



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12056/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 5th April 2019

Decision & Reasons Promulgated
On 10th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR H M S
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M Read for Lei Dat and Baig, Solicitors (Renshaw House).

For the respondent: Mr McVeety, Senior Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant was questioned at Belfast Harbour by immigration officials. It transpired that she was an illegal entrant, having entered Northern Ireland via the unmanned land frontier with the Republic of Ireland. She disclosed that she was an Iraqi national of Kurdish ethnicity from Sulaimaniyah. She said she was travelling to the

United Kingdom to live with her husband, a British national originally from Iraq.

2. She made a claim for protection, stating she feared her elder brother. This was because he opposed her marriage. The claim was refused on 29 September 2018 and her appeal was heard at Manchester on 13 November 2018 before First-tier Tribunal Judge Raikes. In a decision promulgated on 21 November 2018 it was dismissed.
3. Permission to appeal to the Upper Tribunal was granted on the basis the judge may have carried out their own research. A 2nd ground was that the findings as to whether or not the marriage was genuine and whether she will be returning with her husband to Iraq where unclear.
4. On behalf of the appellant a bundle has been prepared for admission on the basis of rule 15(2)(A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. This consists of a statement from the appellant's husband and hospital letters demonstrating her pregnancy. There is also a Council Tax letter showing a common address. In the interests of justice I would admit the documents.
5. The decision refusing the appellant's claim for protection did not accept that the appellant was married and in a genuine relationship. She claimed they married in a religious ceremony in Iraq on 21 April 2018 and subsequently underwent a legal ceremony in Jordan on 3 May 2018. The refusal letter states the marriage certificate produced from Jordan was a photocopy. At the hearing before First-tier Tribunal Judge Raikes it was indicated that her husband was present but would not be giving evidence. The judge did not accept the relationship was genuine.
6. The account given by the appellant and her husband was that in 2006 because of difficulties over telephone lines she ended up answering the phone and it was a wrong number from her future husband. They developed a rapport and following this there was ongoing contact. He then visited Iraq in 2011 to see family members whereupon they met in person. He said this was done discreetly for cultural reasons. A relationship developed whereby he proposed marriage which she accepted. He then approached her family who were in agreement save for her elder brother, albeit he never met her proposed husband. Later, her brother was imprisoned and they took the opportunity to marry. He states they are expecting their 1st child you on 14 July 2019.
7. In the First-tier Tribunal the appellant provided a statement dated 1 November 2018 wherein she states that her husband is a British national who has been living in the United Kingdom for over 15 years. She states that her elder brother had opposed their marriage

because it would mean his wife would have to care for their mother in her absence. However, in November 2017 he was imprisoned and they took this opportunity to marry on 21 April 2018. They became fearful of his pending release and on 2 June 2018 left Iraq travelling through Sweden and Germany and into the Republic of Ireland.

8. She states that she handed in the original marriage certificate to the respondent at screening interview and a copy was taken and the original returned to her. Her substantive interview by way of a video conference so she had no further chance to produce it. She states she still has the original marriage certificate and photographs of their wedding. Photographs can be seen in the bundle.
9. The refusal letter does not accept there was a threat from her brother. Reliance was placed upon section 8 in consideration of her credibility. Even if there was a threat this could be avoided by her relocation within Iraq. She had a passport so there should be no difficulties with the practicalities of return.
10. In suggesting First-tier Tribunal Judge Raikes carried out her own research reference was made to Para 6 ii of the decision which refers to the contents of the appellant's appeal bundle with the judge stating:

“... I also, given the appellant's claim, referred myself to the COIS relating to Iraq: Courage honour crimes: dated of August 2017 and also the COI's relating to Iraq: internal relocation, civil documentation and returns dated October 2018.

