Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07969/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 8th October 2018 and 4th March 2019	**On 12th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NAZHAD [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Greer of Counsel instructed by Fisher Stone Solicitors
For the Respondent: Mr A Tan, Home Office Presenting Officer – 8th October 2018
Mrs R Pettersen, Home Office Presenting Officer – 4th March 2019

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Bradshaw made following a hearing at Bradford on 23rd January 2018.

Background

2. The appellant is a citizen of Iraq who arrived in the UK clandestinely on 29th August 2015 when he claimed asylum. He was refused on 4th August 2017. The appellant was born and lived in Kirkuk and is a Muslim of Kurdish ethnicity. He claimed to have been in the Peshmerga from August 2011 to 2015 and to have been involved in the Kurdish Democratic Party. He said that he feared a return to Iraq because he had been involved in fighting against ISIS and was subsequently threatened whilst in Kirkuk by a group linked with ISIS.

3. The judge found the appellant's account not to be credible. She said that he had failed to claim asylum at the first safe opportunity. She gave a number of examples, from paragraphs 33 to 41 of inconsistencies in his account of having been targeted. She found that even if his claim was accepted he could reasonably relocate to the IKR applying AA (Article 15(c)) Iraq CG [2015] UKUT 544 where his family now live. He speaks Kurdish and a little Arabic and has experience of work in the construction industry. He has an ID card and a family card and could obtain a CSID. He was in regular contact with his family who presently live in the IKR and who could assist him.

4. With respect to Article 8 she wrote as follows:

> "So far as any family life rights are concerned the appellant does not meet the Rules and it was not argued that he does. Private life rights were not argued before me in the appeal. I heard evidence about the claimed relationship between the appellant and Ms [K]. Both were vague and contradictory about their relationship, when they met and when the relationship developed. Both talked of being in love and having a genuine relationship but although both could recall when they first met neither could recall exactly when that was and they were contradictory about when a romantic relationship began, she said after two days and he said it was some six or seven months later. They cannot and do not live together because he was restricted in his asylum support accommodation but she said he comes round every day and has met her family. She has her name tattooed on her chest. However I find that the evidence of a genuine relationship is scant and unconvincing. They produced little or no evidence of a genuine and subsisting relationship at this time. Her pregnancy is not alone evidence of a relationship for the purposes of Article 8. Mr Holmes argued that it cannot be expected of an EEA national to relocate to Iraq and a different culture but if the relationship is genuine that is the appellant and Ms [K]'s choice."

5. On that basis she dismissed the appeal.

The Grounds of Application

6. The appellant sought permission to appeal on the grounds that the judge had failed to give adequate reasons for concluding that the appellant's credibility was flawed. Second that her conclusions in respect of sufficiency of protection were deficient and third that she had failed to properly consider Article 8.

7. Permission to appeal was granted by Judge Andrew for the reasons stated in the grounds on 5th March 2018.

Submissions

8. Mr Greer relied on his grounds. He submitted that it was incumbent on the judge to put to the appellant her concerns. She had criticised him for a lack of detail in his account and had held it against him that he had claimed to have been involved in the Peshmerga for four years and yet only to have been involved in fighting once. Furthermore her observation that the fact that the battle which he had referred to was in the public domain damaged his credibility was perverse.

9. Second the judge was quite wrong to state at paragraph 44 that the authorities in Iraq would be able and willing to offer him protection. Third her assessment of family life was flawed.

10. Mr Tan defended the determination observing that even if any criticisms of the judge's credibility findings were made out it was immaterial since the finding that he could relocate to the IKR was unchallenged. He also submitted that it was open to the judge to reject the evidence of the relationship between the appellant and his partner for the reasons which she gave.

Consideration of whether there is a Material Error of Law

11. There is no error in respect of the judge's consideration of the asylum claim. It was not incumbent on the judge to put each and every concern which she had to the appellant. She was entitled to comment on the lack of detail in the account and to observe that since the battle he referred to was in the public domain the fact that he was able to refer to it did not mean that he was present. She set out in some detail a number of inconsistencies in his account. It was open to her to find it implausible that the appellant claimed to have been involved with the Peshmerga for four years and yet only to have been involved in action once. Moreover despite the threats to him the family stayed in Kirkuk. Moreover even if his account was credible there was no reason to think that that the group would be interested in him now.

