Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01444/2012
AA/01623/2012
AA/01622/2012

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Date Sent**
on 10 January 2014	**On 7 February 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

J S
HA
MD

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vokes, instructed by Coventry Law Centre
For the Respondent: Mr Mills, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

The Appeal

1. The appellants are citizens of Syria and are of Kurdish ethnicity. The first appellant is the mother of the second and third appellants who are her 16 year old daughter and her 15 year old son, respectively.

2. The appellants maintain that their rights under Article 8 of the ECHR would be breached if they were removed to Norway following a decision of the respondent to that effect dated 30 January 2012. The respondent proposes to remove the family to Norway under the Dublin II regulation as that is the country in which they first claimed asylum.

3. The matter comes before me to be re-made as a decision of Judge Aitken dated 26 December 2012 found that the determination of First-tier Tribunal Sacks disclosed an error on a point of law such that it should be set aside and re-made.

Background

4. The appellants left Syria and entered Norway in June 2009 and claimed asylum. At that time the family included two older children. Whilst the asylum applications were being considered HA was hit by a lorry in September 2010 and suffered serious head and neck injuries.

5. When the asylum claims of the family were refused later in 2010, immigration authorities went to the family home in December 2010. The appellants maintain that they managed to escape through a window but that the two older children were removed to Syria and have not been heard of since. The appellants then made arrangements to travel to the UK.

6. The first and second appellants claimed asylum in the UK on 1 March 2011. The third appellant, separated from the others during the journey from Norway, arrived in the UK in approximately July 2011 and also claimed asylum. When it became apparent that the family had already claimed asylum in Norway, the respondent put in place the procedures to remove them to that country under the Dublin II regulation.

7. The appellants maintained that they could not be removed to Norway as the first appellant had formed a relationship in the UK with a British man of Iraqi Kurdish origin. The appellants also objected to removal to Norway as they maintained that HA had suffered from physical and psychiatric problems after her accident, had not received adequate treatment, and was traumatised by the raid on the family home in December 2010 and forced separation from her older siblings. The respondent did not accept those arguments but recognised that they were not wholly without merit and afforded the appellants an in-country

right of appeal on human rights grounds under s.82 of the Nationality, Immigration and Asylum Act 2002.

8. In the appeal before First-tier Tribunal Judge Sacks, heard on 13 March 2012, the main argument for the appellants that JS was in a genuine relationship with her British partner and that the family could not be separated from him by being returned to Norway. Judge Sacks did not accept that the relationship was genuine. Judge Sacks also did not accept that the second appellant's medical problems amounted to circumstances that made removal to Norway disproportionate.

9. The first appellant subsequently married her British partner and it was evidence of that, amongst other matters, that led Judge Aitken in December 2012 to set aside the decision of the First-tier Tribunal.

10. A year has passed since then and circumstances have moved on. The first appellant does not dispute that her husband was living in Iraqi Kurdistan for most of 2013 and there is no prospect of his return to the UK. The reasons for his absence were stated to be the health of his mother and threats from the first appellant's family in Syria who objected to the marriage. Mr Vokes accepted that, whatever the reason for the husband now living abroad, it left little or no merit in the claim that the family should be able to remain in the UK on the basis of the relationship with the first appellant's husband. As he put it, the case really centred on the health of the daughter, HA, and her circumstances if she were returned to Norway.

My Findings

11. Before proceeding to an Article 8 assessment it is expedient to set out and explain my reasons for finding that there are serious credibility problems with much of the evidence in this case and indicate my view of the medical evidence concerning HA.

12. On arrival in the UK in March 2011 the first appellant avoided speaking of asylum claim in Norway and maintained that she had only recently left Syria. She stated that she had met her British partner in Iraq in 2007. She later changed this, stating that she had met him in Syria in 2004 and that he had visited her there on a number of occasions thereafter. This was then contradicted by her partner who stated that he only saw her in Syria in 2004 and then again in Norway in 2009.

13. Once the asylum claims in Norway came to light by way of fingerprint checks, it also became apparent that the family had lived there and claimed asylum in false names. No explanation for that has been provided at any time.

14. Further, on arrival in the UK the first appellant maintained that her first husband, the father of the children, had died in 2006. She later changed this to his having died in 2002. However, a medical report from 2010 from Norway referred to "Dad" living in another apartment, to one of the older siblings having "moved to her father's" and to the parents "have separated since coming to Norway". The first appellant also told the First-tier Tribunal that her husband had not travelled to Norway with her but had gone there "after me". These references to her first husband and the father of the children being in Norway as of 2010 have never been addressed or in any way explained by any of the appellants in their evidence.

