Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08217/2017

THE IMMIGRATION ACTS

Heard at: Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On: 19th February 2019	**On: 15th May 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SZI
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr A. Authi, Aman Solicitor Advocates
For the Respondent: Mrs H. Aboni, Senior Home Office Presenting Officer

DECISION and REASONS

1. The Appellant is a national of Iraq born in 1986. She appeals with permission the decision of the First-tier Tribunal (Judge Thomas) to dismiss her human rights and protection appeal.

2. The basis of the Appellant's claim for asylum was that she faced a real risk of 'honour' based violence at the hands of her father and brothers. She is from Ranya, in the Sulaymaniyah governate of the IKR. She stated that her family became disillusioned with her

marriage to a British national of Iranian origin because he wanted her to come and live with him in the United Kingdom. Despite the fact that the couple already had a child together, her family insisted that she divorce him and marry a suitor of their choosing. Fearing forced marriage or violence she left with the child, travelled to Turkey and from there onwards to the United Kingdom.

3. The Respondent had rejected that claim for want of credibility and the Appellant exercised her right of appeal.

4. When the matter came before the First-tier Tribunal Judge Thomas upheld the decision of the Respondent, giving the following reasons for rejecting the Appellant's evidence:

    i) She had failed to give a reasonable explanation for why she did not claim asylum *en route* to the United Kingdom as she passed through other safe European countries;

    ii) It was not credible that her family, who had agreed to her marrying a man resident in the United Kingdom, would now expect the couple to live in the IKR rather than here;

    iii) It was not credible that her family would not have discussed their concerns with the Appellant's husband;

    iv) The Appellant has been married since 2011 and no explanation was given as to why the family have not taken the feared action thus far;

    v) The Appellant did not seek the protection of the IKR authorities when it was open to her to do so;

    vi) The method by which the Appellant chose to travel to the United Kingdom undermines her credibility. It is clear that they knew that she could not meet the requirements for entry clearance as a spouse, so they contrived to circumvent the immigration rules.

These findings meant that the appeal fell to be dismissed on protection grounds. As for the Appellant's human rights appeal, that too fell to be refused since she had not established that there would be any difficulties in her relocating to Iraq.

5. The Appellant now appeals against that decision, submitting before me that in the course of its determination the First-tier Tribunal erred

in law in that it failed to take material evidence into account, erred in fact and failed to give adequate reasons. For the Respondent Mrs Aboni opposed the appeal on all grounds.

6. In a written decision dated the 20th February 2019 I made the following findings.

7. I am satisfied that the First-tier Tribunal did fail to take material evidence into account when it overlooked the rather obvious point that the Appellant claimed asylum here, rather than in, for instance, Greece or France because her husband is here and her child is British. The whole point of her leaving the IKR was to come and settle with them here. The Tribunal may not have regarded that as a good reason, but that is not what is articulated at paragraph 21 of the determination: the Tribunal there simply notes that no reasonable explanation was offered. I would further accept that the determination, at paragraph 25, does not explicitly recognise the Appellant's case that her family only latterly turned against her and her marriage. Nor does the Tribunal address the country background material warning that young women facing gender-based violence receive little succour from the Kurdish authorities. There also appears to have been some confusion about when and where the child applied for, and received, her British passport.

8. None of these complaints amount, however, to a material error of law. That is because the overall decision, that the Appellant has not discharged the burden of proof, is manifestly sustainable. This was a family who in 2011 had agreed to their daughter marrying an Iranian man with a British passport. Although it would seem that the couple did make some effort to settle in the IKR, with the Appellant's husband trying to establish a business there, it is patently obvious that there would always be a possibility of them going to live in the United Kingdom, or even Iran. The First-tier Tribunal was entitled to find it peculiar, if I may put it like that, that seven years after the marriage the Appellant's family would suddenly demand that she divorce simply on the grounds that her husband wanted to remain in the United Kingdom, the country of his nationality. Had the determination had regard to the country background material, as Mr Authi advocates, it would have found it to be entirely consonant with its own conclusions. The Country Policy and Information Note *Iraq: Kurdish Honour Crimes*, published in August 2017, describes how women are expected to leave their natal family and move to wherever their husband is from:

> "Upon marriage, a woman leaves her birth homestead and moves to her husband's village. Traditionally, a woman did not move away from the territory of her lineage since most marriages were within the lineage where members live a short distance away. However, urban migration and diaspora

> relations resulted in contemporary marriages in which women not only move from their paternal homes, but frequently cross national borders...For boys and girls, marriage establishes the passage to adulthood".
> [at 6.1.1]

9. Research cited in the same document explains that divorced women are regarded in Kurdish society as being "like a disease" [at 5.1.1]. Seen in this context the implausibility of Appellant's account becomes clear.

10. For those reasons I find that the First-tier Tribunal was entitled to dismiss the protection appeal, and the human rights appeal under paragraph 276ADE(1), for the reasons that it gives. Any error in the determination, as identified in the grounds, is not material.

11. The appeal was also dismissed in respect of Article 8 'outside of the rules'. At paragraphs 32-33 of the determination the Tribunal finds that it would be reasonable to expect the Appellant's young child (and presumably her father) to travel back to the IKR with the Appellant, thus dispensing with the Article 8 claim. It is not at all clear what the Respondent's position on this matter was, since at the date of the refusal letter the entire relationship had been doubted. At paragraph 31 of its determination the Tribunal had however accepted that the Appellant is married to her husband, and that their child is British (a British passport having been issued to her). I note that the Secretary of State's ordinarily assumes the position that it would <u>not</u> be reasonable to expect a British child to leave the United Kingdom: had the HOPO been asked, and that position adopted, it is difficult to see how the reasoning at paragraphs 32-33, and indeed 42, could stand. There is in fact published policy to that effect.

12. Given the significance of this issue for the disposal of the appeal on Article 8 grounds I considered that further submissions on the point were necessary, and invited the parties to make the same.

13. By their letter dated the 22nd March 2019 the Appellant's representatives indicated that they wished to pursue the matter on Article 8 grounds alone.

14. By his letter of the 23rd April 2019 the Secretary of State confirmed that it is indeed his policy not to normally require British citizen children to leave the United Kingdom:

> "Given the findings regarding the Appellant's family relationships, the Tribunal is invited to re-make the decision without the need for a further hearing, allowing the appeal on Article 8 grounds whilst maintaining the decision of the

> Judge of the First-tier Tribunal with regards to the protection claim".

15. I therefore uphold the decision of the First-tier Tribunal to dismiss the protection claim. By consent I set the decision on human rights aside and allow the appeal on human rights grounds.

Anonymity

16. Having regard to the fact that this case involves a minor I am prepared to make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings".

Decision

17. The decision of the First-tier Tribunal to dismiss the appeal on protection grounds is upheld.

18. The decision of the First-tier Tribunal to dismiss the appeal on human rights grounds is set aside by consent. I re-make the decision as follows: I allow the appeal on human rights grounds.

19. An anonymity order is in place.

Upper Tribunal Judge Bruce
15th May 2019