



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

Appeal Number: PA/00205/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 May 2017**

**Decision & Reasons Promulgated
On 1 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**MISS Z A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Roberts, Legal Representative, instructed by Cromwell Wilkes

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Fox dismissing her appeal against the refusal of the respondent to grant her asylum in the United Kingdom.

2. The judge's original decision which the appellant appealed was promulgated on 27 February 2017. The judge's decision was subsequently withdrawn, and an amended version was promulgated on 20 April 2017. Both Mr R Roberts for the appellant and Mr T Wilding, Home Office Presenting Officer agreed that as the legal issues remained the same, they were content to proceed with the appeal on the grounds on which permission was granted.
3. The appellant is a citizen of Iraq, born on [] 1998. She arrived in the UK in 2014 as her mother's dependant. She made an asylum claim in her own right, on the basis that she will face a real risk of persecution on return to Iraq, by reason of imputed political opinion.
4. She was granted permission on a ground that argued that the judge erred in finding on the one hand, that the appeal fell to be dismissed and on the other hand, that it was not appropriate to consider risk on return as the appellant's case ought properly to be considered as a linked appeal, with those of her close family members.
5. In granting permission to appeal, FtJ Campbell said that at paragraph 55 of the decision, the judge found that the appellant was an unreliable witness and had "failed to demonstrate a subjective (sic) fear of harm in Iraq." At paragraph 56 he continued, "the issue of risk upon return is left outstanding on the basis that the appeal shall be linked to the other appeals." Immediately thereafter the parties are given notice that "the appeal is dismissed in accordance with the Refugee Convention" and also that "the appeal remains outstanding in relation to Articles 2 and 3 ECHR, humanitarian protection and the Qualification Directive." Human rights were in issue in the appeal (see the Secretary of State's decision letter at paragraphs 66, 67 and 68 to 79; note also, however, the scanty grounds of appeal and the absence of any express mention of human rights on page 10 of form AEFT-5). It is arguable that the judge's approach is inconsistent with the Tribunal's duty under Section 86(2) of the 2002 Act, as amended and permission is granted on this basis.
6. I note that the judge said under "Further Directions" that the appeal shall be linked with other appeals [A, B, C] with the issue of risk upon return to be determined collectively.
7. Mr Roberts submitted that the appellant's case stands alone; it cannot be linked. He had submitted the determination of the appellant's mother, [SM] under reference [A]. The appellant's mother's appeal was dismissed on asylum grounds. Her onward appeals to the First-tier Tribunal and the Upper Tribunal were refused. In the circumstances the appellant's appeal could not be linked to her mother's appeal.
8. Mr Roberts said that the appeal under reference [B] was that of the appellant's aunt, [Y]. Mr Roberts said that [Y]'s case still remains outstanding as it has been remitted back to the Secretary of State on

Section 55 grounds. Accordingly, the appellant's case could not be linked to that of [Y]'s.

9. With regard to the third case, [C], Mr Roberts said that this particular applicant's appeal was successful and consequently not outstanding. Again, it means that the appellant's case cannot be linked to this case. Accordingly, I find that the judge erred in law in requiring the appellant's appeal be linked to these other cases.
10. I find that the judge also erred in law in failing to determine risk on return in respect of the appellant's appeal. By not determining this issue I find that the judge's decision was incomplete.
11. The appellant's appeal was put on the basis that on return to Iraq she would be regarded as a lone female. She will have no assistance or support. She has always been under the protection of others whilst resident in Iraq historically. Therefore, on return as a lone female she would be at risk of persecution.
12. I find that the judge failed to consider the appellant's case and consequently erred in law.
13. For the above reasons, the judge's decision cannot stand. It is set aside in order to be re-made.
14. The appeal is remitted to Hatton Cross for re-hearing by a First-tier Tribunal Judge other than FtTJ Fox.

Signed

Date: 31 May 2017

Deputy Upper Tribunal Judge Eshun