IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00902/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Oral determination given following hearing	**On 17 April 2015**
On 16 February 2015	

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

DEAN RAMSEY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Smeaton of Counsel instructed by MKM Solicitors
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq who first came to this country in or around 1978. It appears that he returned to Iraq for a visit in 1980 but has not returned since then. It is not suggested that his presence in this country has been anything other than lawful and in 1982 he was granted indefinite leave to remain. His birth name was Mr Mohammed but on 12 August 1992 he changed his name by deed poll to his current name which is Dean Mazen Ramsey. Although he made an application to be

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naturalised as a British citizen in February 1999, his tax and national insurance contributions were not up-to-date and for this reason his application for British citizenship was refused.

2. It does not appear that the appellant has any family life in this country which is a matter which will be discussed below. Clearly he must have a private life here but by about 2010 this was not an entirely happy one because he was in dispute with his landlord and also some of his neighbours. Motivated by this dispute, on 22 September 2010 he deliberately set fire to the property in which he and his neighbours lived. The extreme seriousness of this offence is apparent from the sentencing remarks of Judge Baucher when the appellant was being sentenced for this offence which was one of arson being reckless as to whether life is endangered. The appellant was sentenced on 10 June 2011 and I set out below relevant extracts from the sentencing remarks:

> "The facts of this matter are that on [22 September 2010] a female attended the police station, subsequently followed by the defendant, advising that a fire was in place at a semi-detached property... at 20 Oliver Grove, South Norwood. The flats are a basement, a ground floor, and a first and second floor. The defendant resided on the first floor. There were another three families present: six adults, seven children with ages ranging from 2 to 10 years. There was no fire escape at the premises or access or egress other than the internal staircase, and those exiting the premises from upstairs had to pass the source of the fire, namely flat 3.
>
> There was a loud explosion and effectively the entire building ultimately virtually collapsed; certainly the roof was blown out by the explosion. Those on the top floor had to attend hospital that night although they were discharged later that evening. The emergency services had to attend. The road was closed for a week, facilities were cut off for several hours for those in the immediate vicinity. It was considered a major critical incident. The emergency services, 999, attended, together with local authority utility companies, demolition experts and engineers. This is a semi-detached property and the property next to it is now in an unstable condition, to which I will return in due course.
>
> What is evident is that on that day the defendant had received a notification from his landlord in relation to him having left a tap running. This was in relation to a number of ongoing disputes with the neighbours. Essentially in his interview he said: 'I am not going to let this bastard get away with it'. He said: 'I went straightaway, and I had petrol in the spare room, a tank, you know, that you carry in the car. I used to have a car. And I poured it. When I was pouring it I thought this is – this is it. I mean, this is what I am doing. So, I mean, I poured it all over my stuff, furniture, everything, and I went to the bedroom and ignited it. It didn't ignite and the second time I threw the match, the second match, and suddenly, phew! It nearly took me out. I mean, I had to run fast, which is not a long run. I managed to open the door with my rucksack – which I just come – I usually leave it next to the door, and I managed to get out and run downstairs and shouted, 'get out, get out, get out' and the police station is just across the road.' "

3. The next sentence is particularly important, which is, "the other residents, to whom I have already made reference, were in the property at the material time".

4. Having referred to the various evidence given by the families who were all in the property at the time, the judge in her sentencing remarks continues as follows:

> "All those families had to be provided with emergency accommodation. The adjacent property also had to be evacuated and, as I have already indicated, that is in a parlous state. Those in flat 1, the top floor flat, lost everything, which they roughly estimate at £10,000; those in flat 2 lost everything, including their cat; the basement lost about £7,300 worth of goods. Second floor losses have been estimated at £22,500. None of those people are in a position to recover their losses as they were not insured at the material time and the landlord's insurance does not cover for their loss."

5. The judge then deals with the request to make a compensation order which was not appropriate because the appellant was not working and was obviously going to receive a substantial custodial sentence. However the point was made that not only did the appellant place ordinary decent people at very great risk of death or very serious harm but he also caused these people to lose what to them must have been property of very significant value for which they will not be compensated.