15. The appellants maintain that when the immigration authorities in Norway came to detain them, the older siblings were taken away and removed to Syria but they managed to escape through a window. As above, the medical report suggests that one sibling was living elsewhere, with the father. If the older siblings were separated at that point, the appellants cannot know if they were removed to Syria or not, so that is merely speculation. In the context of the other unreliable evidence before me, particularly that concerning the father, I did not find that I could accept that there has been no contact with the older siblings since then or that they were removed to Syria.

16. The first appellant maintains in her witness statement dated 3 October 2010 that in 2012 one of her sisters in Syria obtained the death certificate of her first husband and she used this to demonstrate that she was free to marry her British partner. That death certificate has never been shown to the Tribunal, however, the first appellant maintaining that it was kept by the registry office. Where her marital history was clearly in dispute in these proceedings and she was legally represented, I found it adversely affected her credibility that she would not have kept even a copy of that document. It is merely her assertion that it was a death certificate that was taken by the UK authorities as evidence that she was free to marry her British partner. As above, the Norwegian medical report suggests that her first husband was alive in Norway as of 2010, seriously undermining the reliability of the death certificate the first appellant claims she obtained.

17. There is also the evidence that JS's British husband chose to leave her shortly after the marriage and go to live in Iraqi Kurdistan. It is her evidence (and it was his before the First-tier Tribunal) that they had wanted to be together for many years and that this was why the family had travelled from Norway to the UK. I did not find that to be at all compatible with his decision to live in an entirely different country from shortly after the marriage until now, not even returning to support the family in this appeal.

18. I also find it entirely incredible that the first appellant's British husband would have gone to live in Iraq on the basis of threats from the appellant's family in Syria. It is entirely unclear how such threats could be carried out where the family are in Syria, a country currently in desperate circumstances, and JS and

her husband were in Coventry. There is no suggestion that the alleged threats were reported to the police or that protection and assistance would not have been provided here had there been any substance to the threats.

19. The first appellant relied on a transcript of a telephone conversation with her husband in which he told her of the threats from her family. I did not find I could place any weight on that document. The first appellant has shown herself, as above, to be a seriously unreliable witness. She could have taped a conversation with anyone along the lines of that evidenced in the telephone transcript. Nothing before me indicates even to the lower standard that the person speaking to the first appellant was located in Iraq at the time of the call or was her husband. I did not find it at all credible that the husband would leave JS alone in the UK for an extended period without telling her the real reason for his departure, doing so only later in 2013 as a further appeal hearing approached. I found the appellant's claim that her British husband is in Iraq because of threats from her family to be entirely unreliable, indeed, to be a fabrication.

20. I set out these findings because it appeared to me that they showed that sufficiently unreliable evidence has been adduced as regards significant parts of the claim that any evidence put forward concerning HA's medical condition and the claims as to the circumstances of the family on return to Norway also had to be approached with caution.

21. It remains the case that there is some independent evidence of HA's medical problems. A Norwegian medical report from 2010 confirms her road traffic accident which caused head and neck injuries. However, the appellants maintain that HA did not receive adequate treatment in Norway and that everything had to be paid for. The medical report from Norway indicates this not to be so, with HA receiving ongoing outpatient treatment and investigation of her problems, the intention being for her to be assessed for special needs, to be observed by nurses and have regular blood tests and liaison with school over her fainting episodes. The appellants' claim that HA was not given painkillers is countered by the indication in the medical report that it was considered that HA was using them inappropriately and should discontinue them rather than there being a failure to provide her with necessary medication.

22. The level of treatment shown in the medical report is consistent with the country evidence on healthcare in Norway, a report from the Norwegian Knowledge Centre for Health Services dated 2012. This indicates that undocumented immigrants are only entitled to emergency acute care but these appellants have not shown that they would be treated as undocumented immigrants, however. The UK authorities know of the asylum claims in Norway because the family were registered there. They were given accommodation and the Norwegian medical report indicates that HA did receive ongoing outpatient care. The country evidence also shows that someone

of HA's age would receive free psychological care, the only treatment that she is currently accessing in the UK.

23. I accept that there is also evidence that HA has continued to experience difficulties since coming to the UK, albeit it is a variable and sporadic picture. A GP in Stockton-on-Tees stated in a letter dated 21 February 2012 that HA experienced anxiety and headaches. She had not reported threats of suicide or self harm but considered that she might act impulsively if steps were taken to remove her to Norway.

