Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01412/2013
AA/11003/2013
AA/04112/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 3rd November 2014	**On 17th March 2015**

Before
DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

NA, AS & L R
[ANONYMITY DIRECTION MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Radford Counsel instructed by Wilson Solicitors LLP
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant, NA is a citizen of Iraq. The second and third appellants Mrs LR and Mr AA are citizens of Morocco. The third appellant is the minor child of the first two appellants.

2. As the proceedings impact upon the rights and interests of a child I make an anonymity direction.

3. This is an appeal by the appellants against the determination of First-tier Tribunal Judge Levin promulgated on 21st February 2014 whereby the judge dismissed the appellants' appeals against the decisions of the

respondent to remove each of the appellants from the UK. The countries of destination in the refusal letters were Morocco and/or Iraq.

4. In deciding the appeal Judge Levin had found that the first appellant was not at risk in his country of nationality or in Morocco and that the other appellants were not at risk in their country of nationality or in Iraq, the country of nationality of the first appellant. He went on to find however that the first appellant could not now be returned to Morocco. He therefore considered the prospects of the family going to Iraq. Having considered the prospects for the appellants to go to Iraq, Judge Levin dismissed the appeals on all grounds

5. By decision made on 13 March 2014 permission to appeal to the Upper Tribunal was granted. The matter appears before me to determine in the first instance whether or not there was a material error of law in the original determination.

Immigration background

6. The first appellant was born in Iraq but left there in 1978 in search of employment. He travelled to Morocco, where he met and married the second appellant. He was working in Morocco and had a residence/work permit, which was renewed annually. He appears to have run a school but the authorities closed the school on health and safety grounds.

7. The family remained in Morocco for some time after the closure of the school whilst attempts were made through the courts to obtain authorisation for the school to be reopened. In August 2010 the family left Morocco and came to the UK on visit visas. In 2010 at a time when the first appellant was claiming to be at risk of persecution in Morocco and family were seeking to leave Morocco, the first appellant had obtained from the UNHCR in Morocco a refugee card, ostensibly as a “refugee” from Iraq. Thereafter the appellants travelled on their own passports including the first appellant travelling on an Iraqi passport and came to the United Kingdom.

8. The appellants were claiming that about 18 months before the family left Morocco the family were receiving threats from Sunni Muslim fundamentalists and that it was as a result of those threats that the family left Morocco.

9. The appellants had applied for visas to come to the United Kingdom in June 2010. The appellants entered the United Kingdom on the 20th August 2010 on their own passports on visit visas, which were valid until the 10th December 2010.

10. Having entered the UK the appellants claimed asylum on 3 September 2010. Their claims were refused and immigration decisions issued against the first and second appellants with the third appellant as a dependant. The appellants appealed against the decision and their cases were

dismissed by First –tier Tribunal Judge Kebede in a determination promulgated on the 16th December 2010.

11. The appellants had claimed that the family were at risk of persecution and harm from Muslim fundamentalists and the Moroccan authorities. Judge Kebede in deciding the appellants' cases made adverse credibility findings on material aspects of the appellants' account. Judge Kebede noted that it was only after the first appellant's appeal against the decision to refuse him authorisation to continue running the school that the family had left Morocco. It was alleged that there had been threats from Sunni Islamic fundamentalists but the judge noted that the appellants had remained in Morocco for 18 months or so after the threats and nothing had happened.

12. Judge Kebede found that, had the first appellant been given permission to reopen his school, the family would have remained in Morocco. However as found by the judge the school had been closed down for health and safety reasons and not for any other reason. The appellants had been able to pursue legal action with regard to the closure of a school for over 18 months but had been unsuccessful. It was only at that stage that the appellants sought to leave Morocco. Judge Kebede did not find the appellants claims to be at risk of harm to be credible. The judge was satisfied that the appellants were not at risk of any harm in Morocco.