6. The judge then continues as follows:

> "That is a minimal part of the damage done. The cost of repair to the building is £620,000. There are legal costs associated of some £20,000; there is contents damage to the building itself, another £50,000, there is the repairing of the central wall to the property next door of at least £50,000, and that is if that property does not have to be demolished. The landlord has also been hit with invoice costs from Croydon Council and Limbrook Services and those invoices are in excess of £177,000. Those costs alone are therefore in the region of £1 million and that is on top of the individual losses to those in the property.
>
> The landlord describes how he has been traumatised and unable to sleep 'I have been particularly disturbed about how much worse this could have been in terms of human suffering. I think particularly of the other residents at number 20 who managed to escape, especially the young child and her parents in the top flat. I needed to visit my GP and was prescribed sleeping tablets'. He, not being present in the building at the time, perhaps puts it more coherently than anybody else. In short there were three other families within that building, a total of seven children some 2 to 10 years of age. You on your own admission in interview accepted that you knew they were present, but nonetheless you carried on with what you were doing."

7. The judge then goes out to set out what she regarded (and anybody looking at this offence must also regard) as aggravating features. These were as follows:

> "There was premeditation. You went to the store room (sic) to get this petrol that you had, for whatever purpose I know not; you had not got a car anymore but you had kept it. And, as you said in your interview, you had an attempt to light the fire and then it didn't work so you tried again. The second aggravating feature was the extensive damage which I have detailed. The third significant aggravating feature is of course the number of occupants in the premises and the fact that there were so many children on those premises. Another aggravating feature is that to some extent this is a revenge attack; it is a revenge attack on the landlord, it is a vendetta. Another

> aggravating feature is your failure to raise any alarm whatsoever. When you left the premises you shouted 'get out', but that was hardly sufficient given that you knew that the top floor was occupied. Going to the police station when the fire was in full swing can hardly be seen as a mitigating factor. It was also well known to you that there was no external means of exiting these premises. The only one means of exit was down through the internal staircase and that internal staircase came past your flat which was the source of the fire. If anybody had any doubt at all, should this matter go elsewhere, as to the extent of the damage to the property or what was at stake here, then I invite them to look at the two bundles of photographs which have been produced to me and properly copied. These clearly capture the extent of the damage and what could have occurred given that this building was divided into four flats."

8. Having set out the personal circumstances of the appellant and also his explanation that "in the few months prior to the fire my behaviour became quite erratic and I was unable to cope with my personal circumstances and felt very isolated" the judge referred to the report from the Probation Services and gave her reasons why she did not consider that the public needed to be protected by means of an indeterminate sentence, saying that "I am satisfied that the public can properly be protected by means of a determinate sentence. But, as I have already said, that has to be substantive".

9. The judge then states as follows:

> "What is also clear in relation to arson of this type, as the Court of Appeal said in *Attorney General's reference (No.68 of 2008)* reported at [2009] 2 Crim App R 48: 'Sentencing in arson cases is not an easy exercise. Further, the dividing line between the worst cases of reckless arson and the least serious cases of arson with intent is a very fine one'. I have no doubt, given the aggravating features of this case, that this falls at the upper end [if] not the very top end of the offences of reckless arson...".

10. The judge also considered that other than in respect of the early plea of guilty "there can be very little mitigation indeed".

11. Ms Smeaton who appears for the appellant before me today does not seek to persuade me that this was not an exceptionally serious offence which could have had the most horrific consequences not only in terms of monetary loss (which it did have) but also in terms of the potential injury or even death of a very large number of wholly innocent and decent members of the public. Unsurprisingly, even though the appellant had been in this country for a long time, the respondent made a deportation order in respect of him. The respondent is by virtue of the automatic deportation provisions now in place obliged to make such an order unless as a consequence of her so doing the rights of this appellant would be breached either under the European Convention of Human Rights or the Refugee Convention. The respondent, having considered all the circumstances surrounding this offence considered that it would not. It is not necessary for the purposes of this determination to set out the law in any great detail. The deportation order which was made against the appellant on 13 May 2014 was made under Section 32(5) of the UK Borders Act 2007 on the basis that his deportation was conducive to the public good and in the public interest because (as set out within paragraph 398 (a) of the

immigration rules), he had been convicted of an offence for which he had been sentenced to a period of imprisonment of at least four years.

12. The appellant appealed against this decision and his appeal was heard by First-tier Tribunal Judge R.J.N.B. Morris sitting at Hatton Cross on 4 November 2014 and in a Decision and Reasons promulgated on 27 November 2014 Judge Morris dismissed the appellant's appeal. The appellant now appeals against that decision pursuant to permission which was granted by First-tier Tribunal Judge Cox on 17 December 2014. There are five grounds of appeal although it is fair to say that the fifth has not really been pursued before me today. The grounds were settled by Ms Smeaton of Counsel who appeared for the appellant before Judge Morris and has also represented the appellant before me. It is right that I record my appreciation to Ms Smeaton for the sensitive and persuasive way in which she has argued what is clearly on the facts of this case an extremely difficult appeal. She made the points which she felt were properly arguable in a thorough but concise manner without attempting in any way to minimise what on any view was a very serious offence indeed. She relied on the grounds which she summarised before the Tribunal and I will attempt in this determination to state briefly what they were.

