Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08151/2017**

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision Promulgated**
On 3 May 2018	**On 11 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

MSII
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms N Patel, instructed by Lei Dat Baig
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Malik promulgated 10.10.17, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 10.8.17, to refuse her protection claim.

2. First-tier Tribunal Judge Pedro refuse permission to appeal on 24.11.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge McGeachy granted permission on 25.1.18.

3. Thus the matter came before me on 3.5.18 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.

5. In essence, the grounds assert that the judge erred by finding that the appellant's delay in claiming asylum damaged her credibility without considering the reasons she gave for delay. They also assert that the judge erred in finding the appellant would not face persecution on return, despite having accepted that she was pregnant when she made the application and that her child would be born outside wedlock.

6. In granting permission to appeal, Judge McGeachy considered it arguable that the judge failed to make a clear finding that the appellant is unmarried and was pregnant, and that he had not considered the implications of that on return to Iraq.

7. There is no merit in the ground in respect of the judge's reliance on delay. The delay the judge considered at [38I] was that relating to her awareness from childhood that she was to be forced into an arranged marriage. On arrival in the UK she would have been aware that it was time-limited and that she would have to return to Iraq. In those circumstances, it was open to the judge to conclude that she had ample opportunity to seek protection against the forced marriage a number of years before she did so. The explanation of the appellant relied on in the grounds is that she was not pregnant on arrival in the UK and, as NAS was still with her, believed she had time to persuade her family. That is a different matter and is not an adequate explanation for the delay referred to by the judge and addressed further at [38V].

8. With all due respect to Judge McGeachy, it is quite clear from [35] of the decision that the judge proceeded on the basis that the appellant was pregnant and unmarried. At [36] the judge noted the concession to that effect on the part of the Secretary of State. It cannot be said that there is not a clear finding as to this issue.

9. The only ground with any potential merit is the suggestion that at [3] of the grounds that even if the judge did not accept that the appellant was at risk on return based on her relationship, "*there was the further finding to be addressed in respect of A's treatment upon return as an unmarried female with a child outside of wedlock. This is a distinct and independent finding that required assessment because even if A's family did not accept her relationship there was a separate further risk posed to the appellant returning with a child outside of wedlock...The IJ's failings to make a finding on the risk on return to (Iraq) as a woman with a child outside of wedlock is a material error of law.*"

10. The child had not been born at the date of the appeal hearing, though she was pregnant out of wedlock. At [37] the judge recognised from the objective country evidence that 'honour' crimes are prevalent in the Iraqi Kurdish community, in the main perpetrated by male family members against women relatives, and that protection or support from the

authorities is limited. However, for the reasons set out under [38] in the decision, the judge reached the conclusion that the appellant had not provided a full or credible account of her claim and ultimately did not accept that she would be at risk on return due to her out of wedlock relationship with NAS, or at risk of a forced marriage, or at risk for an 'honour' crime for becoming pregnant outside of wedlock.

11. The reasons given by the judge were detailed and comprehensive, open to him on the evidence before the tribunal. In particular, at [38VI] the judge gave reasons for not accepting that the appellant's father, who had found out about the pregnancy, had threatened to kill her for that or any other reason. The judge also took into account that NAS had returned to Iraq and the same local community and that there were no reprisals against him or his family. In summary, no part of the appellant's claim was found to be credible. The judge thus concluded that "*neither (NAS) nor the appellant are at risk from her family for any of the appellant's claimed reasons and whilst she now says that they are no longer in a relationship, I find even to a lower standard, that this is contradictory, as she says NAS was happy about the pregnancy and called her from Iraq*."

12. Ms Patel urged on me that the judge failed to address the independent risk on return from the culture and society the appellant would be returning to, a risk as the member of a particular social group (PSG). However, the case was presented and pursued at appeal on the basis of a risk of honour killing by her own family, a risk the judge has found not proven even to the lower standard of proof.

13. Mr McVeety accepted that the judge did not address any specific risk on the basis of out of wedlock pregnancy or birth of a child arising from outside of the family but submitted that the omission was not material, as if the judge did not accept that there was any risk at all from members of her own family, and there was no specific evidence of any threat or risk from anyone outside the family, it was difficult to see from where any risk on return would emanate.

14. On the judge's findings, the appellant was not at risk from her father or anyone else within the family. This view was strengthened by the fact that NAS had returned to Iraq without any adverse attention, despite the appellant's family and in particular her father being aware that the appellant had become pregnant. It follows that the appellant would be returning with the support of her family and if that is the case, she had nothing to fear from them and every expectation that they would continue to support her and not permit any action against her. In this regard, the judge noted her claim that her father had power and influence in the community, which would surely be additional protection for her.

15. Whilst the skeleton argument submitted to the First-tier Tribunal alleged a "risk on return as a single woman at risk of honour killing," it does not appear from the record of the hearing that there was any focus on an independent risk outside of the family. That the judge was alert to this issue is clear from what is said at [37] and [23] of the decision, but as he

noted, honour killings are perpetrated by male family members on female relatives. Other evidence addressed how the authorities allegedly do not provide a sufficiency of protection, because they are regarded as "family issues." All of the evidence suggests that the relevant risk arose from the appellant's father or at the most the extended family. All the appellant's case had been about how she would not be able to survive or hide from her family on return, but that becomes unnecessary if in fact she has nothing to fear from her family. Honour killings are by their nature family-based, because of the shame becoming pregnant or having a child outside of wedlock supposedly brings on the person's family. If the judge did not accept, on the credibility assessment, that her father or any other member of the family would harm the appellant for becoming pregnant or having a child outside of wedlock, it is difficult to see where the risk arises or alternatively on what evidence the judge could properly have found such a real risk.

16. I am satisfied that all findings were properly open to the judge and for which cogent reasons have been provided. In all the circumstances, I am not satisfied that the appellant has demonstrated any material error of law in the making of the decision of the First-tier Tribunal.

Conclusion & Decision

17. The decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require it to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup