



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

Appeal Number: IA/18998/2015

**THE IMMIGRATION ACTS**

**Heard at: Manchester  
On: 24<sup>th</sup> May 2017**

**Decision Promulgated  
On: 27<sup>th</sup> June 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Nooriya Ali Noori al-Haddad  
(no anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant: no legal representative  
For the Respondent: Mr G. Harrison, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq date of birth 1<sup>st</sup> July 1939. She has permission<sup>1</sup> to appeal against the decision of the First-tier Tribunal (Judge NMK Lambert) to dismiss her human rights appeal. The determination was promulgated on the 13<sup>th</sup> July 2016.

**Background and Decision of the First-tier Tribunal**

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<sup>1</sup> Permission granted by Upper Tribunal Judge Taylor on the 14<sup>th</sup> December 2016

2. The Appellant arrived in the United Kingdom on a visit visa on the 31<sup>st</sup> May 2012. In order to get that visa the Appellant had assured the Entry Clearance Officer in Amman, and then Judge White of the First-tier Tribunal, that she was only coming for a two week holiday to visit her daughter, Dr S. Jadow. She said that she had every intention of returning to Iraq to live with her son and daughter in the family home.
3. On the 14<sup>th</sup> November 2012 the Appellant's sponsor and daughter Dr S. Jadow wrote to the Respondent, stating that she had lost contact with her siblings who had previously been living with their mother in Baghdad. Dr Jadow asserted for the first time that her mother had been threatened by sectarian and criminal elements. In 2010 she had been forced to relinquish all of her money and personal possessions to a criminal gang who were threatening her and her family. Dr Jadow asserted that she and her husband were both working full time, owned their property outright and would be able to adequately maintain and accommodate the Appellant, who would cost the public purse no money. She had comprehensive private healthcare insurance.
4. The Respondent rejected the claim on human rights grounds. The Appellant appealed and on the 19<sup>th</sup> June 2014 the decision was found to be 'not in accordance with the law' and the matter was returned to the Respondent<sup>2</sup>. On the 29<sup>th</sup> April 2015 the Respondent issued a fresh decision. The Respondent considered the claim with reference to the provision in the rules relating to Article 8 private life: paragraph 276ADE(1). Having rejected that, the Respondent proceeded to consider whether there were any 'exceptional circumstances' such that a grant of leave under Article 8 would be justified. Finding there to be none, the claim was rejected.
5. When the matter came before the First-tier Tribunal the Appellant's daughter and sponsor Dr Jadow gave oral evidence. She told the Tribunal that after her mother arrived in this country in 2012 the family had lost touch with relatives in Baghdad and that her mother's health had deteriorated. At paragraph 3.3 of the decision the following observation is made: "Quite obviously all of this runs completely counter to the findings made by Judge White on the evidence presented to him in 2012. It is extremely difficult to escape the conclusion that the Appellant and sponsor have been dishonest in their evidence before either me or Judge White". The Tribunal thereby rejected the Sponsor's evidence that her mother had no health issues at all at the time of the visitor appeal. It found it to be improbable that Dr Jadow would not have been aware of the sectarian attack suffered by the family in 2010 when she gave evidence to Judge White. As to the family members in Iraq, the Tribunal noted the Appellant's evidence before Judge White that she had four children in Iraq.

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<sup>2</sup> The decision of Judge Holmes, dated 18<sup>th</sup> June 2014 (IA/10644/14) was that the decision of the Secretary of State for the Home Department was unlawful for its refusal to address protection concerns. Judge Holmes considered it to be incumbent on the Respondent to consider these matters before the First-tier Tribunal determined their validity

It rejected Dr Jadow's evidence that two of these people were stepchildren who had both died a long time ago, and that the other two had suddenly, without any notice, fled Iraq for Turkey. In light of the discrepancies identified, the Tribunal was unable to place any weight on the current claims of the Appellant and her daughter. Judge Lambert found there to be no likelihood that any of the evidence given about the family circumstances in Iraq was true. The claim therefore fell to be dismissed in the following terms [at 3.6]:

"There is no credible basis for concluding that her return there would breach Article 3. On the sponsor's own evidence the Appellant's health problems were appropriately treated and under control there and while I accept that she also now has a diagnosis of Alzheimer's dementia, on the findings I have made I have not been able to accept that she could not depend on family members in Iraq who include medically qualified adults equally as able to cope with their mother in her old age as the sponsor. For these reasons I also uphold the respondent decision under paragraph 276ADE that there are no very significant obstacles to the Appellant's integration into Iraq. There are of course ongoing security problems there, but these were experienced by the family for many years before she left. There is no suggestion that the appellant meets any of the provisions of Appendix FM of the Immigration Rules and I find no evidence justifying consideration of Article 8 outside of the rules or capable of sustaining any finding that the respondent decision is in all the circumstances of the case disproportionate."