24. There is an A & E letter dated 22 February 2012 stating that HA was admitted at that time but nothing to indicate what that was for. A letter dated 13 March 2012 from as Consultant Clinical Psychologist at the Child and Adolescent Mental Health Service (CAMHS) in Stockton-on-Tees refers to HA experiencing anxiety and having ideas that police might come to deport her but that she was not "struggling with any mental health difficulties other than the anxiety described above" which related to her uncertain future. She was discharged from the service because of a lack of engagement.

25. There is then a medical report at page 32 of the appellant's bundle confirming that HA was admitted to A & E after an overdose of pills in October 2012. I have no information as to any follow-up to that admission.

26. The next evidence is in a letter dated 9 October 2013 from Ms Turner, a counsellor and nurse, who states that she had seen HA on four occasions. Her letter suggests that HA attempted suicide in Norway but this is not confirmed in the evidence from HA or her mother or any information from Norway. Ms Turner reports that the appellant continued to suffer from her experiences in Norway, both the accident and the removal of her siblings, and feared return there. Mr Turner considered that the appellant's threats to kill herself if returned to Norway should be taken seriously as she had already attempted suicide and appeared genuine.

27. It was not my conclusion that this letter could be taken at its highest, however. Ms Turner is not a qualified psychiatrist or psychologist. She had only seen HA four times at the time of writing. The letter is relatively brief and does not set out any objective medical or other criteria against which the seriousness of any threat of suicide or self-harm was assessed. It is therefore somewhat subjective and I did not find that I could place full weight on it.

28. An email from HA's school indicates that she became anxious in October 2013 as an appeal hearing approached. She behaved in an inappropriate manner and out of character, stating an intention to self-harm if she were returned to Norway.

29. In November 2013 HA saw an independent psychiatrist who prepared a report for these proceedings. HA told the psychiatrist of having nightmares of being chased by people with knives and being afraid of a police raid and of experiencing low mood. She was diagnosed with PTSD and a depressive disorder. The psychiatrist recommended an antidepressant and trauma-focussed Cognitive Behaviour Therapy. At the hearing, the first appellant stated that the latter treatment had commenced but that HA was not on medication.

30. The psychiatrist was asked to state whether HA's suicide threats were genuine but states only that "[t]hese thoughts should be taken seriously and should be treated on an urgent basis." He went on to state that "removal to Norway at this stage would have a massive negative impact on her mental health and behavioural adjustment. It is likely that it will trigger significant suicidal behaviour and personal pain."

31. I had some difficulty with this conclusion. The psychiatrist had a limited knowledge of and contact with HA. Nothing in the report indicates that self-harm or suicidal ideation was discussed with her at all so it was not clear to me how a conclusion of "significant suicidal behaviour" could have been reached merely on the basis of information from other reports. That is additionally so where some of the other medical evidence that was before the psychiatrist, particularly that of a CAMHS consultant who had seen HA more than once, stated that she did not have mental health problems. The GP in Stockton also stated that there were no ideas of suicide or self-harm. The information in those documents is not evaluated in the psychiatrist's report. Nor is HA's disengagement and discharge from CAMHS in 2012 and the absence of any actual self-harm since October 2012 despite the reported increase in anxiety in the autumn of 2013 as return to Norway became more of a possibility.

32. Further, no assessment is made of how HA would present if she were properly supported during her return to Norway or of how she could be assisted to deal with her problems once in Norway. It is not disputed that proper procedures to assist her during her removal from the UK would be put in place. The conclusion as to the risk of suicide was prepared without the information as to HA's father being in Norway as recently as 2010. The report is also based on an acceptance of the older siblings being forcibly removed and disappearing, something which is not accepted by me. Also, the report is very brief. There is almost no information as to what HA actually said to the psychiatrist. If it was merely what is recorded at paragraph 4 of the report, that cannot be sufficient to underpin the conclusions. There is no indication of how long the examination lasted or whether an interpreter was used.

33. In summary, I did not accept the evidence that HA would become suicidal or self-harm on return to Norway. I accept that she took an overdose of pills in October 2012 but that was well over a year ago and there is nothing to indicate

any other actual self-harm at any other time, even though she has had very little treatment in the UK. It is entirely understandably has some mental health problems following her difficult life experiences, certainly anxiety and a subjective fear of return to Norway where she was seriously injured and does not feel she was adequately treated. I did not find that it had been shown that she is currently at a serious risk of self-harm either in the UK or on removal to Norway, however.