13. It is clear that before Judge Morris the appeal had been put on the basis that the appellant's removal would be in breach of both his Article 3 and Article 8 rights. So far as Article 3 is concerned there were two limbs to this argument. In the first place it was said that the situation in Iraq was so serious now that it simply was not safe for anyone to be returned there at this stage.

14. The second limb was related to the appellant's personal circumstances in that the reason why he had changed his name was that he had repudiated his Muslim upbringing and so he would be returning to Iraq in circumstances where because he was an atheist who had repudiated Islam he would personally be at risk. Both these factors were also relevant it is said to the appellant's Article 8 claim because taken together with everything else about this appellant, when looked at in the round these factors created "very compelling" reasons why notwithstanding the seriousness of the offence of which he had been convicted, the deportation of this appellant to Iraq in current circumstances would still be disproportionate.

15. I will deal with the Article 3 argument first. It was I think accepted by Ms Smeaton that at least so far as the first ground is concerned it would be difficult to argue that the judge was not entitled to find that the situation in Iraq was not so dangerous as to engage the appellant's Article 3 rights. Ms Smeaton still sought to argue that the appellant's rejection of his Muslim identity would put him at risk on return although it is fair to say that she does accept that not all the evidence which might have been before the judge to support such a claim was in fact before the judge. I will deal with this in a little more detail below.

16. So far as Article 8 is concerned Ms Smeaton's primary submission is that the judge did not properly consider the arguments which had been advanced in support of the appellant's Article 3 claim, within her consideration of Article 8. It is the appellant's

case as now argued that the defect in Judge Morris's reasoning was that having found both that the situation in Iraq was not such as in itself to give rise to an Article 3 claim and also that atheists as such were not persecuted (which was still challenged on behalf on the appellant), the judge should nonetheless have gone on to consider whether the current situation in Iraq, albeit not so bad as to give rise to an Article 3 claim, coupled with the difficulties faced by atheists or non-Muslims in Iraq, were such that when aggregated with all the other factors could still lead to the conclusion that it would be disproportionate for Article 8 purposes to return the appellant to Iraq now. When considering this submission, I of course appreciate that the Court of Appeal has in a number of cases now stated that there may be circumstances, albeit rare, where if an applicant's Article 8 rights are engaged then factors which although themselves do not give rise to an Article 3 claim might still, when aggregated with other factors, be taken into account when considering whether removal is disproportionate for Article 8 purposes. I have in mind in particular the observations of the Court of Appeal made in *MM Zimbabwe)* [2012] EWCA Civ 279 and more recently in *GS (India) & Others* [2015] EWCA Civ 40, although it was made clear within the latter decision (a health case) that the circumstances in which such an argument could succeed would be rare.

17. When considering the Article 8 position of the appellant so far as ground 2 was concerned it was argued that Judge Morris should have had regard to the *HJ (Iran)* point which is that she should have appreciated that it was not sufficient just to assume that the appellant could change his name back to a Muslim name and adhere to Muslim behaviour because this could be said to go to his whole identity. It was also said within grounds 3 and 4 that there were factual errors within the determination itself. Ms Smeaton acknowledged when advancing grounds 3 and 4 that if these had been the only grounds then in Ms Smeaton's words "I will have to concede they will be unlikely to succeed on their own" but she did submit that they were capable when considered in the round with her other grounds of being of sufficient weight as might have affected the proportionality exercise. So far as ground 3 is concerned, it is submitted that the judge when referring to the length of time that the appellant had spent in Iraq prior to coming to this country should have appreciated that the situation in Iraq now was so different from how it was when the appellant had left in 1978 that it was not appropriate to place any sort of weight on his previous presence in that country. Saddam Hussain came to power in 1979 which is the year after the appellant had left Iraq, although he had been back briefly the following year. Ms Smeaton submitted that as Iraq now was so very different from how it was when the appellant left that his previous presence was not very significant. His only connection was that he spoke the language.

