Case No: C5/2008/0995

Neutral Citation Number: [2008] EWCA Civ 923
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No. AA/09448/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 9th July 20008

Before:

LORD JUSTICE TOULSON

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Between:

AA (IRAQ)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Mr B Ali (instructed by Messrs Aman) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED

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Judgment

(As Approved by the Court)

Lord Justice Toulson:

1. This is a renewed application for permission to appeal against a decision of Immigration Judge Vaudin d'Imecourt dismissing on stage 2 reconsideration the appellant's appeal against the refusal of his claim to remain in the UK on asylum, humanitarian and human rights grounds.

2. The appellant is a citizen of Iraq and a Sunni Muslim. He was born on 26 March 1974. He left Iraq in June 2007 with an agent, travelling through Turkey and overland to the UK. He claimed asylum on 26 June 2007. His application was based on his claim to have a well-founded fear of persecution at the hands of the Shia militias in Iraq as a result of his connection with his father, who was a prominent general in the Saddam Hussein regime and had been a member of the Ba'ath party since its inception. The appellant claimed to have been kidnapped by the Shia militia from outside his house in Baghdad and to have escaped from them. It was then that he decided to leave Iraq and come to the UK. It was accepted that he would be at risk, because of his connection with his father, in the Baghdad region; the only live issue was whether there were other parts of Iraq to which he could properly and reasonably relocate. The judge found that there were. His conclusion is attacked on, broadly, two grounds. First, that he misdirected himself as to the appropriate test in law and, secondly, that he failed to give proper attention to the material evidence, and in one respect took into account matters that he should not have taken into account.

3. As to the first point, the judge directed himself as to the law by reference to the cases of Januzi v SSHD [2006] UKHL 5 and SSHD v AH & Ors [2007] UKHL 49 in paragraphs 47 and 48 of his determination. In paragraph 47 he said that the principles in the case of Januzi might be summarised as follows:

> "The test for whether it would be unreasonable for an asylum seeker to relocate to a safe haven within his own country is not whether the quality of life there fails to meet basic norms of civil, political or socio-economic human rights, but whether he would face conditions, such as utter destitution or exposure to cruel or inhuman treatment, threatening his most basic human rights."

4. It is submitted that he there seriously misstated the law. The test was not whether the suggested place of relocation would expose him to utter destitution or to cruel or inhuman treatment. This would be setting the bar far too high. This submission is based on taking that sentence from the judgment which I have read, without regard to the passage in the judgment which follows, and placing a particular interpretation on that sentence which is inconsistent with the passage that follows. There is nothing wrong in the statement that the test is not whether the quality of human life fails to meet basic norms of civil, political or socio-economic human rights. Expressions to that effect are to be found in Januzi. Nor, properly interpreted, is there any

objection to saying the question is whether he would face conditions threatening his most basic human rights. It depends what is meant by that. It would be wrong if that were interpreted in the sense of being restricted to exposure to utter destitution or cruel or inhuman treatment. A person's fundamental rights are not to be so circumscribed. But the judge made this perfectly plain in his direction to himself when in the next paragraph he continued by saying:

> "The test to determine whether internal relocation was available was the test set out in Januzi, namely, that the decision-maker should decide whether, taking account of all relevant circumstances pertaining to the claimant and his or her country of origin, it would be reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him or her to do so."

5. He also added it was an incorrect formulation of the test in Januzi to equate unreasonable or unduly harsh conditions in the place of intended relocation with a real risk of inhuman or degrading treatment or punishment within the mean of article three of the ECHR. So when one reads the entirety of what the judge said, I see no real prospect of this court being persuaded that the judge materially misdirected himself in law. As to his factual conclusion, the basis on which the appellant faced a potential risk in the Baghdad area because of his association with his father was not because in Iraq there is a general persecution of the families of former Ba'ath party members, but rather because family members may find themselves caught up in reprisals against former Ba'ath party members. The kidnapping of the appellant himself in Baghdad was not found to have been part of some general attempt to carry out reprisals on families of Ba'ath party members, but was because he might know his father's whereabouts. The immigration judge dealt with this in paragraph 62 of his determination where he said:

> "I bear in mind that family members of former Ba'ath party members are generally in danger as a result of the party member being targeted for revenge and not personally. I find that this is exactly what has happened in the present case. The appellant was not targeted for his personal views but because it was thought that he might know his father's whereabouts. I also note from the evidence before me that the appellant has said that he has had no communication with his family since departing from Iraq. Indeed his evidence was that his brother had remained in Baghdad where he continued to work from home."

6. So, in considering the possibility or the reasonableness of expecting the appellant to live in some other part of Iraq, the starting point was to identify what was the source of the risk which he might face, and the judge did so. He

referred to some objective material. He noted in paragraph 54 that the main Sunni insurgent groups are concentrated in the governance of Al-Anbar, Baghdad, Ninawa and Salah ad Din. He noted that the capital of Al-Anbar was Samarra where, according to the appellant's evidence, his mother had gone. The judge is criticised for having carried out his own researches on Google about Samarra. He noted that it was described as a city in central Iraq with about 200,000 inhabitants. It was a trade centre, and he inferred that the appellant would be able to get work there. There is validity in that criticism: a judge should not do research on his own, however tempting it may be. If he thinks that something more is needed he should notify the parties, and if he does -- which he should not -- make his own enquiries he should tell the parties what he has done so that they can comment. But there is no suggestion in this case that Samarra is not the centre or the capital of Salah ad Din or that the information about it having 200,000 inhabitants in 2002 was incorrect, and there is no specific evidence to suggest that what he said about it being a local trade centre was wrong, although my attention has been drawn to a more general statement to the effect that there is a high level of unemployment in a number of provinces, including Salah ad Din.

7. The judge noted that the appellant was fit and in good health. In the first adjudication it was noted that he had computer skills. The judge concluded at paragraph 68:

> "Given the appellant's age, good health and qualifications, I have little doubt that he would be able safely to relocate in either Samarra or in one or other of the cities in the province of Al-Anbar which is dominated by Sunni Arab tribes, who are if anything opposed to the new regime and against what one may call the invading forces and where it is likely that former supporters of the former Ba'athist regime are to be found. It is not likely that in those areas, either the appellant's father's name or the fact that he was a founder member or initial member of the Ba'ath Party would cause the appellant to be at risk of any reprisals from Shiite militia. Nor could it be said, applying the decision in the case of AH and Januzi, that it would be unreasonable to expect a young man such as the appellant to seek internal relocation in one or other of those areas."

8. It was a careful and thorough determination. The criticisms made of it are in my judgment essentially criticisms of fact -- complaints that the judge attached too much weight to this bit of evidence and failed to attach sufficient weight to another piece of evidence. But the criticisms, in my judgment, fall far short of establishing an arguable case that there was any error of law by the judge. The conclusions that he reached were open to him on the material before him and accordingly this renewed application for permission to appeal is refused.

Order: Application refused