12. Most importantly there is no challenge in the grounds to the judge's conclusion that the appellant could reasonably and safely relocate to the IKR and join his family there.

13. I am however persuaded that the judge erred in her consideration of whether the appellant enjoyed family life in the UK. There was strong evidence that he did, not least evidence of a pregnancy. An explanation was given for the couple's decision to live apart, which was that the appellant was not able to live with his partner because he was restricted to his asylum support accommodation. However the oral evidence was that

they saw each other daily. There was no challenge to the evidence that his partner had tattooed the appellant's name on to her body. In these circumstances the judge ought to have considered the Article 8 claim advanced.

14. The appellant produced a birth certificate showing that the baby was born on 25th June 2018. The appellant is named as the father and there are two addresses for him, one the partner's address and the other presumably the address given to him by the asylum support team. I heard oral evidence from the appellant's partner [MK]. She is a Czech national who has been in the UK since May 2012. Her English was limited but I am satisfied that she understood the questions which were put to her. She reiterated that she remained in a relationship with the appellant and that he continued to visit her every day. She lives with her parents. They came to the UK in 2010 and initially her father worked. Her mother however is disabled. From her description it seems as though she may have had a stroke. Her evidence was that her father worked for about three years, on something to do with aeroplanes, but had to stop when her mother became ill and half her body no longer worked. The family now live on benefits, child tax credits and a carer's allowance. Ms [K] herself went to college for two years when she came to the UK and then worked part-time in a shop for two or three hours a day. For the last three years she has not worked.

15. She was unclear about what her parents' status in the UK was. She said that she thought her father had some kind of paper but she did not think that they had residence cards. She herself did not want to return to the Czech Republic and certainly did not want to go to Iraq with the appellant because she was scared. She wanted to stay with her partner and her parents and her three sisters.

16. At the conclusion of the evidence it became clear that it would be essential to discover what, if any, the appellant's partner's status was in the UK. It would not appear that she is exercising treaty rights here but it could be that she is a family member of a person who has retained the right of residence under Regulation 10 of the Immigration (EEA) Regulations 2016. Further enquiries will need to be made and further evidence taken from Ms [K]'s father. His status and Ms [K]'s status have direct bearing on whether the appellant's child could be entitled to British citizenship.

17. Accordingly, by agreement, this matter was set down for rehearing on 27th November 2018.

The Rehearing

18. Following an adjournment request made by the appellant's solicitors for more time to obtain the necessary documentation this matter was postponed but came before me on 4th March 2019.

19. At the commencement of the hearing Mr Greer confirmed that he had no documentation which he could place before the Tribunal in relation to the status of the appellant's partner. He did however seek to rely on documentation produced by his instructing solicitors filed before the hearing which includes statements from the appellant and his partner, objective material relating to Iraq and the Czech Republic, and a copy of an email sent to the Visa Department of the Ministry of Affairs of the Czech Republic and their reply.

20. I heard oral evidence from the appellant who confirmed that the contents of his witness statement were true. He said that he continued to be in a relationship with his partner. They were not able to live together as he was formally in asylum accommodation but she had her own flat and he spent most of his time there. He helped to look after the baby all the time.

21. He had contact with his family in Iraq, speaking to them about once a month. He did not know where his CSID card was because he gave it to the Home Office together with the ID documents that he had when he arrived in the UK. If he needed to apply for a new ID he would be anxious about being questioned by the authorities about his activities with the Peshmerga. He did not know whether it would be possible for his partner or his son to get permission to live in Iraq but even if they did, the situation was too dangerous there. His partner could not speak Kurdish Sorani. He did not think that he could live in the Czech Republic as he had no travel documents to allow him to make an application for a visa but in any event, he did not speak Czech.