18. The fourth ground relates to the judge's finding that it was only a matter of "conjecture" that the appellant no longer had any family in Iraq. She referred to the evidence the appellant had given that the country had been destroyed (in evidence he had said 'decimated') by the war in which he was referring to his home area, and this apparently was not challenged during that hearing. Also, in his witness statement he had said that even if his mother was still in Iraq she would be about 80 now and his siblings had all married and moved away a long time ago.

19. Also the judge had incorrectly referred to the appellant returning to Iraq twelve years after his arrival in 1980, whereas in fact he had returned two years after his arrival in 1978 which was in 1980 and had not been back to Iraq since then. Also it was said that the judge had ignored the background evidence of the high number of displaced persons there were within Iraq. These factors were all capable of having weight when consideration was given to how easy it would be for the appellant to integrate within Iraq, the society as it was now, and the judge's statement that because he had been able to integrate into the UK when he came he would be able to integrate into Iraq now did not follow because his ability to integrate into Iraq without assistance under current circumstances was simply not comparable with his situation when he came to this country.

20. So far as the fifth ground is concerned this related to whether or not the appellant would have difficulties because he might be returned without documentation but as the current policy of the respondent is that undocumented people are not returned to Iraq at the moment and also because it does not appear to be disputed that the appellant could himself assist in obtaining such documentation, so far as his Article 8 rights are concerned that ground was not pursued before me.

21. On behalf of the respondent Mr Shilliday responded briefly to the grounds in turn. So far as ground 1 is concerned it was not accepted that the tests have been conflated. In the first place Judge Morris had been asked to consider the same matters with regard to Articles 3 and 8 and it was clear from what was set out at paragraph 27 that she had had in mind the correct test because, having considered the various factors she had stated that "although the appellant might experience hardship and inconvenience in re-establishing himself in Iraq, it is not unreasonable for him to return to Baghdad where he would not be at real risk of persecution or other serious harm, especially since it is possible to obtain the requisite documentation needed to re-integrate into the Iraqi way of life".

22. That in Mr Shilliday's submission is the appropriate test under Article 8 so the judge had looked at the factors both in respect of Article 3 and Article 8. So far as ground 2 was concerned, although it was accepted that in line with *HJ (Iran)* regard had to be had to whether or not the appellant would be required to deny an intrinsic part of his personality, this in the circumstances of this case was simply not a relevant factor. The reality here is that there was simply no evidence before the Tribunal to establish that the appellant would be at risk because he would be returning as an atheist who had renounced Islam. What Judge Morris was saying in effect was that the appellant was not a Christian or a Yazidi and there was no other evidence that he would be at risk on return; even if she did not say this in terms it would still not have been a material error because there was no evidence before her to support a case that he would be at risk on return for this reason.

23. So far as the other grounds were concerned I understood Mr Shilliday's case to be that these were minor mistakes insofar as the judge got the facts slightly wrong. What was relevant in this case is that the appellant had absolutely no family life in this country whatsoever so when one compares the family life that he has here with

the family life that he might have in Iraq whereas he clearly has no family ties in this country he might have some family ties in Iraq. Mr Shilliday did not dispute that the appellant would have some private life in this country but no factors have been put before the Tribunal to show that this life was such as to provide very compelling reasons why his removal, given the seriousness of the offence of which he was convicted, would not be proportionate.

24. In reply Ms Smeaton briefly reiterated the case she was advancing. She did not submit that the judge, had she taken full account of all the factors, would have been bound to find that the removal of this appellant was disproportionate but asserted that she did not have to establish this. All she had to establish, which she submitted she had, was that if the judge had considered all the facts properly it would have been open to her to find that there were very compelling reasons why this appellant should not be deported and accordingly the errors within her determination were material ones.

Discussion

25. My starting point must be the relevant provisions as contained within the Immigration Rules (which were properly set out within paragraph 6 of the First-tier Tribunal's determination) as considered by the Court of Appeal in *MF (Nigeria) v SSHD* [2013] EWCA Civ 1192. Following the decision of the Court of Appeal in *MF (Nigeria)* the Rules were amended slightly to give effect to the judgment in that case (so that, for example, the words "very compelling circumstances" were substituted for "exceptional circumstances"), but these changes do not have any material impact on this decision. It is now established, following *MF (Nigeria)*, that in respect of deportation decisions the Article 8 rights of an applicant are incorporated within the Rules such that the duty of a decision maker is to consider first whether deportation of an applicant would be in breach of that applicant's Article 8 rights having had consideration to the factors set out within paragraph 399 and 399A, and if not then to go on to consider under paragraph 398 whether there were "compelling circumstances over and above those described in paragraphs 399 and 399A" such that removal would be disproportionate. The last section of paragraph 398 provides as follows:

> "*The Secretary of State in assessing that claim* [that the deportation of an applicant would be contrary to this country's obligations under Article 8] *will consider whether paragraph 399 or 399A applies, and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A*."

