



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06429/2017

THE IMMIGRATION ACTS

Heard at Field House
On 8 May 2018

Decision & Reasons Promulgated
On 17 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MRS TAVGA MOHAMMED AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sesay, Solicitor instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Khan promulgated on 16 February 2018.
2. The appellant is a citizen of Iraq born on 5 February 1991. She entered the United Kingdom clandestinely and claimed asylum on 6 December 2016. I need not repeat her immigration history which is set out in the First-tier Tribunal Judge's decision. Her husband is a British citizen and they have two children, also British citizens, the first is now aged 3 and the second is some 7 months.

3. The appeal was dismissed under the Immigration Rules, under Articles 2 and 3 of the European Convention on Human Rights, and on humanitarian protection grounds.

4. Mr Sesay, on behalf of the appellant, has helpfully placed his oral submissions under two discrete heads. The first matter turns on paragraph 59 of the decision which reads as follows:

“In order to qualify under Article 8 of the ECHR, the appellant has to show that she can meet the financial requirements of the Immigration Rules. The appellant has not provided any evidence to show that she can meet the financial requirements”.

5. Mr Sesay says this is an incorrect statement of the law and Mr Jarvis who acts for the Secretary of State concedes that the statement is not strictly accurate. However, Mr Jarvis says that if one reads paragraph 59 in context, it is clear that what the judge is intending to address is the “Chikwamba situation” of whether appellants can demonstrate that they meet the requirements of the Immigration Rules. Were that to be the case, then there might be an argument that if the Rules could be met and an entry clearance application from overseas would almost inevitably succeed, then the pendulum of the proportionality analysis might swing in that person’s favour.

6. I think Mr Jarvis is right as to the issue at paragraph 59 was intended to be directed. It is clumsily and inelegantly worded, and that is unfortunate, but I do not consider it to constitute a material error of law because the judge nonetheless goes on to deal with the proportionality assessment weighing the various interests concerned.

7. The second ground is put by Mr Sesay in a narrow compass. He submits that the judge did not properly turn his mind to the provisions of sub-section 117B(6) when looking at the statutory public interest criteria. This is put in the context of an allegedly failed proportionality assessment.

8. In paragraph 55 the judge says this:

“The appellant's second child was born on 20 July 2017 in the UK, she is now 6 months old. There is clear evidence in this case that there is [no] barrier for this family to enjoy their family life outside the United Kingdom. The husband in his evidence accepted that there are other oil companies in Iraq. He stated that he did not want to work away from home. I find that this is not a barrier in the way of family life continuing in Iraq”.

9. In the citation of that passage I have made one small amendment, shown in square brackets, of what I take to be a typographical error. The word “now” makes no sense when read in context and must, as I have indicated, be read as if it were the word “no”. In other words: “no barrier in respect of family life”. That is the only reading which is consistent with the thrust and context of paragraph 55. Mr Sesay did at one stage urge upon me that I should read that sentence as: “there is now a barrier for this family”. Although this may make grammatical sense, it would not make sense in the context of

the paragraph due to the dissonance with the final sentence which expressly rules out the possible existence of any barrier to family life.

10. The judge's assessment is summarised in paragraphs 58 and 60.

"58. The appellant's husband and children are British citizens and therefore not subject to removal. However, there is no barrier for them returning with the appellant to Iraq in order to continue with their family life there. The appellant's husband and children do not have to return to Iraq, it is open to the appellant to return to Iraq and make an application for entry clearance in the proper way.

[...]

60. As for the appellant's private life, this has to be balanced with the respondent's right to exercise fair immigration controls. The appellant has lived in the UK for a very short period of time. She claims to have entered the UK on 3 October 2016. She has private life with her husband and her two children but this can continue in Iraq or if she chooses to return to make an application for entry clearance, there will be a very short disruption in the families private life. Her husband left Iraq with their son in August 2016 and the appellant remained in Iraq until October 2016. I find that as the family were able to cope with the short disruption they can do so whilst the appellant is waiting for the issue of her entry clearance".

11. Mr Sesay takes me specifically to Section 117B(6) which reads as follows:

"In the case of a person who is not liable to deportation, the public interest does not require the person's removal where -

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom".

12. The elder child here is only 3 years of age, was born and spent the early part of his life in Iraq. The second child is only some 7 months old. It is not proposed to remove those children. It is a matter for the parents whether they live together and whether their children live with mother or father. The father has chosen to work in this country. His evidence to the First-tier Tribunal was that he could seek employment in Iraq. Those are matters which doubtless the judge took into account.

13. The issue here is whether there was any material error of law on the part of the judge. There clearly was not. The judge has a wide discretion in assessing proportionality. In the fact-specific circumstances of this case, he came to a clear conclusion which was properly open to him and gave adequate reasons for so doing. The Upper Tribunal

cannot interfere with a judicial discretion properly exercised in the absence of an error of law. I am not persuaded that there is an error of law and this appeal must be dismissed.

Notice of decision

Appeal dismissed.

Signed *Mark Hill*

Date 15 May 2018

Deputy Upper Tribunal Judge Hill QC