## **Discussion and Findings**

6. The grounds of appeal were drafted by the Sponsor Dr Jadow, who also appeared before me. Bearing in mind that she is not a lawyer or immigration law specialist I have given those grounds their widest possible reading.
7. It is submitted that the decision of the First-tier Tribunal erred in the following material respects:
  - i) In failing to take the country background material into account. It is submitted that there was nothing inherently implausible in the Appellant's son and daughter electing to leave Baghdad in the summer of 2012;
  - ii) In failing to weigh into the reasoning an envelope and letter which established as a matter of fact that the Appellant's other children were now in Turkey;
  - iii) Failing to consider the particular bond between the Appellant and her daughter in the United Kingdom
8. Permission to appeal was refused by First-tier Tribunal Judge Grant, who considered ground (i) to be arguable, but found that "in the absence of credible evidence from Turkey the FtTJ was fully entitled to reject the claims made". Permission was granted upon renewed application by UTJ Taylor who considered the evidence referenced at ground (ii) might be the

evidence that Judge Grant considered to be missing.

9. The evidence in question consisted of photocopies (it is not clear whether the First-tier Tribunal was shown the originals) of two envelopes posted in Turkey, said to have contained letters from the Appellant's daughter. It is clear that the First-tier Tribunal did have sight of this material, since it is recorded at paragraph 3.4:

“... letters presented from the son and daughter at the hearing, posted from and claimed to support their presence in Turkey in February 2016, present no particular incident causing either of them to flee Iraq but maintain in general terms that life in Iraq became too difficult”

10. I accept that the First-tier Tribunal has made no express findings on whether the letter was posted directly by one of the Appellant's children, whether they were in Turkey then or whether they remain in Turkey now. I must however read the determination as a whole, and when the entire body of the reasoning is taken into account it is quite clear that the Tribunal rejected the documents as credible evidence of the whereabouts of Dr Jadov's siblings. I say that for the following reasons. First, the account of flight to Turkey was primarily doubted by the Tribunal for the reason it sets out at paragraph 3.4, namely that there was no explanation as to why these two adults, with settled lives and good jobs, would up and leave Baghdad with no prior discussion with their close family members. Second, as set out in the extract above, the explanation provided in the letter appeared to be at odds with the suddenness of their apparently covert departure. Third, it is clear from the subsequent findings that the Tribunal believes the two to still be in Iraq. It is further implicit in the wording used that the Tribunal doubted that the pair were in Turkey at all, or at least that they were there for any substantial period of time: “...*and claimed to support their presence in Turkey in February 2016*”. I am unable to find that the Tribunal ignored the Turkish letter, or that it failed to consider whether it was probative of that plank of the Appellant's case.
11. It perhaps follows that ground (i) must fall away in light of my finding. There may well have been good reasons for anyone to leave Baghdad in the summer of 2012 but the Tribunal's finding was not premised on it being inherently unlikely that anyone would do so. The evidence that is rejected as “extremely unlikely” is the claim that two hitherto established professionals, who had cared for their mother for a number of years and were obviously close to her, would secretly elect to leave their homes, jobs and country in the two weeks that she was on holiday.
12. In respect of ground (iii) I have reviewed the witness statements of both mother and daughter. Whilst I do not doubt that the two are close I have been unable to identify any particular evidence contrary to the finding made at paragraph 3.6 of the determination: “I have not been able to accept that she could not depend on family members in Iraq who include medically qualified adults *equally as able to cope* with their mother in her

old age as the sponsor” (emphasis added).

13. At the hearing I did canvass with Mr Harrison whether any material error arose in the First-tier Tribunal’s apparent application of the *Gulshan* threshold question in the closing sentence of 3.6. The notion that a decision maker must first decide whether there is a good arguable case under Article 8 before deciding whether to conduct a proportionality balancing exercise has now been expressly disapproved by the Court of Appeal: see Lord Justice Aikens at paragraph 129 of MM (Lebanon) v Secretary of State for the Home Department [2014] EWCA Civ 985. In that respect, the Tribunal arguably erred in stating: “I find no evidence justifying consideration of Article 8 outside of the rules”. I am however unable to find that error to be material, since the determination immediately qualifies the reasoning with the words: “or capable of sustaining any finding that the respondent decision is in all the circumstances of the case disproportionate”. On the facts as it had found them, that was a decision open to the Tribunal on the evidence before it.
14. The Appellant is approaching her 78<sup>th</sup> birthday. She has a diagnosis of Alzheimer’s dementia. There was no evidence before me, nor insofar as I can tell, before the First-tier Tribunal, going to the matter of her fitness to fly. Obviously her age and illness are matters that the Respondent will have careful regard to before making any decision to remove. Dr Jadov should endeavour to keep the Respondent up to date with any developments relating to her mother’s health.

### **Decisions**

15. The determination of the First-tier Tribunal does not contain an error of law such that it should be set aside.
16. There is no order for anonymity.

Upper Tribunal Judge Bruce  
26<sup>th</sup> June 2017