Article 8 ECHR

34. The parties were in agreement that the provisions of the Immigration Rules in force from 9 July 2012 onwards did not apply to this appeal. I referred to the questions identified as relevant in Article 8 cases which were set out by Lord Bingham in paragraph 17 of the judgement in the case of Razgar [2004] UKHL 27, as follows:

> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well- being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
>
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

35. The issue of family life is not greatly engaged here as the appellants will be removed together. There was no dispute that the appellants have a private life in the UK as they have been here for nearly 3 years. The children are in school and HA has received treatment set out above.

36. No dispute arose as to the next three Razgar questions being answered in the appellant's favour and the advocates properly focussed the remainder of their submissions on proportionality and the important part played by the best interests of the children in this matter.

37. I first considered the best interests of the second and third appellants. I referred to the guidance provided in ZH (Tanzania) v Secretary of State for the Home

Department [2011] UKSC 4. I also referred to MK (best interests of child) India [2011] UKUT 00475 (IAC) in which the Upper Tribunal held that:

(i) The best interests of the child is a broad notion and its assessment requires the taking into account and weighing up of diverse factors, although in the immigration context the most important of these have been identified by the Supreme Court in ZH (Tanzania) [2011] UKSC 4, the Court of Appeal in AJ (India) [2011] EWCA Civ 1191 and by the Upper Tribunal in E-A (Article 8 –best interests of child) Nigeria [2011] UKUT 00315 (IAC);

(ii) Whilst an important part of ascertaining what are the best interests of the child is to seek to discover the child's own wishes and views (these being given due weight in accordance with the age and maturity of the child) the notion is not a purely subjective one and requires an objective assessment;

(iii) Whilst consideration of the best interests of the child is an integral part of the Article 8 balancing exercise (and not something apart from it), ZH (Tanzania) makes clear that it is a matter which has to be addressed first as a distinct inquiry. Factors relating to the public interest in the maintenance of effective immigration control must not form part of the best interests of the child consideration;

(iv) What is required by consideration of the best interests of the child is an "overall assessment" and it follows that its nature and outcome must be reflected in the wider Article 8(2) proportionality assessment. Consideration of the best interests of the child cannot be reduced to a mere yes or no answer to the question of whether removal of the child and/or relevant parent is or is not in the child's best interests. Factors pointing for and against the best interests of the child being to stay or go must not be overlooked; and

(v) It is important when considering a child's education to have regard not just to the evidence relating to any short-term disruption of current schooling that will be caused by any removal but also to that relating to the impact on a child's educational development, progress and opportunities in the broader sense.

38. The appellants maintain that it is in the best interests of the children to remain in the UK rather than going to Norway. It was my conclusion that the evidence on this question did give a definitive answer. As above, the evidence as to HA becoming suicidal or self-harming if returned to Norway was not particularly strong. The suggestion that she would not receive treatment or adequate treatment is not supported by the evidence before me. The country evidence suggests that HA would be able to received free CBT, a treatment similar to the only treatment she is currently receiving in the UK. I have set out the evidence above suggesting that her father may be in Norway, a presumably positive

factor. She and MD will be returning with the current family unit intact. HA and MD refer to more limited educational facilities for asylum seekers in Norway and to experiencing racism there. I had no independent evidence of limited or inadequate education facilities for immigrants in Norway or of the number of racist incidents there. Without such evidence I did not find that these could be taken to be significant factors as regards whether the children were in the UK or Norway.

39. I accept that the appellants all have a subjective belief that their lives are better in the UK, however. The children have stated clearly that they do not want to go there and I accept that they will have bad memories of HA's accident and experienced life as being more difficult for them in Norway. I accept that their reluctance, whether well-founded or not, tips the balance minimally in favour of the children's best interests being in remaining in the UK.

40. I must therefore weigh this assessment of the children's best interests as a primary factor when assessing whether the decision to return the family to Norway amounts to a disproportionate interference to their private lives. I have found that it is only by a small margin that children's best interests lie in remaining in the UK. That must be weighed against the public interest in maintaining an effective immigration system which requires the family to pursue their asylum claims in the European country in which they first arrived and made those claims. Where Norway has accepted responsibility for the family, it must weigh heavily against the public interest for the UK to continue to maintain and accommodate them and educate the children. They have not claimed to have any particularly strong links to the UK now that the first appellant's husband is in Iraq. Norway is a developed country with adequate healthcare, asylum, education and other systems in place. The family are familiar with the country to some extent, having spent over a year there even if they have spent approximately 3 years since then in the UK. There is no suggestion that the family would be refouled from Norway to a country where they would face serious harm.

41. It was therefore not my conclusion that the decision to remove the family to Norway amounted to a disproportionate interference with their private lives.

Decision

42. **The appeal is dismissed.**

Signed: 
Upper Tribunal Judge Pitt

Dated: 28 January 2014