

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2011 No. 395 J.R.]**

**BETWEEN**

**S.S.F. AND H.H.A.**

**APPLICANTS**

**AND**

**PAUL CHRISTOPHER SITTING AS THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENTS**

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2009 No. 1100 J.R.]**

**BETWEEN**

**Q.S.S. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND S.S.F.)**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND MICHELLE O’GORMAN SITTING AS THE REFUGEE APPEALS  
TRIBUNAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice McDermott delivered on the 21st day of August, 2014**

1. These cases involve three members of an Iraqi family who seek to have determinations made against them by the Refugee Appeals Tribunal quashed and remitted for rehearing. The first set of proceedings (Record No. 2011/395JR) concern the parents of the family S.S.F., a former medic in the Iraqi army and H.H.A., his wife. The second (Record No. 2009/1100JR) concern their son, Q.S.S., who was a minor at the time the proceedings were initiated: the parents and child were separately represented. The parents married in 1967 and lived in Baghdad for 35 years. They are Shia Muslims and had a family of six children, consisting of 5 sons and 1 daughter. Their daughter is now a Swedish citizen and resides there with her husband and four children. They do not know the whereabouts of three of their sons, H., A. and K. Two other sons, J. and Q. came to Ireland with them.

2. The family arrived in Ireland on 8th September, 2006, having travelled through Turkey and France using a trafficker for a fee of \$15,000.00.

3. The parents made an application for asylum on 14th November, 2006. A separate application was made on behalf of Q.S.S. on 20th September. All three applicants claim asylum in this jurisdiction on the grounds that if returned to Iraq they will suffer persecution from Sunni Muslims as a result of their Shia Muslim faith. They also claim that their lives will be in severe danger arising from the fact that their son K. worked as an interpreter with the United States Army. The parents claim that the health care available in Iraq is insufficient to meet their needs when compared to Ireland. They each suffer from documented medical conditions.

4. The relevant questionnaires were completed in the course of the applications for asylum and s. 11 interviews were carried out with the parents on 18th October, 2006, and with Q.S.S. on 3rd March, 2007. All three gave an account of threatening letters received by the family from the “Mujahideen Brigade” ordering them to leave the area in which they lived or they would be killed. One of their neighbours also received such a threat and having reported it to the police in Baghdad, was subsequently killed. Two letters were received, the first on 15th August, 2006 and the second on 22nd August. The father, S.S.F., reported the first letter to the police who, he alleged, advised him to go home and protect himself as the police were having difficulty enough protecting themselves. The second letter was also reported to the Baghdad police and a Magistrate, but no action was taken and as a result, fearing for their own and their children’s lives, they left Iraq.

5. There was no reference in the two threatening letters to K., and his work as an interpreter for the American Army. However, S.S.F. stated in his s. 11 interview that he told the police that his son was working with the Americans following which they received the second threatening letter. He was satisfied that the letters and the threats were linked to his son’s work. He stated that locals had informed his son, H., to tell his brother, K., to stop working with the Americans. On one occasion having left the American camp K. was stopped and searched by men looking for a translator’s job card. K. was aware of the risk of carrying his card, and not finding one the two men threatened that if they found him in the area again he would be killed.

6. H.H.A. in her s. 11 interview described how her family was under siege for five days and the neighbours were calling them traitors for helping the Americans. She believed that the people who were threatening her and sent the letters were Sunnis or former

Ba'athists. She described how a threatening letter had been thrown from a car which drove past the house. They were told to leave their home or they would be killed. She added "they threw a grenade into the front garden of our house and the windows were broken". S.S.F. in evidence to the Tribunal stated that the family home had not been targeted in a grenade attack, rather a grenade had exploded some distance down their street in a random attack. In evidence, H.H.A. stated that the grenade was thrown into their rear garden but when it was put to her that this contradicted her account at interview, she stated that they had no back garden at the family home. This was identified in the Tribunal decision as a contradiction which undermined the credibility of their story.

7. The parents stated that three of their sons H., A. and K. left the family home in Baghdad approximately two days before their own departure, as an immediate consequence of the threatening letters, but in particular, the threat to K.'s life. Two of the sons were married and living in the family home. The father said that he had no discussion with his three sons, who are adults, as to where they might go. The father presumed that they intended to travel to Syria or Jordan, but did not ask about their plans or arrange a means of staying in contact with them. He now believes that they were killed en route to wherever they were going.