26. It is not suggested that any of the factors set out in paragraphs 399 or 399A apply in the circumstances of this case. The appellant does not have a relationship with a child and nor does he have a relationship with a partner in the UK such as would be necessary for paragraph 399 to apply. So far as paragraph 399A is concerned this is not applicable either because the deportation of this appellant is conducive to the public good under paragraph 398(a) (and not under 398(b) or (c)) "because he has

been convicted of an offence for which he has been sentenced to a period of imprisonment of at least four years" (in this case the appellant was sentenced to imprisonment of seven years).

27. Accordingly deportation is in the public interest and this will also only be outweighed by other factors for Article 8 purposes "where there are very compelling circumstances over and above those described in paragraphs 399 and 399A".

28. So far as Article 3 is concerned I can deal with the submissions made on behalf of the appellant briefly because in my judgment they are simply not arguable. Under current jurisprudence as the judge recognised the background information was not such as was capable of providing support for the proposition that no one could safely be returned to Iraq because of the general situation within that country. So far as the second ground is concerned again there was simply no proper basis before the judge on which she could possibly have found that the appellant would be at risk on return because of his atheist westernised identity. The highest that the case was put before me with regard to this ground was by reference to the Iraq OGN of 31 December 2013 (reissued on 22 August 2014) in which the "**situation for other religious minorities in central and southern Iraq**" was set out at paragraph 3.14.20 as follows:

> "There were some reports that non-Muslim minorities felt obliged to adhere to certain Islamic practices, such as wearing a Hijab or fasting during Ramadan. Some Muslims threaten women and girls, regardless of their religious affiliation, for refusing to wear the Hijab, for dressing in western style clothing, for not adhering to strict interpretations of Islamic norms governing public behaviour. Numerous women, including Christians, reported opting to wear the Hijab after being harassed. Two Christian female government employees reported forcible transfer to another section of their employing industry without notice or consent because they refused to wear head scarves."

29. As Mr Shilliday noted in his submissions, it would have been open to the appellant in the absence of background information supporting his claim to have instructed an expert to give evidence on his behalf but he chose not to do so and in the absence of evidence an Article 3 claim or claim for asylum founded on an alleged risk on return for this reason is simply unarguable.

30. Turning now to Article 8, I do not accept the argument advanced by Ms Smeaton on behalf of the appellant that the judge conflated the different tests which are applicable when considering respectively Article 3 and Article 8. It is clear from was is said at paragraph 27 that the judge having decided that an Article 3 claim was not made out then adopted the correct test when considering Article 8 which is whether or not it would be reasonable to expect the appellant to return to Baghdad, and her finding that this would be reasonable given the background to this case, is entirely appropriate. She accepted that the appellant "might experience hardship and inconvenience in re-establishing himself in Iraq" but given that "he would not be at real risk of persecution or other serious harm" considered that it would be reasonable for him to go back there. Whether or not the applicant has family in Iraq

is really beside the point. He clearly does not have family in this country and has not suggested that he has, and in any event, when considering whether his removal is proportionate, the starting point must be that the offence which he committed was of such exceptional seriousness and the revulsion which the public must feel towards this offending is so great, that there would have to be very compelling reasons (as the Rules make clear) for his forcible return to be seen as disproportionate. Obviously if the appellant would be at risk on return such that his Article 3 rights would be engaged, he could not lawfully be returned, but given the extreme seriousness of this offence and the appellant's lack of any family ties in this country, it is hard to conceive of any circumstances other than where the Article 3 threshold is met in which his return could properly be said to be disproportionate. He is a healthy man and there is no reason to believe that he would have such difficulties in re-integrating into Iraq as to amount to a very compelling reason as to why he should not be required to do so. Certainly none has been put before this Tribunal.

31. On the facts of this case, I consider that any decision other than that this appellant's deportation was proportionate would have been arguably perverse. In these circumstances it follows that this appeal must be dismissed.

<u>**Decision**</u>

There having been no material error of law in the determination of the First-tier Tribunal the appellant's appeal is dismissed.

Signed:

Upper Tribunal Judge Craig   Date: 27 March 2015