



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13045/2017

THE IMMIGRATION ACTS

Heard at Field House
On 8th March 2019

Decision & Reasons Promulgated
On 16th April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MRS B A
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms H Short, Counsel, instructed by Turpin and Miller LLP(Oxford)
For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant was born in July 1989 and is from Kurdistan, Iraq. She married in 2006 and had a son in 2008. The marriage broke down and they divorced. Her son lives with her former husband in Iraq.
2. In August 2016 she married her present husband in Iraq. He also is originally from Kurdistan. He came to the United Kingdom in 1999 and obtained British citizenship in 2005. He also had been married before to a Kurd and they have 2 children, V, born on 29 May 2008 and S, born on 28 April 2011.
3. After his marriage to the appellant he returned to the United Kingdom on the 9th September 2016. He returned again to Iraq in May 2017 to see the appellant. He

could not meet the financial threshold to sponsor the appellant under the immigration rules.

4. The appellant entered the United Kingdom illegally on 31 May 2017 and made a claim for protection. She said she feared her family who feel she has brought dishonour upon the house. At the time of hearing she was expecting her 1st child with her 2nd husband.
5. A claim was refused by the respondent on 27 November 2017. Judge of the First-tier Lodge heard her appeal on 19 January 2018 and accepted the appellant was in a genuine and subsisting relationship with her husband. However, the judge did not find she would be at any risk on return. The judge did not find her to be a truthful witness and concluded her claim was to circumvent the immigration rules for entry clearance as a spouse.

The Upper Tribunal

6. Following a hearing on 23 November 2018 I found a material error of law in the decision in relation to the consideration of article 8.
7. For the resumed hearing I have been provided with an appeal bundle on behalf of the appellant running to 220 pages. I have also received copies of the decisions in Lama (video recorded evidence- weight- article 8 ECHR) [2017] UKUT 00016 and JG (s 117B(6):" reasonable to leave)Turkey [2019] UKUT 72. Ms Short has helpfully provided a skeleton argument.
8. I heard evidence from the appellant and her husband. She accepted that her asylum claim was not credible and said they had wanted to seek entry clearance but could not meet the requirements. She claimed her husband was unaware she was going to enter the country illegally. She adopted her statement and said that her husband's 2 children are with them and see their natural mother every other weekend. She said they are in contact with her husband's family but not her own. She said that Kurdish is spoken in the household.
9. Her husband gave evidence adopted his statement. He said that his 2 older children sometimes spend their holidays with her natural mother. He said they did not like to spend a long time away. He does not have regular contact with his first wife. He referred to his work as a taxi driver. He said that before the appellant arrived he can only work limited hours and earned in the region of £5000 per annum. This has gradually increased to around £10,000. He said they had considered applying for entry clearance at the time but did not make application. He claimed he did not know she was coming to the United Kingdom. He was asked about the possibility of the family relocating to Iraq. He said his family were in difficult circumstances as his father had suffered a

stroke and his mother cared for him. He did have a sister who worked in a bank.

10. In submissions, the presenting officer pointed out the appellant came here illegally. She made the point that she was not credible in her asylum claim. Beyond entering the country illegally she accepted there was no evidence of any criminality. Her husband had indicated he could not meet the financial requirements under appendix FM. She submitted that the appellant's relationship with the 2 elder children did not meet the requirements for a parental relationship. She also submitted that this was not a de facto parental relationship and that the appellant's evidence, for instance, that the school would call her about the children was not consistent with her limited command of English. She submitted the evidence about the older children's contact with the natural mother was inconsistent and there was no independent evidence as to her role in relation to the children. She submitted that the children had a closer relationship with their natural mother than was being suggested. She made the point that the appellant's husband cared for his 2 children before he was with the appellant and could now look after all 3 children. Reference was made to the public interest considerations in section 117 B, particularly as the financial requirements would not be met.
11. Ms Short relied upon her skeleton argument. She submitted that this was a family unit living in the same house. She submitted it would be unreasonable to expect the children to leave the United Kingdom and that they were at an important stage in their education.

Consideration.

12. Some of the claims made by the appellant I can accept and other aspects I do not. I bear in mind that the appellant's claim for protection was not found to be truthful. There is an absence of independent evidence about aspects of the claim and it is impossible to know, in the absence of evidence, what is a true situation. I have at times had to make findings based on what I feel is most likely to be the situation.
13. I find that the statement from the appellant's husband does give insight into the background to the claim. He came here in 2009 and acquired British citizenship in 2005. His 1st wife is also Kurdish and from Iraq. He states they lived together in Oxford and went on to have 2 children.
14. V was born on 29 May 2008 and so is 10 years of age. S was born on 28 April 2011 and so is almost 8. He said there were problems in the marriage and at one stage his first wife took the children and returned to Kurdistan. He said he went there and persuaded her to return and give their marriage a further chance. However, in 2015 she left again taking the children with her. He states he followed her to Kurdistan and unsuccessfully attempted to persuade her to

return. He said the then divorced in Kurdistan. He says that they agreed it would be in the children's best interest to return to the United Kingdom. He claims he returned to the United Kingdom taking the children with him and his 1st wife remained in Kurdistan.