8. Q.S.S. who was born on 4th February, 1992, and was fourteen at the time of his application for asylum, is the youngest child of the family. His claim was based on the same facts as those set out by his parents. However, he gave further details about the nature of the persecution which he said he suffered in the course of his secondary education. He claimed that he was the target of life threatening events and hazards. He suffered discrimination at school where he was bullied and verbally abused, tormented physically and mentally by other pupils and gangs within the school who hated him because he was a Shia. He was assaulted inside and outside the school. The school administration did nothing about this harassment and tolerated and encouraged it. However, he acknowledged that the teachers did not participate in it, and he did not complain about it to his parents or the school authorities: indeed, the only negative encounter he had with his teachers concerned his failure to apply himself to his studies. He witnessed a number of bomb attacks on schools, including one which killed three pupils together with a large number of passers-by. He witnessed the killing of a pupil on her way to school. He became very fearful when outdoors and afraid that he might be killed.

9. The Refugee Applications Commissioner recommended that the applicants should not be declared refugees in reports issued under s. 13(1) of the Refugee Act 1996. It was concluded that the applicants had each failed to establish a well founded fear of persecution. The applications were considered separately by different officials. The mother's decision was given on 8th November, the father's on 8th December, 2006, and the son's on 17th January, 2007. The decisions were appealed to the Refugee Appeals Tribunal by notice of appeal dated 15th January, 2007 for the parents and 15th February for their son.

10. In the course of the appeal a number of other events were referred to as evidence of continuing risk of persecution. The applicant claimed that his brother who lived in another area of Baghdad went to the applicant's home after it had been bombed and was shot by unknown terrorists in 2010. A death certificate indicating that his brother died as a result of gunshot wounds to the chest and lung on 12th January, 2010 was submitted. The house had been bombed some three years before his brother's killing. The father contended that his brother had been shot as a result of mistaken identity in that the unknown terrorists thought they had shot him.

11. The father also claimed that a third threatening letter had been sent after the family left Iraq which had been found by a neighbour and posted to him. This letter linked the threat to the family with K's work with the United States Army. He claimed that this neighbour had the keys to their house and acted as a caretaker, but he had lost contact with him since the house was bombed in 2007. It was noted by the Tribunal that in the s. 11 interview the father stated he did not have time to lock the house before he left, and it had been empty when his neighbour called and found documents which he later posted to the applicant. At the oral hearing the father stated that his neighbour had keys to their house and acted as caretaker. In addition, it was said that the same neighbour forwarded further documentation concerning vehicle registration and weapons licences, though the father maintained that he had had no contact with this neighbour since 2007.

### **Tribunal Decisions**

12. Oral evidence was heard from each of the parents on 24th March, 2011, by the Tribunal and each parent relied on their own evidence and that of the other in their respective appeals. The same tribunal member determined the parents' appeals and delivered decisions in respect of each on 11th April, 2011. A different tribunal member determined the son's appeal on 29th July, 2009, following an oral hearing on 6th April.

### **Parents' Decision**

13. In the father's decision, the tribunal member having summarised the family's claim concluded that he was not satisfied as to the father's credibility because his evidence "just ran contrary to commonsense and was implausible and on other occasions his evidence was contradictory". A number of examples were set out in the decision:-

(a) The Tribunal found that the father could not provide details to the Commissioner or the Tribunal identifying those who targeted his family in the letters, apart from the fact that they were signed by the "Mujahideen Brigade". He could not identify which sect was persecuting him on religious sectarian grounds.

(b) It was noted that though an attempt was made to link the threats against the family to his son's translation work with the United States Army, there was no mention of this work in the letters presented: though clearly there is such a reference in the third letter submitted.

(c) The contradictory features of the account of the father's contact with his neighbour referred to above were highlighted.

(d) It was noted that his brother's death certificate was submitted in early 2010, along with driving and weapons licences. It was claimed that the father had lost contact with the neighbour who had sent him documentation in 2007. However, he had been informed of his brother's death by another neighbour who forwarded the death certificate. It was then stated that the original neighbour forwarded the documents concerning vehicle registration and the weapons licence. The Tribunal concluded that this contradicted the earlier contention that he had lost contact with the first named neighbour since 2007.

