Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/04151/2017
PA/04155/2017
PA/04156/2017

THE IMMIGRATION ACTS

Heard at Field House
On 23rd August 2017

Decision & Reasons Promulgated
On 27th September 2017

Before

UPPER TRIBUNAL JUDGE KING TD

Between

SAM (FIRST APPELLANT)
HM (SECOND APPELLANT)
FHM (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Chakmakjian of Counsel, instructed by Leonard Cannings Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Iraq, born respectively on [ ] 2002, [ ] 2000 and [ ] 2002. The first and third appellants are first cousins and the second appellant is their uncle. They left Iraq on 15th August 2016 and arrived in the UK in or about September 2016.

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They made contact with their uncle/half brother, Farhad who lived in the United Kingdom as a British citizen and claimed asylum on 12th October 2016.

2. Their claim for asylum is based upon the fact that ISIS wanted to recruit them before they left Iraq and that they fear that ISIS will kill them if they return.

3. The respondent in three similar decisions dated 12th April 2017, refused to grant them asylum or any other protection. That it was that they appealed against that decision, which appeal came before First-tier Tribunal Judge Sweet on 31st May 2017. In a decision promulgated on 7th June 2017 the appeals were dismissed.

4. A challenge was made to the decision and leave to challenge that decision was granted to the Upper Tribunal. Thus matters come before me in pursuance of that grant.

5. Essentially at the hearing the appellants relied upon their witness statement and also gave some oral evidence. HM gave evidence that ISIS had visited their home and spoke to his parents. Seemingly ISIS returned and kidnapped his father and two weeks later took his two brothers-in-law. He was present when his father's body was returned, after ISIS came to the house again and his mother started receiving letters to the effect that ISIS wanted him to join them. He himself had no direct contact with those who visited.

6. FHM gave evidence ISIS had visited his home, he had not seen them. He was told by his mother that his grandfather and uncle had been kidnapped. SAM also gave evidence ISIS had visited his home and had taken his father and also his grandfather's body was returned to the house but he did not see any of this.

7. Essentially each of the appellants speak of visits to the home by ISIS but they were not present at those visits and had no direct contact with ISIS. During those visits members of the family were removed and killed and it was the intention of ISIS according to the letters to recruit them. Thus it was that they fled.

8. The last witness was FF who was the British citizen with whom they reside .He was not aware that the appellants were coming to the United Kingdom and last spoke to his mother in 2010. The Judge did not find the evidence given by the appellants to be credible nor the account as to the journey to the United Kingdom and lack of contact with family members .

9. The first challenge that is made to the decision is that the findings of credibility largely set out in paragraph 56 thereof lacks reasoning.

10. It is to be noted in that regard that the respondent, in the various decision letters, relies very heavily upon internal inconsistencies in each account as given. Such inconsistencies are said to relate to when and who was taken by ISIS; when the various letters were received by ISIS and how many and by whom. It was said that

there were inconsistencies as to how long the appellants remained in Mosul and why it was that they came to leave. The point being made that none of the appellants seemed to have any first hand knowledge of the events which they describe, albeit that they were living with their parents and members of their respective families who were either kidnapped or killed. Such a lack of connection in such violent times was said lacked to be lacking credibility . Reasons were incorporated by the Judge in the overall comment made at paragraph 56 of the determination. Little indication is given as to whether any or some of the account was accepted or not. It was a very broad brush comment as to credibility and lacked reasons as to why such adverse comments should be made.

11. The circumstances in which the appellants came to the United Kingdom was also found to lack credibility and reasoning is provided for that. Given the expense that would have been incurred in funding the journey to the United Kingdom, it is reasonable to expect that the appellants' families would wish to have kept in contact with them. It is not considered credible that no attempts had been made to contact the family in Iraq. However no particular comment as to the credibility or otherwise of FF has been made. It was his claim that the appellants simply arrived in the United Kingdom without his knowledge, armed with his telephone number and made contact with him. There is no particular finding as to whether that is or is not accepted by the Judge. Is it to be argued that so much expense was employed upon moving the three appellants to the United Kingdom on the pure off chance that they might happen to meet up with their sponsor or was it the case that that contact had been made? Indeed the question arises as to the credibility of the account that none of the appellants had any telephone numbers or points of contact with their own family having left Iran or indeed that FF had had no contact. Thus there being partial findings as to credibility but perhaps not as full as might have been required. The important consideration clearly is whether or not the appellant had family members to whom they can return.

12. I do find that credibility is not as clearly as expressed for reasons given and I find merit therefore in that challenge.

13. The second challenge being as to the issue of asylum. In that regard Mr Chakmakjian relies heavily upon the way in which matters are expressed in paragraph 58 of the determination, namely as follows:-

> "I accept that there is some objective evidence that ISIS uses child soldiers in Iraq and they are at risk from that organisation however, as I am not satisfied that they have had exposure to ISIS I do not uphold their claims".