13. In making her decision Judge Kebede had only considered the prospects of the appellants being returned to Morocco. There was an appeal to the Upper Tribunal and as is evident from paragraph 4 of the Upper Tribunal decision the issue of whether the first appellant was a refugee had to be determined with reference to his country of nationality that is Iraq not Morocco. The Upper Tribunal found as is evident from paragraph 9 onwards that the evidence before the Tribunal was not such as to show that the first appellant would have a well founded fear of persecution in Iraq or show that the first appellant would be at risk of inhuman or degrading treatment or punishment. The Upper Tribunal concluded that the second appellant and her dependant were not refugees and the findings of fact by Judge Kebede, were justified in the circumstances. The Upper Tribunal concluded that the appellants were not refugees and there was no basis upon which Judge Kebede could have found that the first appellant or any other of the appellants were refugees

14. In making that decision the Upper Tribunal did not interfere with the findings of fact made by Judge Kebede. The Upper Tribunal took the findings of fact and looked at the prospects of the first appellant on return to Iraq on the basis of the facts as found.

15. The Upper Tribunal upheld the decisions to dismiss the appeals on all grounds and the appellants appeal rights became exhausted as of 20 July 2011.

Present Appeal

16. On the 31st August 2012 further submissions together with a further statement and an expert report from Professor Joffe were submitted to the Home Office. The Home Office accepted such as a fresh claim and made fresh decisions to remove each of the appellants from the United Kingdom again to Morocco and/or Iraq.

17. The appellants appealed against those decisions. The appeal was heard by Judge Levin, who in a determination promulgated on the 5th February 2014 dismissed the appellants' appeals. The appellants now appeal to the Upper Tribunal against the decision of Judge Levin.

Error of Law

18. The grounds of appeal in summary raise three issues:-

    a) the judge materially in his consideration of paragraph 276 ADE

    b) the judge materially in his approach to credibility

    c) the judge failed properly to consider the case of IA v SSHD (Scotland) [2014] UKSC 6.

19. Judge Levin in dealing with the credibility of the appellant's account had accepted the starting point was the findings of fact made in the previous determinations by Judge Kebede and the Upper Tribunal. Judge Levin had applied the principles set out in the case of Devaseelan v SSHD [2002] UKAIT 00702.

20. In the previous appeal the Upper Tribunal, in dealing with the appeal from the First-tier, had accepted the findings of fact made by Judge Kebede and applied those findings. The Upper Tribunal altered the focus of the first appellant's appeal concentrating upon the first appellant's country of nationality as required by the Refugee Convention. They did not interfere with any findings of fact made by Judge Kebede and there is no reason for those findings of fact not to stand. There was no reason for Judge Levin not to treat the findings of fact as the starting point in accordance with Deevaseelan.

21. Further it is to be noted within paragraph 50 of the determination by Judge Levin he clearly takes account of the fact that the previous determinations are merely the starting point and he has to take account of the evidence of events which have happened since and other evidence including the expert evidence advanced on behalf of the appellants, which may bring into question those findings of fact.

22. Judge Levin thereafter has carefully analysed the evidence given by the appellants and given valid reasons for making the findings of fact that he did.

23. Within the grounds of appeal it is alleged that the judge has misunderstood the evidence and failed to give the evidence anxious

scrutiny. It is suggested that the judge has misunderstood the evidence about why and when the appellant feared returning to Iraq.

24. Judge Levin from paragraph 66 onwards of the determination was examining in part assertions made in the first appellant's statement. The appellant in his statement at paragraph 4 [page P1 onwards of the appellants' bundle] stated that the reason he had not returned to Iraq was because his life was in danger. The first appellant had obtained a new passport and his wife had obtained a visa to go to Iraq in Aril 2009. A family visit to Iraq was intended but was cancelled because of the alleged fear according to paragraph 4 of the statement. The judge in paragraph 69 had rejected the assertion in paragraph 4 of the appellant's statement that he feared return because his life was in danger and therefore he and his family had not visited Iraq. The first appellant had asserted that is brother had been killed in 2010. The judge looked at that and looked whether there was any other cause for the appellant to believe that his life was in danger in 2009. The first appellant had accepted that the death of his brother had occurred after they had decided to cancel the trip to Iraq. The judge concluded that he did not accept the first appellant's claim that his life was in danger in April 2009 if he had returned to Iraq.