(e) The Tribunal noted that his three other sons did not leave Iraq with other members of the family, notwithstanding the fact that K., in particular, had been targeted for persecution because of his work with the United States Armed Forces. Furthermore, the father stated in his s. 11 interview that they had not left Iraq as one was in education and the other two were married. In addition, it was noted that the father's siblings continued to live in the same district in Baghdad as the applicant despite the claim that the family was being targeted on sectarian grounds. It was concluded that this tended to undermine his contention of having a well founded fear of persecution.

(f) The Tribunal noted the difference between the father's evidence and that of his wife concerning the purported grenade attack on their home.

(g) The Tribunal also concluded that it was inherently incredible that the applicant did not have a conversation with his three sons about their intentions or proposed destinations before they fled the family home, or that they did not make some plans to remain in contact.

(h) The Tribunal concluded that the father's claim that terrorists stopped his son, K., and searched him but when they did not find a translator's card let him go, contradicted his assertion that they would kill his son, K., and his family because of his employment as a translator.

(i) The Tribunal also concluded that it could give little weight to the copies of personal documentation submitted by the applicant because of the unsatisfactory nature of the evidence as to their provenance and his dealings with his neighbour.

The Tribunal was, therefore, satisfied that the parents were not credible. The Tribunal also considered country of origin information which, it concluded, was to the "general effect that people working for the United States Armed Forces are at possible risk from terrorists in Iraq". However, because of the inherent lack of credibility of the account given by the applicants, the general thrust of that information did not affect the decision ultimately reached by the Tribunal. The Tribunal rejected both appeals.

### **The Son's Decision**

14. Father and son gave evidence at the oral hearing which is summarised in the decision. The decision was delivered by a different tribunal member to that concerned with the parents' case. The applicant's father gave evidence at the oral hearing that it was his decision that the family should split up and leave the home separately. His three sons left before him and the others because he had been waiting to hear from a trafficker concerning the rest of the family's travel arrangements. The tribunal member concluded that it was implausible that the applicant's brothers did not indicate to their family where they intended to go, considering the difficulties and threats the family faced, the fact that they had lived in the family home as a unit and that it had been their father's decision that the family should split. Documentation submitted was not capable of verification. The Tribunal noted that the death certificate in respect of the father's brother had no medical cause of death inserted in the relevant columns and gave the applicant's home address as the residence of his cousin to whom the certificate was issued. The son's claim was also rejected for lack of credibility.

### **Relocation**

15. In all three decisions it was concluded that relocation was an option, because the Shia community was in the majority and there were identifiable sections of Baghdad to which the family could have relocated in relative safety.

### **The Challenge to the Parents Decision**

16. The parents submit that the Tribunal failed to consider an important part of their case, namely the fact that their son, K., had been employed as a translator for the American Armed Forces since in or about August, 2004 with the United States 9th Cavalry and the documents submitted from the American Army to that effect. The documentation included a reference which verified that K. carried out numerous duties translating for patrols, interviewing Iraqis and reliable informants. This documentation was not part of the material later sent from Iraq, the provenance of which was questioned by the Tribunal. It was submitted by Mr. F. at the outset of the application. Indeed, the authenticity of the documents was specifically accepted in the s. 13(1) report which was adopted by the Tribunal. There was no suggestion that the person referred to in the documentation was other than the applicants' son, K. The country of origin information indicated that interpreters and their families were at risk from those opposed to the American presence. The Tribunal correctly noted that Mr. F. stated in his s. 11 interview that K. and his two sons did not leave Iraq with him, as one was in education and the other two were married. He was unsure whether they planned to leave Iraq. This was of particular importance when juxtaposed with a further finding based on Mr. F's account that he did not have a conversation with his three sons before they left Iraq, and that they gave no indication of their proposed destination and that no plan was made to renew contact with them. The three sons did not indicate an intention to leave Iraq when their father and mother decided to leave. This suggested, particularly in the case of K., who had been the main focus of the alleged threats that they did not have a well founded fear of persecution on religious grounds or on the basis that he was employed by the Americans. Mr. F. later said in evidence that he did not think to ask his sons about their proposed destination. He presumed that they had gone to Syria and Jordan, but did not know and believed that they may have been killed on the way. It is not for the court to consider as a court of appeal whether it would have come to the same conclusion as the Tribunal in relation to issues of fact. The court must consider whether the conclusions reached were unreasonable or irrational within the principles of *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701, which is a high threshold.

