



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

Appeal Number: PA/02564/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1<sup>st</sup> December 2017**

**Decision & Reasons  
Promulgated**

**On 22<sup>nd</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**SRWA [A]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Alam (instructed by The Law Partnership Solicitors)

For the Respondent: Ms Z Ahmad (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of First-tier Tribunal Judge Geraint Jones promulgated on 25<sup>th</sup> April 2017 following a hearing at Hatton Cross on 11<sup>th</sup> April 2017. The case was a protection claim by an Iraqi citizen, a woman born in 1991. She arrived in the UK in September 2016 and claimed asylum upon arrival. The Secretary of State refused the application in a

decision of February 2017 and it was the appeal against that decision which came before the judge.

2. The claim was based on a fear of ISIS or Daesh on the basis that her father, who had been a doctor working with the Peshmerga, had been kidnapped and, it was believed, killed in February 2015 and that her brother was also killed. She claimed that threats had been received by her mother threatening her and her mother and that she would be at risk from ISIS upon return. Additionally, she has a husband in the UK who is now a British citizen and she wanted to remain with him. By the time of the hearing before the judge in the First-tier Tribunal she was pregnant.
3. The judge dismissed the appeal on all grounds and permission to appeal was granted by a judge of the Upper Tribunal on the basis that arguably the judge failed to make reasoned findings relating to credibility and the facts based on the evidence before him in the round but rather started from a position that the Appellant had sought to flout the Immigration Rules of the country. The judge granting permission referred also to unfortunate wording in the Decision and Reasons and found it arguable that the judge had made irrational and unclear findings as to the nature of the marriage. Further it is said in the grant of permission that the Tribunal failed to attach any weight to the fact that the Secretary of State accepted that the Appellant's father had been kidnapped by Daesh.
4. I have read the Decision and Reasons with care and I agree that it is tainted by material errors of law. A reading of the Decision and Reasons gives the distinct impression that the judge had prejudged the case and used most unfortunate wording including that the Appellant had decided to flout the immigration laws. Throughout the judgment the wording used by the judge is unfortunate and ill-advised such as at paragraph 9 where he says that "the Appellant did not then condescend to say, even approximately, when that phone call took place". He also says at paragraph 13:

"I am in no doubt that this appellant has sought to flout the immigration laws of this country in circumstances where she well knows that she could not gain lawful entry under the Immigration Rules and so has decided to take the law into her own hands, dressed up as a claim for asylum so that as she said at the very outset when interviewed at Luton airport, she can join her husband."
5. The judge later in the decision makes another ill-advised comment about the Appellant's husband when he says at paragraph 28: "I do not accept that any man worthy of calling himself a lady's husband would desist from accompanying her if she had to return to Iraq through Baghdad".
6. He says at paragraph 23(i) that the Appellant married her husband in an arranged marriage or a marriage of convenience. That particular finding is purely speculative and not based on any evidence and the judge gives no reason for it. The judge has failed to take into account a great deal of documentary evidence supporting the marriage, including the original

marriage certificate with a translation, the evidence of cohabitation in the United Kingdom and of course the fact that the Appellant was pregnant. There is no analysis of any of the documentary evidence.

7. Furthermore, in relation to the protection claim in relation to Daesh the judge has made no mention whatsoever of the fact that the Secretary of State accepts that her father was kidnapped by Daesh nor does the judge consider or make any findings in relation to the death certificate of the Appellant's brother which is also included in the file.
8. In short this decision reads as though the judge has decided before hearing the case and without consideration of the documentary evidence that he is going to dismiss it. His decision cannot stand and must be set aside in its entirety. It is appropriate given the findings that need to be made that it should be remitted to the First-tier Tribunal for a full rehearing. The appropriate hearing centre is Hatton Cross.

### **Notice of Decision**

The appeal is allowed to the extent that the First-tier Tribunal's Decision and Reasons is set aside and the case remitted to the First-tier Tribunal for a full rehearing.

No anonymity direction was requested and none is made.

Signed

Date 19<sup>th</sup> February 2018

Upper Tribunal Judge Martin