Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10497/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 5th January 2018	**On 26th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[K M]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Warren, Counsel
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on [ ] 1984. The Appellant claims to have left Iraq in July or August 2015, to have entered the UK illegally concealed in a lorry and was encountered by police on 16th December 2015 – claiming asylum on the same day. The Appellant's claim for asylum is based upon a fear that his father wishes to take his children off him and send them to his family and have the Appellant remarried. The Appellant asked to be recognised as a refugee on the basis that she had a well-founded fear of persecution in Iraq on the basis of her membership of a particular social group, namely single mothers in Iraq and due to the problems she

had experienced with her father and her husband's family. That application was refused by the Secretary of State by Notice of Refusal dated 16th April 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Durance sitting at Manchester on 22nd June 2017. In a decision and reasons promulgated on 5th July 2017 the Appellant's appeal was dismissed. Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended:-

   (i) That the judge had failed to deal with the question of Article 15(c)/humanitarian protection.

   (ii) That the judge had failed to consider the best interests of the children as he has a statutory duty to do by virtue of Section 55 of the Borders, Citizenship and Immigration Act 2009.

   (iii) That the judge made findings of fact in relation to the asylum claim that were not open to him on the evidence.

   (iv) In coming to the conclusion that the Appellant could relocate to the IKR the judge gave inadequate consideration to the factors relevant to the conclusion that the Appellant and her three children could reasonably relocate there.

3. On 2nd October 2017 Deputy Upper Tribunal Judge Chapman sitting as a Judge of the First-tier Tribunal granted permission to appeal. On 6th November 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Miss Warren. Miss Warren is familiar with this matter. She appeared before the First-tier Tribunal and she is also the author of the Grounds of Appeal. The Respondent appears by a Home Office Presenting Officer, Mr Bates.

Submission/Discussion

4. I start by noting that the Appellant has three children, all of whom are dependent upon her claim. She has stated that she is a Sunni Muslim and that she left Iraq due to differences with her in-laws following the death of her husband and that her marriage brought an end to a clan/land based dispute. Further she emphasises that her late husband was a Shia Muslim while she is a Sunni Muslim.

5. I note the above factors. Miss Warren starts by emphasising that this is not a case of returning to the IKR and that Kirkuk is not part of the IKR. She emphasises the Appellant has never lived anywhere else so if she is to be returned other than to her home she would be moving to a fresh area. She submits that the judge did not consider internal relocation and consequently the whole issue of humanitarian protection was not considered and that the only consideration the judge gives to the possibility of the family being able to relocate is to be found at paragraph 51(f) where he states

> "She has male family members who can look out for her interests in the IKR and she will not be a lone female without family support.".

Miss Warren points out that the judge has accepted that the Appellant is from Kirkuk and consequently it follows this is where her family members are. She points out that the evidence of the Appellant which was unchallenged in the determination is that she has never visited the IKR and knows no one there. Consequently she submits that the finding at paragraph 51(f) is unsustainable. Further she submits that it is inappropriate for the judge to have dealt with a humanitarian protection claim as a mere presumption when dismissing an asylum claim. She notes the contentions made by the Secretary of State within the Rule 24 response, particularly by reference to the decision of *Amin v SSHD [2017] EWHC 2417 (Admin)* and fails to see how this case is applicable in the present circumstances. This is not an issue that is particularly addressed by Mr Bates for good reason and I accept that whilst *Amin* may remain good law it can be factually distinguished from the present case.

6. Miss Warren then turns to what she considers to be a substantial failure of the First-tier Tribunal Judge, namely to consider the best interests of the children, reminding me that the Appellant is a lone mother and that the decision is silent with regards to the position of the children and submits that they cannot merely be considered as an adjunct to the Appellant's appeal. She takes me to paragraph 49 of the decision and submits that it is very difficult to follow what the judge is trying to say here and opposes her view the paragraph has no relevance to the current scenario. She points out that it is incumbent upon the judge to come to a decision as to whether or not return is in the children's best interests or not and that the judge has failed to do so.

7. Turning to the asylum claim she notes that the judge has found the Appellant not to be credible. She submits there is a limit to what a judge should presume and that he has made findings that are not open to him. She specifically takes me to paragraph 40 of the decision, pointing out that there is no evidence that the Appellant left with a male relative and she has no idea how the judge reached that conclusion. Further she takes me to paragraph 36 where the issue relating to the question of the passports being used particularly those of the children was not even in evidence at the hearing and that the judge has made presumptions that he was not entitled to. Reference is made to the husband's activities with the militia and the Appellant's apparent lack of knowledge. The Judge has made conclusions, she submits, that he was not entitled to and that he should have had regard to the fact the Appellant was living in a patriarchal society. Further she reminds me that the Appellant was fleeing from male relatives. She asks me to conclude that the decision has substantial errors of law in it and to set it aside and to remit the matter back to the First-tier Tribunal for rehearing.