17. I am satisfied that the documents furnished in respect of his son's service with the American forces were considered by the Tribunal as part of the body of evidence available, in addition to sectarian based attempts to remove them from their area of residence. It was open to the Tribunal to consider all of the evidence including the steps taken by all members of the family in the face of such threats and to reach a conclusion in the round as to whether the applicants had a "well founded fear of persecution". I am not satisfied that the decision is fundamentally flawed on the grounds that the Tribunal failed to take account of K's service with the American forces or the documentation adduced in that respect, or that the conclusion reached in respect of the applicant's engagement with his sons in respect of their departure and the fact that they may have remained in Iraq was in any way unreasonable or irrational.

18. There was a misstatement in the body of the decision that the son's work for the United States Army was not mentioned in the threatening letters received by the family, and this is manifestly not the case, because the third letter does contain such a reference. However, that letter was one received after the family left Iraq and furnished much later. It was part of the documentation to which the Tribunal did not accord much weight because of the inconsistency which it perceived in the accounts of how later documentation was discovered, preserved and forwarded from Iraq; this it was entitled to do.

19. There were also differences in the accounts furnished concerning the alleged grenade attack on the house: the father believed it to be a random event which happened further down his street, but the mother thought it more proximate and that the grenade landed in the front garden (a reference to a back garden by her appears to be a simple error). Nevertheless, there was a conflict in recollection concerning this matter between the two which the Tribunal was entitled to take into account.

20. The court does not accept the submission that the issue of religious persecution was not considered by the Tribunal. It was plainly part of the evidence adduced in the course of the Tribunal hearing and was to the fore throughout the application for asylum. The parents account of how they and their Shia neighbours were being intimidated into leaving the area and that the initial two letters were directed to achieve that result for sectarian reasons is clearly included and considered as part of the applicants' case as

set out in the Tribunal's decision. It was satisfied that the assessment made in the s. 13(1) report, which examined the role of the Mujahideen Army and referred to the fact that the country of origin information stated that the Army sought to distance itself from sectarian insurgency in Iraq was accepted. The court is satisfied that the fear of religious persecution was fully considered by the Tribunal in reaching its decision.

21. There is no doubt that both applicants have developed medical conditions which must cause them and their family concern, but which are not of such a nature as to give rise to a Convention based ground for a claim for refugee status.

22. I do not consider that the applicants have established substantial grounds to challenge the decisions of the Tribunal in their respective cases and I, therefore, decline to extend the time for the bringing of their applications or to grant leave to apply for judicial review. The applicants have not established an error of law such as to vitiate the decisions made by the Tribunal or good and sufficient reason for the extension of time sought. They retain their respective rights to apply for subsidiary protection and humanitarian leave to remain in the state.

### **The Son's Challenge**

23. This challenge is made some 19 days outside the 14 day period required under s. 5(1) of the Illegal Immigrants (Trafficking) Act 2000. The relevant criteria set out in *De Roiste v. Minister for Defence* [2001] 1 I.R. 208 and *G.K. v. Minister for Justice and Law Reform* [2002] 2 I.R. 418, must be applied, as they were to the parents' case, and the court must consider whether good and sufficient reason exists for extending the period. The court may consider, *inter alia*, whether the claim is based on substantial grounds.

24. A challenge is made to the credibility findings in the son's case (grounds E(i),(ii),(vii)). It is claimed that the findings of fact are irrational and unreasonable. The court must consider the claim separately from that of the parents not least because it was decided by a different tribunal member. However, it is clear that both the asylum claim and the reason for its rejection by the Tribunal bear close similarities to that of the parents' cases.

25. There are, however, a number of differences. Q.S.S. bases part of his claim in respect of persecution on religious grounds, on the manner in which he was bullied and repeatedly assaulted as a secondary school pupil; this included attacks inside and outside school, and killings and attacks which he witnessed on his way to and from school. He continued to attend because he wished to continue his studies and did not want to stay at home. His claim was also based on the same threatening letters and events outlined by his parents. Two letters were sent before he left on 15th and 22nd August, 2006, followed by a further letter which was forwarded to Ireland from Iraq and which (as noted above) referred specifically to K's work with the American Army.

