim while in a safe country. The appellant had travelled through Europe, including Holland, where he was detained, France, for 6 – 7 months, and Germany, which he had travelled through quickly to avoid being fingerprinted. It was inconceivable that the genuine refugee would not have made an asylum claim when one of these opportunities arose so.

The Upper Tribunal hearing

5. At the hearing before the Upper Tribunal the appellant was represented by Mr Adebayo, who submitted that the immigration judge had been wrong in her approach to credibility. She had over inflated importance of the appellant's failure to claim asylum in a safe third country or take account of his explanation, namely, that he spoke English and that he regarded his prospects of successfully claiming asylum to be "worse" in third country such as France. Secondly, Mr Adebayo referred to the evidence called on behalf's client at the FTT. This included a detailed witness statement from one Alex Mc Donald who stated in his witness statement that he was a British national who knew the appellant since 2011. The appellant formed a close relationship with Mr McDonald, who was called to give oral evidence. Mr McDonald stated that he worked for the British Army between 2003 and 2010, serving in the Royal military police. He claims that appellant Farhad, worked as an interpreter and trainer for the Chinese National petroleum company. It was argued that Mr McDonald went some way to corroborating the appellant's account. In addition,

there was a witness statement from Muslim Abed, another Iraqi national, who claimed to know the appellant when it was in Iraq. Mr Abed, who also worked with the appellant, was not called to give oral evidence. However, he also stated in his witness statement that he knew the appellant from the time he was an interpreter and "had problems as a result". Mr Abed claimed he had fled Iraq and claimed asylum in the USA. That corroborated the appellant's account, it was argued. Mr Adebayo also referred me to a number of documents in the appellant's bundle before the FTT. These included Mr Abed's "commercial licence", various certificates which had been issued and a document suggesting that the appellant was part of the security team of security personnel dated 1 August 2014. I was also referred to some documents in the respondent's bundle, which included an untranslated identity card for the appellant, Iraqi birth certificates for the appellant and some documents from Alex McDonald. It was argued that the immigration judge had not demonstrated that he had fully taken this evidence into account. He should have accepted that the appellant that a trainer and interpreter at BP PLCs Iraqi subsidiary. Finally, the immigration judge found inconsistencies in the appellant's account (see paragraph 57 of his decision) which were not justified.

6. Mr Adebayo also submitted that the immigration judge had erred in her consideration of the risk on return. He referred me to the case of **BA [2017] UKUT00018** where the upper Tribunal identified the level of general violence in Baghdad city was such as to create a risk on return to a number of categories of person. It was submitted that the appellant would fall within one such category of person, although he acknowledged that the case above was not decided until after the hearing of this appeal (**BA** having been decided on 17 January 2017). Nevertheless, it was submitted that it was an error of law. The appellant feared the Mahdi army and hack militia. On both grounds I was invited to set aside the decision First-tier Tribunal and remake the decision or remit the matter to the First-tier Tribunal for a fresh hearing. It was acknowledged that if I was to find that the only error related to the risk on return, it would be appropriate to leave the findings of fact made by the FTT in place but reach a written fresh conclusion on the question of risk on return.

7. It was submitted by Mr Stanton on behalf of the respondent that the immigration judge had demonstrably considered all relevant factors. I was referred to the conclusion at paragraph 7 to the effect that the appellant had "inflated" his role and conflated the identity of the private companies, with which he was concerned, with the multinational national force in Iraq. He said that the immigration judge had made an assessment all

the evidence but concluded that the appellant had not been the focus of the threats that he claimed to have been subject to. The immigration judge noted that the appellant had worked for the same company for a period of about 6 years without any risk to him. Furthermore, I was referred to paragraph 49 of the decision of the FTT where the immigration judge concluded that the appellant had not been solely employed to interpret. He accepted the evidence from a variety of sources to the effect that the appellant had in fact been employed as a security worker rather than an interpreter. His ability to communicate in English would have been an important asset in that role as there were a number of international companies working in Iraq at that time. Furthermore, Mr Stanton submitted that section 8 of the 2004 Act was very much a live issue in that the appellant had passed through numerous safe countries, sometimes spending long periods of time in them through the, en route for the UK. He had deliberately evaded the authorities in some of those countries. It was right for the immigration judge to keep section 8 at the forefront of her mind, therefore, as appears to have happened.

8. Paragraph 61 of the decision showed that the immigration judge rightly considered the issue of risk on return having concluded that the appellant did not qualify as a refugee. He rightly concluded that the appellant could contact the police in the event that he was at risk from Abo Khazal, the alleged source of the threats of violence together with the Al Mahdi army. In any event, the appellant was not from Baghdad and the case of **BA** was not directly relevant therefore.