8. In response Mr Bates seeks to rely on the Rule 24. So far as credibility is concerned he takes me to the issue of the passports and that that was raised in the Record of Proceedings. He submits that the judge has made strong credibility findings at paragraph 36 and that it was open to the judge on the evidence to assess whether or not it was credible that the passports would have been taken to the hospital. He

further submits the judge goes on at paragraph 43 to consider discrepancies in respect of when the Appellant got married and the nature of her husband's activities and that it would be reasonable even in a patriarchal society for the Appellant to have known that her husband was involved in either Sunni or Shia activities.

9. So far as the best interests of the children are concerned he points out that the family unit has only been in the UK since 2015. He accepts that as they are not qualifying children the Tribunal only had to deal with the issue of return. Therefore he submits there is no material error because the Appellant would be returning with her children. He takes me to the finding at paragraph 51(c) and emphasises that the judge has given his reasons as to why he feels he can depart from country guidance, bearing in mind that Kirkuk has been liberated from ISIS and that the judge was entitled to do this. He further notes that the judge has found that the Appellant has a wealthy family in Iraq and submits that the position that the Appellant finds herself in re an ability to return is even stronger today now that ISIS has been eradicated. It is reasonable, he submits, to assume that the Appellant can fly to Irbil and reconnect with her family. He submits the judge's findings are reasonable and that the Appellant would not be a lone female with children but would be able to return to Kirkuk and her family. He submits that there is no difficulty now travelling from the IKR to Kirkuk and the children's best interests are covered by it being implicit that they would be travelling with their mother. He submits that there would be wealthy family support and therefore it is questionable whether there would be any risk pursuant to Article (15(c)).

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. I have recited in considerable detail the submissions of the two parties in this matter. From this it is necessary to draw conclusions. In some areas I agree with Mr Bates's submissions, particularly with regard to the best interests of the children not being addressed by the judge. It is implicit that they would be travelling with their mother.

13. However whilst noting the other issues raised by Mr Bates I am satisfied that there are errors of law and that they are material. It is incumbent upon the judge to deal with the question of Article 15(c)/humanitarian protection and the judge has made scant consideration of this particular issue. Further the judge has made strong findings on credibility without necessarily the evidence to support them. It is appropriate when a judge carries out a proper approach to credibility that an assessment of the evidence and of the general claim is made and that this can include the internal consistency of the claim, the inherent plausibility of it and external factors of the sort typically found in country guidance. I do acknowledge that theoretically a claimant need do no more than state his or her claim but that claim still needs to be examined for consistency and inherent plausibility. Looking at the findings made by the judge, in particular at paragraphs 36 and 40 they are strong findings. There is no evidence that the Appellant left with a male relative and whilst the judge is open to make findings of adverse credibility he has to give his reasons and these have not been properly given in this case, particularly bearing in mind the assertion that is made that we are dealing with a patriarchal society. That reflects on some of the judge's findings. I accept that the judge has made certain findings with regard to whether or not the Appellant would or would not have known that her husband was mixing with Sunni or Shia militia. Again there is no evidence on that point but the judge heard the evidence and he made findings on this particular aspect that I think he is entitled to.

14. So far as the return is concerned I have already indicated that I think that this is open to the judge insofar as the children would be returning with their mother. I do not find that the finding paragraph 51(f) sits with the evidence that has been presented to me, namely that there are male family members to whom she can turn. *AA* is authority for saying that it is necessary to look at each case on its facts and on the evidence and the Appellant appears to firmly rely on the fact she has no friends and family in the IKR per se. I find the failings of the judge to rule on this particular aspect to be material and to constitute an error of law.

15. This is one of those cases where consequently some of the findings reflect errors of law whereas others do not. However in the interests of justice the correct approach is to remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand having found that there are material errors of law that taint the decision of the First-tier Tribunal Judge. That is not to say – for it is a matter for another judge on another day – that another judge will not come to exactly the same conclusions to those of the original First-tier Tribunal Judge.

Notice of Decision

The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

(1) On finding that the decision of the First-tier Tribunal Judge contains a material error of law the decision is set aside with none of the findings of fact to stand.

(2) The appeal is remitted to the First-tier Tribunal sitting at Manchester on the first available date 28 days hence with an ELH of three hours. The appeal is to be before any First-tier Tribunal Judge other than Immigration Judge Durance.

(3) That there be leave to either party to file and serve an up-to-date bundle of subjective and/or objective evidence upon which they seek to rely at least 28 days prior to the restored hearing.

(4) That a Kurdish (Sorani) interpreter do attend the restored hearing.

No anonymity direction is made.

Signed Date 15 January 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date 15 January 2018

Deputy Upper Tribunal Judge D N Harris