11. Reference was also made in the application to paragraph 15 of decision of First-tier Tribunal Judge Raikes, where she states:

“... I have also, given the appellant's claim, referred myself to other COIS reports produced in respect of Iraq including the most recent of those dated October 2018 relating to internal relocation, civil documentation and returns; also March 2017 in respect of the humanitarian situation, and September 2017 in respect of return/internal relocation relating to the security situation in Baghdad, the South and Kurdistan Regions of Iraq, and the situation in the Contested Areas.”

Consideration.

12. I find this to be a carefully prepared decision in which the judge has given adequate reasons for findings that were open.
13. The claim is based upon fear of the appellant's elder brother. The respondent did not accept this is true. The judge has given sustainable reasons from paragraph 25 to 27 for rejecting this claim

also. Notably, in the body of the judgement the judge referred to the fact that both sides of the appellant's family attended her wedding and were supportive. The only person apparently causing difficulties where her elder brother who had never met her husband.

Furthermore, his grievance was because his wife would have to look after their mother who has a disability. However, the judge records that another brother has since married and his wife, in the appellant's absence, as caring for their mother. Furthermore, there has been no suggestion that her brother, apparently now released from prison, has made any further enquiries as to them.

14. The refusal letter did not accept that the marriage was genuine and subsisting. There was evidence in the appeal bundle to the contrary. This included the appellant's own account; a statement from a landlord and a tenancy agreement and photographs of the appellant and her husband dressed for the wedding. The judge evaluated this evidence in the decision. Rather surprisingly, given that the marriage was an issue, the appellant's husband was in attendance but did not give evidence. The judge commented on this at paragraph 29.
15. Furthermore, the judge refers to the Jordanian marriage certificate being a photocopy. The appellant states that she submitted the original at screening and photocopy was taken and the original handed back to her. She said she could provide the original. On the face of it would seem in fact the judge still only had a photocopy. There is nothing from the appellant's representative to indicate to the contrary. These are all matters of evaluation for the judge and reasons are given at paragraph 36 sustainable. The matter is evaluated in detail from paragraph 29 to 32.
16. The appellant has now produced documentation to show she is pregnant. There is also a Council Tax bill further to rule 15 (2)(A). This evidence of course was not before the judge. The evidence that she is now pregnant is important but in the absence of DNA testing is not definitive. The baby is due to be born in July. Furthermore, the issue is not what I would have concluded on the evidence presented but whether the judge's conclusion was sustainable. In my view it was.
17. The judge considered the practicalities of return. She has a passport. She has supportive family members in Iraq as does her husband. All of them could help with her I think the necessary documentation. The evidence recorded was that he returns at last annually. The relevant case law was considered. Consequently, I see no issues arising in respect of documentation.
18. It is suggested the judge did not make a clear finding in whether the appellant would be returning alone. This was particularly

relevant to the consideration of relocation. At para 51 onwards the judge considers matters in the alternative. On the basis she had not demonstrated the marriage was genuine and subsisting then she would be returning on her own. However the judge had discounted the threat from her brother and therefore she would have the support of her family. In the alternative, if the marriage was genuine and subsisting she would not be returning as a lone female. On this premise her husband is faced with the choice of either joining or not. The judge sets this out at paragraph 51 onwards.

19. The final issue I would deal with is whether the judge has carried out independent research and not afforded the appellant and her representative an opportunity to comment. Mr Read did not appear in the First-tier Tribunal. Mr McVeety has considered the presenting officer's preparation notes for the hearing and is of the view that the judge did not carry out any independent research that would materially. Rather, the reports referred to were either mentioned in the documents or at hearing. Other aspects of country information were not particularly relevant as they dealt with other parts of the country or where historical.

20. I do not find it established that the judge carried out their own enquiries. I find the references at para 6(ii) and at para 15 the reference 'I have also ... Referred myself to other COIS Reports' would appear to be a turn of phrase rather than evidence of independent research. A similar expression can be seen at paragraph 23.

21. In conclusion I do not find a material error of law established in the decision.

Decision

No material error of law has been established. Consequently, the decision of First-tier Tribunal Judge Raikes dismissing the appeal shall stand.

Francis J Farrelly
Tribunal Judge.

Deputy Upper