26. As in the parents case, this tribunal member found that the account given as to how the three brothers left in advance of the main family party was implausible, particularly the fact that they left without giving any notice of their intended destination or potential contact details. The court is satisfied for the same reasons that this finding cannot be regarded as unreasonable or irrational.

27. The second matter dealt with by the Tribunal concerned violence and abuse suffered by the applicant at school. The Tribunal considered that, having regard to the appalling incidents witnessed by the boy when going to and from school and his unhappy and violent experiences while at school, it was difficult to believe that he would continue to attend for three years. It is particularly important that a careful examination of a minor applicant's case be carried out by the Tribunal. In this regard, it was assumed without drawing upon any evidence that children in those circumstances would be kept from school or not continue to attend school. Baghdad was clearly a city riven by sectarian strife and the applicant continued to attend a mixed Sunni and Shia school, notwithstanding the problems with which he was faced. No evidence regarding the continued operation of schools in Baghdad was advanced. There was no country of origin information on the matter. The determination of the Tribunal on this aspect was largely subjective and somewhat speculative. The applicant's strength in the face of adversity might be an equally justifiable conclusion. In that regard, it should be noted that the applicant's account of his school experience was treated as giving rise to grave issues in the s. 13(1) report and it was concluded that he may have or require support and assistance as a result. However, such experiences do not necessarily give rise to a well founded fear of persecution under the Convention. Thus, his account of bullying and general experience of schoolboy assaults going to and from school though not rejected in the s. 13(1) report was held not to be of such a nature or severity as to give rise to a Convention ground for relief.

28. It is clear that the applicant did not make any complaints to the school authorities or his parents, and that it was not offered as a reason for the initial flight from Iraq which was decided upon by his father because of sectarian threats in the letters and the threat to K. and the family. I am not satisfied that the conclusion reached by the Tribunal in respect of the school attendance issue could be regarded as so unreasonable or irrational as to vitiate the Tribunal decision. It was clearly reached by considering the evidence as a whole.

29. I am also satisfied that the Tribunal was entitled to have regard to the evidence adduced in respect of how the applicant and his family travelled to Ireland and why they failed to apply for asylum at Dublin Airport immediately upon arrival. I am not satisfied that a consideration and application of s. 11B(b) and (c) of the Refugee Act 1996 (as amended) gives rise to any substantial ground for relief.

30. The court does not accept the submission that the Tribunal erred in law in taking into account operational guideline notes as country of origin information. It is clear from the submissions made to the Tribunal that this material was relied upon by the applicant in the appeal to the Tribunal, and the Tribunal was invited to take it into account.

31. A complaint is made as to the manner in which the Tribunal considered previous decisions of the Tribunal. The Tribunal applied the appropriate principles as set out in *P.P.A. v. Refugee Appeals Tribunal* [2007] 4 I.R. 94, concerning previous Tribunal decisions. The Tribunal decided that by reason of the adverse credibility finding made in respect of the applicant's case that the previous decisions submitted were not of sufficient relevance to the appeal to warrant a decision in his favour. I am satisfied that the applicant has not established substantial grounds on this basis.

32. I am, therefore, satisfied that the applicant is not entitled to the relief claimed on the grounds advanced and furthermore, having regard to that fact and having considered the affidavit furnished in that regard, I am not satisfied that there is good and sufficient reason to extend the time for the making of this application.

### **Relocation**

33. The issue of relocation should it properly arise in an asylum application falls to be considered in accordance with the principles set out in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481. In that case Clark J. noted that there were a large number of

cases which consider relocation, notwithstanding the absence of a finding of fact that a well founded fear of persecution existed on the part of the applicants. The learned judge noted that the decision maker is really saying "if what you say is true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger". She considered that these findings were not, in reality, internal relocation alternative findings requiring adherence to Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006): rather, they were part of a general examination of whether the applicant had a well founded fear of persecution. The applicants' claims were rejected on credibility grounds. In accordance with K.D., I am not satisfied that the findings in respect of relocation were an appropriate exploration of relocation as an alternative to refugee status. The decision in each case is that the applicants' assertions that they had a well founded fear of persecution were not credible. I am, therefore, not satisfied that the applicants have established a substantial ground to challenge these decisions on the basis of the consideration of relocation.

34. For the reasons set out above, the applications are refused.