9. Mr Adebayo responded briefly to say that the militia were in control of Basra at date of the hearing and the police and security forces were inadequate in Iraq.

10. The end of the hearing I reserved my decision as to whether there was a material error of law in the decision of the FTT and if so what steps should be taken to ensure the decision was fair.

Discussion

11. As the respondent observed in her rule 24 response, the immigration judge did not accept the appellant had been employed as an interpreter but this was one of a number of roles the appellant had within the company he worked for. The immigration judge accepted that the appellant had been employed between 2009 and 2015 for, essentially, “the same company”. One of the companies written through the concerned was initially called Ardan security. That company changed names but the management stayed the same. Those companies were international companies registered in the USA,

the U K and Iraq. The immigration judge accepted that the appellant had been employed as a security guard but concluded that, although he had some command of the English language, he was not employed as such as an interpreter. Indeed, the appellant had sought to exaggerate his role and to conflate the identity of the companies with which he worked so as to "bolster his claim for asylum".

12. Permission to appeal was given on the grounds that the immigration judge may have erred in her approach to credibility in the light of the case of **CG (Iraq) [2007] UKAIT 00046**. It was feared by Deputy Upper Tribunal Judge Chapman that in the light of the country guidance case referred to the appellant may be at risk on return to Iraq.

13. In fact, there is a more recent country guidance case in the form of **B A [UKUT00018**. In that case the Upper Tribunal was concerned with the safety of return to Baghdad. It held that evidence showed that a person who work for a non-security related Western international company which collaborated with coalition forces in Iraq would be likely to be perceived to have collaborated in areas under ISIL control but in Baghdad itself there was a low level of risk from such groups. There had been an increase in levels of violence within that city but it would depend on the facts of each case whether an individual, particularly a Sunni Muslim, would be at risk.

My conclusions

14. Although it was argued that the immigration judge had exaggerated the degree of damage to the appellant's credibility in his assessment of section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, I find that the appellant's failure to claim asylum in Holland, France and Germany is striking. This is particularly so in that he was detained and fingerprinted in Germany, a country that has welcomed a large number of asylum seekers. This the judge was entitled to conclude that the appellant was not a genuine refugee given his failure to make any claim in these countries. I do not find that the immigration judge exaggerated this point or attached excessive weight to the above statute.

15. Secondly, and more significantly, it was said that the immigration judge had failed to attach adequate and sufficient weight to the fact that the appellant had produced a witness statement from one Muslim ABED, who, I was informed, had subsequently successfully claimed asylum in the USA. Mr Abed is alleged to have been the appellant's colleague and he provided a witness statement to the tribunal but did not attend the hearing. Mr Abed was said to be one of three instructors

who had other roles but, as the immigration judge pointed out between paragraphs 50 and 53 of her decision, there is no adequate explanation of Mr Abed's role or the work that he did. The immigration judge did have the evidence of Mr McDonald but the immigration judge rejected Mr MacDonald's evidence to the effect that the appellant was relied on as an interpreter. I find that the immigration judge was not bound to attach any greater weight the evidence of Mr Abed, given that he had not given oral evidence and that very little detail of his work was provided to the tribunal.

16. I am also unpersuaded that the immigration judge's failure to mention corroborating evidence from the appellant, such as the identity cards, had led to any identifiable error of law. Unfortunately for the appellant, the immigration judge did not find the appellant's evidence at all credible. He considered that the account surrounding the posting of a threatening message through "his door" in paragraph 55 et seq was not thought to be credible, particularly since this came after the appellant had worked for, essentially, one company for six years.

17. The immigration judge did consider the risk on return at paragraph 63 of his decision. His view that the appellant could if necessary relocate to Baghdad is more questionable, in the light of the case of **B A [2017] UK UT00018**. However, the immigration judge found that the appellant had a family support network in Nazirya and therefore could safely return to his home town. Accordingly, whether or not it was safe for the appellant to return to Baghdad, was not a material issue in the case and it follows that the country guidance case mentioned was of peripheral importance in this regard.

18. The immigration judge had regard to recent case law including the leading case of **C G** in 2007 but fundamentally did not accept the appellant's account, believing it to have been exaggerated and to a large degree incredible. In this context, the appellant's failure to claim asylum at the first opportunity was a material matter for the when weighing up the evidence. Overall his conclusions appear to have been open to him on the evidence before him and an appeal court should be reluctant to interfere with an assessment that has been carried out after hearing oral evidence from two witnesses and having made an appraisal of the written documentation.

Decision

19. For these reasons this appeal is dismissed. The appeal is dismissed on asylum grounds.

20. The appeal is also dismissed on humanitarian protection grounds.

21. The appeal is dismissed on human rights grounds.

22. No anonymity direction was made by the FtT and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signature William Hanbury **Dated this 3 July 2017**