15. Thereafter, there is limited evidence about his 1st wife. It may be, as he suggests, he does not know or alternatively, the whole truth is not being told. He said that the following year his 1st wife contacted him and told him she was back in the United Kingdom. He states she had remarried in Kurdistan but believes she came to the United Kingdom alone. She subsequently moved to Gloucester where she remains. He states there were no court orders but it was agreed he would continue to look after the children and they would see their mother every other weekend.
16. The papers referred to an incident involving the social services. There is limited documentary information about this but there is a letter at page 30 of the appellant's bundle confirming some concern. The appellant's husband refers to this at paragraph 13 onwards of his statement. The account given abuse credible and supports their natural mother being in the United Kingdom and that contact takes place.
17. On balance, I would be prepared to accept that from the summer of 2016 he was caring for his 2 children as a lone parent. I accept he was living in Oxford and their natural mother was living in Gloucester and she would see them every other weekend.
18. He states because of his caring responsibilities he had to reduce his working hours as a taxi driver. Consequently, I can appreciate how he saw the need to remarry. He said this was not an arranged marriage but the background would suggest differently.
19. At hearing it was indicated they had an awareness of the rules about entry clearance. To make an application presented difficulties: notably, the financial requirements and the English language requirement. It is my conclusion they mutually agreed the appellant would enter the United Kingdom illegally and make a fabricated claim for protection. It is notable that the appellant arrived in the United Kingdom a few days after her husband had returned. I do not accept his account he was unaware she was travelling over.
20. Since she arrived in May 2017 they have been living together. Their relationship is genuine and subsisting. They have now been together for 2 years. They now have a son, Sh, born on 9 June 2018. The appellant has limited English but I accept she intends to learn if her situation is more settled. I accept her husband now has more time to work as a taxi driver and his income has increased albeit it is still below the financial threshold. Because the appellant has taken on much

of the caring responsibilities towards the children he is able to have some leisure time, for instance, to go to the gym.

21. I accept that the appellant and her husband and 3 children are living as a family unit in Oxford. It seems natural over the course of the 2 years that a bond will have developed between the appellant and her husband's 2 children from his 1st wife. I accept the appellant's account of a typical day which involves her taking the children to and from school and spending time with them. I also accept that the 2 elder children maintain contact with their natural mother. This includes visits every other weekend. The evidence would suggest their father does not enjoy a good relationship with her and contact between them is limited and confined to practical matters such as arrangements for visits and some financial assistance.
22. The decision affects not only the appellant and her husband but also the 3 children. In considering the appeal I must have regard to section 55. The 2 elder children are British nationals. They speak English and Kurdish. The evidence indicates they have been to Kurdistan on 2 occasions for short periods. Their established life is in the United Kingdom where they have friends and attend school. It is in their best interests as they grow that they have a loving mother figure. It is important that they maintain contact with their natural mother. The appellant's child is an infant and it is important that he bond with his natural mother. In this scenario I cannot see how it could possibly be in the children's best interests for the family unit to be broken up or for the family to relocate.
23. I am required to have regard to the public interest consideration set out in section 117 B. In particular section 117 B 6 is relevant. The appellant's child is a British national. The appellant has a genuine and subsisting parental relationship with him. I also accept at this stage the appellant has a genuine and subsisting relationship with the 2 elder children. I have considered whether it would be reasonable to expect the children to leave and my conclusion is that it would not. They have the right to be here and to benefit from all that United Kingdom can offer. It would not be reasonable to break up the family unit. The 2 elder children could not relocate to Kurdistan if their mother is in the United Kingdom.
24. In terms of the public interest factors the appellant has engaged in deception when making a fabricated claim for asylum. I also find her husband was complicit. However, there is no evidence of any other negative suitability factors. It is acknowledged that the appellant has limited English but I would accept when circumstances permit she will seek to address this. Her husband also does not meet the income threshold but is nevertheless in employment and is attempting to increase his earnings.

25. Looking at the feature set out and primarily because of the position of the children it is my conclusion that the appeal must succeed on the basis of article 8.

Decision

The appeal is allowed under article 8

Date: 14 April 2019

Francis J Farrelly

Deputy Upper Tribunal Judge