He submits that that is a clear finding that, regardless of credibility, there is an acceptance based on the background evidence that the appellants are at risk from ISIS. Given the acceptance of that risk, the live issue is whether or not the appellants can relocate to another part of Iraq. In that connection the decisions made focused upon the possible return to Baghdad, as the appellants have no prior connection with

the AKR. It is conceded in the refusal letters that, if adequate reception arrangements cannot be established, then they qualified for limited leave to remain in the United Kingdom as an unaccompanied asylum seeking child. Mr Chakmakjian submits that there was a clear acknowledgement by the respondent that internal relocation was not possible; that in any event the appellants could not be returned under the policy. In those circumstances he submits that the ingredients for refugee status have been met and accordingly the Judge was in error in not awarding that status in the decision. Mr Wilding, on behalf of the respondent, invites me to read paragraph 58, of the determination in the light of paragraphs 56 and 57 and submits that that statement in paragraph 58 lacks a degree of clarity, particularly given the findings that the Judge has made. He also relies upon the preceding paragraph to that dealing with reception arrangements which provides as follows:-

> "Adequate care and reception arrangements should be available to the child, such as a family home where the child was cared for and has lived previously".

It was considered that there is a distinction between the Immigration Rules relating to adequate reception arrangements and the requirements for removal from the United Kingdom to take place. He accepts that the lack of adequate reception facilities is a powerful factor to be taken into account in assessing whether internal relocation is possible or is unduly harsh. Although family tracing was not employed in this particular case there was every reason, upon a proper analysis of the matter, for the Judge not to come to a conclusion that there were family and support available to the appellants.

14. As the case of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544** indicates on the question of ability on whether it would be unduly harsh on return, there needs to be a proper fact-sensitive analysis which was not conducted in this case at all by the Judge.

15. Mr Chakmakjian submits that it is entirely open to a Judge to reject the credibility of a specific account but nevertheless find there to be a general threat. He submits that there was, at the time of the hearing no mechanism to return, there was no analysis by the Judge required.

16. Although his arguments may seem to be attractive, the difficulty is to understand where the risk to the appellants can be properly focussed.

17. If for example there was a general risk of recruitment from ISIS but in this particular village or area there were no visits by ISIS and no attempts to recruit the appellants, it is difficult to understand what is the risk that they face. The test is of course one of a real risk and not simply a fanciful one. If the appellants have not had exposure to ISIS, on what basis can it be found that they face a realistic risk that in the future they will? It seems to me that it is important for the Judge to give reasons for that conclusion, if indeed that be his or her finding.

18. In terms of the analysis of the safety or ability to return is also the question of documentation as well as family and other support. None of this was conducted by the Judge.

19. The challenge was that the Judge erred in law in failing to consider the issue of humanitarian protection. Although the appellants had been granted leave to remain it was a requirement under **AA (Article 15(c)) Iraq CG** that the real risk upon return to Baghdad be analysed and decided upon at the time of the hearing and not postponed. In that regard the decision of the respondent also fell into error, as did the Judge. There is an acceptance by both parties that that is the proper challenge to be made.

20. Once again Mr Chakmakjian seeks to go further to persuade me that actually, on the facts of the case the Judge should have allowed the appeal on the basis of humanitarian protection. It was not in dispute that at the time there was a widespread risk of violence in Mosul and that a return to Baghdad could not be made on policy grounds. Once again it seemed to me that there had been no analysis by the Judge of the issue of return and no indication as to whether the returnees would be able to obtain civil identification (CSID or any detailed consideration as to the risk on returning to Baghdad).

21. The fourth challenge is to Article 8 and once again it is incumbent upon the Judge to make findings based upon the situation at the hearing. The fact that there is no immediate risk of removal is clearly a factor to be taken into consideration. The appellants are entitled to have their whole circumstances and situation considered as at the time of the hearing, reference to the support that they have in the United Kingdom as against the lack of support that they may have elsewhere should that be a finding that has been made.

22. In the circumstances I find that it is not inevitable upon the facts, as placed before the First-tier Tribunal at the hearing, for there to be the grant of asylum or humanitarian protection regardless of credibility although it is to be acknowledged that the factors in support of the grant of humanitarian protection were strong ones.

23. The point that of course is now made, in response to the challenge by the respondent ,is that the liberation of Mosul is a further avenue of return that was not present at the hearing itself. Such a return is not however part of the original decision of the respondent and would require in any event a fact-sensitive consideration.

24. In all the circumstances I find that the decision should be set aside and that it should be remitted to the First-tier Tribunal for a de novo hearing with no findings of fact preserved.

25. No doubt the First-tier Tribunal will give such directions as is considered to be appropriate, including updated background evidence. It may be desirable in these circumstances to have a full skeleton argument submitted as to the issues of asylum

and humanitarian protection that have been canvassed. It may be that it is also for the respondent to grapple with the issue of humanitarian protection in the light of dealing with return as at the date of hearing and not upon the expiry of discretionary leave.

26. In that regard I direct that the hearing before the First-tier Tribunal should be listed as soon as possible so that none of the appellants lose the protection that they currently have of their discretionary leave and their minority status. One will become 18 in May 2018 and his discretionary leave will expire when he is 17½. It seems to me to be fundamentally unfair to delay matters so as to deprive the appellants of that advantage which they enjoyed at the hearing, which was a proper factor which should have probably been taken into account at that hearing.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 18 September 2017

Upper Tribunal Judge King TD