



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/13041/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 4<sup>th</sup> March 2019**

**Decision & Reasons  
Promulgated  
On 25<sup>th</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**GAB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain of Counsel, instructed by Kirklees Citizens  
Advice and Law

For the Respondent: Mrs Petterson, Home Office Presenting Officer

**DECISION AND REASONS**

This is the appellant's appeal against the decision of Judge Smith made following a hearing at Bradford on 8<sup>th</sup> August 2018.

**Background**

The appellant is a citizen of Iraq born on 1<sup>st</sup> January 1985. She arrived in the UK on 10<sup>th</sup> July 2017 and claimed asylum on the basis that if returned she would be at risk of an honour killing.

The judge did not accept that the core of the appellant's case was true and permission to appeal was not granted to challenge any of his conclusions in respect of the asylum claim.

The appellant has a British child, a son, who is 3 months old. Her partner, Mr H, is of Kurdish origin like the appellant. The judge accepted that M was a qualifying child but considered it reasonable for him to return to Iraq with his mother. He said that the appellant had behaved in an egregious manner, having invented a story to avoid immigration control as a consequence of which public time and money had been expended on a false claim.

Permission to appeal was granted on the basis that the judge had materially erred in law in concluding that M could reasonably return to Iraq. M was a qualifying child, as a British citizen. The judge's conclusion was contrary to the respondent's own IDIs and policies as set out in IDIs Family (as a Partner or Parent) Private Life: 10-Year Routes; 22<sup>nd</sup> February 2018:

It states:

“In particular circumstances, it may be appropriate to refuse to grant leave to a parent or primary carer where their conduct gives rise to public interest considerations of such weight as to justify their removal. The circumstances envisaged include those in which to grant leave could undermine our immigration controls, for example the applicant has committed significant or persistent criminal offences falling below the thresholds for deportation set out in paragraph 398 of the Immigration Rules or has a very poor immigration history, having repeatedly and deliberately breached the Immigration Rules.”

Mrs Petterson did not seek to argue that this decision could be maintained. She accepted that it was not possible to equate being untruthful in relation to an asylum claim with criminality and accepted that the judge's decision was out of line with the respondent's policy documents relating to British children.

The Immigration Judge erred in law. His decision is set aside. It is not consistent with the Home Office policies set out above nor with the decision in MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 88, which requires powerful reasons why a qualifying child should be removed. In the present case, the matters identified come nowhere close to what would be needed; indeed, the appellant's conduct is less culpable than those of the appellants in MT and ET, whose appeals were allowed.

## **Decision**

The judge's decision in relation to the appellant's asylum claim stands.

His decision in relation to the appellant's human rights claim is set aside and remade as follows:

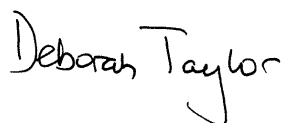
The appellant's appeal is allowed on human rights grounds.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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.

Signed

Date 19 April 2019

A handwritten signature in black ink that reads "Deborah Taylor". The signature is written in a cursive style with a large initial 'D' and a long tail on the 'y'.

Deputy Upper Tribunal Judge Taylor