25. As the appellant had made the assertion in his statement, the judge was entitled to make the finding that details in the statement were not true and that that damaged the credibility of the appellant.

26. The grounds of appeal raised the issue that the judge has failed properly to take into account the UNHCR card, which recognised the appellant as a refugee in Morocco. In the first instance that was considered in the determination by Judge Kebede, as is evident from paragraph 56 of her determination. It was also a matter that was considered in the Upper Tribunal as is evident from paragraph 9 of the Upper Tribunal determination. There the Upper Tribunal clearly assessed the UNHCR card and even taking that into account concluded that the first appellant was not a Convention Refugee.

27. The appellants' representative sought to argue that the approach of Judge Levin with regard to the UNHCR card fails to take into account the case of IA v SSHD 2014 UKSC 6. However as is evident from that case much may depend upon the credibility of an individual and a decision by the UNHCR does not bind Tribunals. Paragraph 29 of the judgement in IA makes that specific point. The approach to be adopted to such cards can be seen from paragraph 45 onwards of the judgment.

28. The Upper Tribunal had considered the card previously and had given it due weight. Judge Levin, as is evident from paragraph 28 and 45, was aware of the issue and that that issue had been dealt with by the Upper Tribunal previously. The judge was entitled to make his assessment of the evidence in light of that and has fully justified in the findings of fact made.

29. The grounds of appeal argue and it was argued before me that the judge's approach to paragraph 276 ADE was flawed. The judge had taken careful note of the fact that the first appellant have lived for nearly 35 years in Morocco. However he noted also that the appellant's brother had until 2010 been living in Iraq when it is alleged that he was killed. The first appellant had extended or renewed his passport on a number of occasions. The first appellant also required a fluent Arabic interpreter at the hearing. The judge noted that he had spent the first 26 years of his life in Iraq and had been educated to university level. The judge having considered all the evidence came to the conclusion that he was satisfied that the first appellant continued to have ties to Iraq. That was a finding of fact that the judge was entitled to make on the basis of the evidence presented.

30. Paragraph 276ADE is considered in detail from paragraph 94. The judge had considered the case law applicable. Again the judge has fully justified his decision.

31. It is suggested that the judge has raised an issue not taken by the respondent. It is suggested that the judge has raised the requirements under Appendix FM –S-LTR.2.2 because the first appellant has submitted false information. In applying paragraph 276ADE the Immigration Rules provide that the applicant must not fall for refusal under the provisions of appendix FM identified.

32. However in the first instance the judge had already found that the first appellant did not qualify under paragraph 276ADE. He was satisfied that the first appellant and thereafter the other appellants through the first appellant had in the circumstances ties to Iraq. The fact that he gave subsequently a further reason for not allowing the appeal Under 276 ADE was not material in the circumstances.

33. Within the grounds of appeal it is suggested that there is an inconsistency in the findings of fact made by the judge. It is suggested that having found that the appellant had not lived in Iraq for 35 years but lived in Morocco that finding was inconsistent with the judge suggesting that the first appellant's lack of credibility impacted upon whether the first appellant had visited Iraq since that time. There is nothing inconsistent in the findings of fact made by the judge a person can clearly be settled in a country and returned to visit their homeland. That does not suggest that they are living in their homeland again but merely that they are visiting.

34. Having considered the issues raised I find that there is no material error of law in the determination. I uphold the decision to dismiss these appeals on all grounds.

Signed Date

Deputy Upper Tribunal Judge McClure