



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

Appeal Number: PA/02628/2019

THE IMMIGRATION ACTS

**Heard at Birmingham
On 7 February 2020**

**Decision & Reasons Promulgated
On 2 March 2020**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**N
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam (Solicitor)

For the Respondent: Mrs A Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 26 June 2019 (the date of its written reasons) following a hearing of 23 May 2019. The tribunal's decision was to dismiss the claimant's appeal on international protection grounds and human rights grounds.

Given the position adopted by the parties I may be brief in explaining what I have decided and why. The claimant is a female national of Iraq. She was born on 1 November 1981. She entered the United Kingdom unlawfully on 14 June 2017 and claimed asylum upon arrival. She is, in fact,

married to a British citizen (the marriage having taken place in Iraq in 2015) and the couple now have two children who were born on 23 September 2018 and 20 August 2019 respectively (though the youngest had not been born at the time of the tribunal's decision). Each child is a British Citizen.

2. The claimant had asserted, in seeking international protection, that she was at risk in Iraq at the hands of her family who disapproved of her marriage. The tribunal, like the Secretary of State, comprehensively disbelieved her about that. In addition to dismissing her appeal on international protection grounds the tribunal decided that she could not succeed on appeal under what might be described as the Article 8-related Immigration Rules. That was because it was thought that the requirements set out at paragraph EX.1 of those Rules were not met since it was reasonable to expect the claimant's child (there only being one at the time) to leave the UK. Further, the tribunal, having considered the situation under Article 8 outside the rules, concluded that requiring the claimant to leave the UK was proportionate.

4. The grounds of appeal to the Upper Tribunal challenged the decision which had been made with respect to the application of Article 8 of the ECHR outside the Immigration Rules only. Permission was given on that basis and the matter was listed before the Upper Tribunal (before me) with a view to consideration being given as to whether the tribunal had erred in law and, if so, what should flow from that.

5. In fact, that hearing was a very short one. That is because Mrs Aboni told me it was accepted on behalf of the Secretary of State that the tribunal had undertaken an inadequate consideration under Article 8 bearing in mind the citizenship of the then single child. Mrs Aboni also explained to me about the birth of the second child. She said that she would concede that the tribunal had erred in law and she urged me to set aside its decision and to re-make that decision myself on the basis that removing the claimant would constitute a breach of her rights under Article 8. Mr Mohzam, of course, agreed with that suggested course of action.

6. In the circumstances, and without any criticism of the tribunal, I have decided by consent and having regard to the content of rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008, to set aside the tribunal's decision and to remake the decision in the terms urged upon me.

Decision

7. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The Upper Tribunal remakes the decision in these terms: the claimant's appeal from the Secretary of State's decision of 7 March 2019 is allowed on human rights grounds under Article 8 of the ECHR only.

Anonymity

The First-tier Tribunal granted the claimant anonymity. I continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. That grant shall remain in place unless and until a tribunal or court directs otherwise. Accordingly, no report of these proceedings shall directly or indirectly identify the claimant or any member of her family. This grant and direction applies to all parties to the proceedings. Failure to comply could lead to contempt of court proceedings.

Signed:

Dated: 25 February 2020

Upper Tribunal Judge Hemingway

Fee Award

I make no fee award.

Signed:

Dated: 25 February 2020

Upper Tribunal Judge Hemingway