22. His partner, in her witness statement, confirmed that the couple remained close. She would not be able to go to Iraq with the appellant if he were removed there and she did not know how he could live with her in the Czech Republic.

Submissions

23. Mrs Pettersen submitted that the appellant could conduct his family life either in the Czech Republic or in Iraq. On his own evidence the Home Office had sufficient documentation to allow him to approach the Iraqi Consulate for a passport or travel document and he could either then use it to travel to Iraq or to apply for a visa to the Czech Republic.

24. Mr Greer acknowledged that this case could only be put on the basis of an application outside the Immigration Rules since he could not show that the appellant's son was a qualifying child. He did however submit that there would be very significant obstacles to the family relocating to Iraq because even if the appellant could obtain the necessary documentation his family members could not. Neither could they reasonably be expected to go to the Czech Republic where the appellant would face hostility as a Muslim in addition to practical difficulties being admitted there.

Findings and Conclusions

25. This matter was adjourned on the last occasion in order to give the appellant the opportunity to establish that his partner was settled in the UK. Mr Greer acknowledged that he was not in a position to be able to produce any such documentation. Accordingly, he accepted that the appellant's child could not be shown to be British. The only way in which this appeal could succeed is whether he could bring himself within paragraph 276ADE(vi) or be allowed to remain on Article 8 grounds outside the Rules.

26. It is clear that the appellant has a number of documents including his CSID and driving licence. He also is in contact with his family who live in the IKR. On the findings of Judge Bradshaw, and confirmed by the evidence in his witness statement, he would be in a position to obtain a CSID. I accept that the position would be much more challenging for his child whose birth has not been registered in Iraq. It therefore would be extremely challenging for the family to be expected to all return together, although no doubt in due course the appellant could provide the necessary documentation for them once he is re-established in the IKR. He would have the assistance of his family.

27. Fortunately there is an alternative and more straightforward alternative. The email from the Visa Department of the Ministry of Foreign Affairs of the Czech Republic reads as follows:

> "Residency on the territory of the Czech Republic falls under the competence of the Ministry of the Interior and you will be best advised to address your query there. However based on our knowledge of the legislature on practice it is hardly conceivable to accept and decide favourably on an application of an applicant whose identity cannot be determined. Should the person under question be in possession of documents proving his status and identity, and primarily his long term legal stay, in the UK, could, however, provide some starting point. Iraqi nationals are required to file their visa and residence applications at our Consulate General in Erbil unless they reside abroad based on a long term residence permit".

28. The appellant is not a person who cannot determine his identity. Neither is he someone who could not return to Erbil to file his application. There are no serious practical difficulties, in principle, to his obtaining a visa. I note the information provided by the appellant's solicitors in relation to hate crime in the Czech Republic towards Muslims and refugees but most of the evidence dates from 2015 and in any event, there is no case law which establishes that the appellant would face any serious obstacle in establishing himself there with his Czech partner. Nor does the evidence now presented show that the appellant himself individually would face significant obstacles. Indeed, Mr Greer did not press the point.

29. The appellant cannot meet the requirements of the Immigration Rules with respect to Article 8. He does not enjoy family life with a British national or a person who is settled here and his child is not a qualifying child. He does

enjoy private life here, and his familial relationships are a part of that private life, but they could be continued either in the IKR or, more likely, the Czech Republic.

30. The appellant has no basis of stay in the UK. He entered clandestinely and made an asylum claim which has been found to be on a false prospectus. The factors set out in Section 117B of the 2002 Act are against him. He speaks little English, is not financially independent, and his private life has been established at a time when his immigration status has been precarious.

31. The maintenance of effective immigration controls is in the public interest and, taking into account all of the above, it follows that it would be proportionate for the appellant to be removed.

Notice of Decision

32. The original judge did not err in law in respect of the asylum appeal. Her decision stands. Her decision was set aside on human rights grounds. It is re-made as follows. The human rights appeal is dismissed.

No anonymity direction is made.

Deborah Taylor

Signed Date 11 March 2019

Deputy Upper Tribunal Judge Taylor