Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: **PA/10925/2019 (P)**

THE IMMIGRATION ACTS

Decided Under Rule 34
On: 8 October 2020

Decision & Reasons Promulgated
On: 14 October 2020

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to the decision and directions issued by Upper Tribunal Judge Coker on 2 July 2020.

2. The appellant, a citizen of Iran born on 6 August 1985, arrived in the United Kingdom on 14 January 2015 and claimed asylum as the dependent spouse of her husband, SA, an Iraqi national. The claim was refused and an appeal against the decision was dismissed on 20 April 2016. SA lodged further submissions which were refused on 26 July 2016. The appellant then made a claim in her own name, with SA as her dependant, which was refused on 10 May 2017 with no right of appeal. The appellant made further submissions on 10 December 2018 which were treated as a fresh claim. That claim was also refused, on 17 October 2019 and the appellant appealed against that decision. Her appeal was heard by the First-tier Tribunal on 22 January 2020.

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3. The appellant's claim was based upon a fear of persecution as a member of a particular social group, namely a woman at risk of gender-based harm. She claimed to be at risk of an honour killing from her family on return to Iran because she had shamed them by marrying a person without their consent and, moreover, by marrying an Iraqi national. She claimed to be at risk on the basis of her husband's Iraqi nationality as well as on the basis of being a Kurd and having left Iran illegally. She claimed that she could not return to Iran as a result and that neither could she and her family, namely her husband and son, go to Iraq.

4. The respondent did not accept that the appellant would be at risk on return to Iran and considered as speculative her claim to fear being a victim of an honour killing. The respondent considered further that the appellant could relocate to Iraq with her husband and son. It was not accepted that the appellant's removal from the UK would put her at risk or would breach her human rights.

5. In a decision promulgated on 30 January 2020, First-tier Tribunal Judge Hawden-Beal accepted the appellant's account of having married without her family's consent and accepted that she was at risk of being the victim of an honour killing owing to her marriage. The judge was satisfied that the appellant and her husband and son would be at risk of persecution in Iran because of her membership of a particular social group, namely women at risk of an honour killing. The judge was satisfied that the appellant and her husband and son could not safely relocate to another part of Iran as she accepted that her family could find her wherever she went in Iran. The judge also found that the respondent had failed to consider whether the appellant's husband and son would even be permitted to enter Iran. The judge found further that the appellant would not be able to access state protection in Iran. However, the judge concluded that the appellant could relocate to Iraq with her husband and son as she was entitled to Iraqi nationality and there was no risk of persecution in that country. As such the judge found that she could not qualify as a refugee and that neither could she qualify for humanitarian protection. The judge did not accept that the appellant's removal, with her husband and son, would breach her human rights. The judge accordingly dismissed the appeal on all grounds.

6. Permission to appeal to the Upper Tribunal was granted on 18 March 2020 on the grounds that the judge, by finding that the appellant could relocate to Iraq, had arguably erred by failing properly to apply the definition of a refugee and had arguably erred by considering the situation in Iraq rather than Iran.

7. In light of the need to take precautions against the spread of Covid-19, the appeal was not listed for a hearing, but the case was reviewed by an Upper Tribunal Judge, who took the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties in response to directions sent out on 28 April 2020.

8. The appellant did not respond to the directions. However, in submissions made on 20 May 2020, the respondent accepted that the judge had applied the wrong test in stating that internal relocation to the appellant's husband's country, Iraq, would not be unduly harsh and accepted that the judge had erred in law in her consideration in that regard since the appellant was not a national of Iraq, even if it was arguable that she might be admitted there. The respondent did not object to the Tribunal re-making the decision in the light of the First-tier Tribunal Judge's findings of fact.

9. In a decision made under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 without a hearing and promulgated on 2 July 2020, Upper Tribunal Judge Coker set aside the First-tier Tribunal's decision and directed that it be re-made on the basis of the facts as found by the First-tier Tribunal Judge. Her provisional view was that the resumed substantive consideration of the appeal could be made without a hearing and again she invited submissions from the parties or objections to that course.

10. The matter then came before me. Unsurprisingly, in view of the respondent's concession in the submissions of 20 May 2020, neither party had responded to Judge Coker's directions.

11. Unless I am mistaken and have misunderstood the respondent's submissions, it seems to me that there can only be one outcome to the appellant's appeal, namely to allow the appeal on all grounds. As acknowledged by the respondent in the submissions of 20 May 2020, Judge Hawden-Beal had found the appellant to be at risk in all parts of Iran, with no effective state protection and no effective internal flight alternative. Given that the respondent did not challenge those findings and had conceded that relocation to Iraq was not a relevant consideration, since the appellant was not an Iraqi national, the only conclusion is that, on the findings of facts made by the judge, the appellant's removal to Iran would breach the United Kingdom's obligations under the Refugee Convention and would be in breach of her Article 3 and 8 human rights.

DECISION

12. The original Tribunal was found to have made an error of law and her decision has been set aside. I re-make the decision by allowing the appellant's appeal on protection and human rights grounds.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 8 October 2020