



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12429/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 24 April 2018

**Decision & Reasons
Promulgated
On 01 May 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SHAIDA SALEEM HAMA AGHA
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Shaida Saleem Hama Agha, was born on 1 January 1989 and is a female citizen of Iraq. She entered the United Kingdom on 30 March 2016 and was served with a form IS97ENT as an illegal entrant on the same day. She claimed asylum on 27 April 2016. By a decision dated 25 October 2016, the Secretary of State refused her application. She appealed to the First-tier Tribunal (Judge Monaghan) which in a decision promulgated on 13 April 2017 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the outset of the hearing, Mr Mills, who appeared for the Secretary of State, told me that the Secretary of State now agreed that the judge had erred in law as regards her treatment of her Article 8 ECHR. The appellant has a young child who was born on 28 January 2017 (she has had a further child since the First-tier Tribunal hearing). The child and the appellant's

husband were, at the date of the hearing before the First-tier Tribunal, British citizens. Mr Mills submitted that the judge should have found that there were insurmountable obstacles preventing the appellant and the child travelling to Iraq to live. Her husband, as a refugee, would be unable to live in Iraq. Mr Mills submitted that the appeal should be allowed on Article 8 ECHR grounds. Having considered the facts, I agree.

3. Mr Gayle pursued the remaining grounds of appeal which concern the dismissal by the judge of the international protection claim. Mr Gayle submitted that inadequate reasons had been given by the judge for dismissing that claim. The judge had found it implausible [71] that the appellant would admit to the family home her cousin who then abused her taking a video of the abuse. The cousin was a close family member and visited the family home often; there was no reason why he should not have entered the home on the occasion on which the abuse took place. The judge also found [72] that it was implausible that the cousin would have taken steps to set up his mobile phone in order to video the incident. The appellant asserts that it would not have been implausible. Finally, the judge found the most “damaging aspect” of the appellant’s account as regards her credibility had been her claim that her cousin had not taken any steps to reveal the video to her family before she left Iraq, a period of 8-9 months, despite his having threatened to do so on many occasions. The appellant asserts that the conduct of the cousin was not incredible given that he was away from home fighting in the civil war.
4. I find that the challenge to the judge’s dismissal of the international protection claim is entirely lacking in merit. I find that all the findings which I have described above were properly open to the judge on the basis of the evidence before her. What the appellant characterises as faulty or inadequate reasoning is, in reality, nothing more than a series disagreement with findings available to the judge.

Notice of Decision

5. The decision of the First-tier Tribunal promulgated on 13 April 2017 is set aside. I have remade the decision. The appeal on asylum and Article 3 ECHR grounds is dismissed. The appeal is allowed on human rights grounds (Article 8 ECHR).
6. No anonymity direction is made.

Signed

Date 24 April 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 24 April 2018

Upper Tribunal Judge Lane