



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

Appeal Number: PA/00965/2017

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower Decision & Reasons Promulgated  
Birmingham On 18<sup>th</sup> September 2017 On 9 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**B O  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Sidhu of Harbans Singh & Co Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Iraq born on 1<sup>st</sup> January 1988. She entered the UK illegally on 19<sup>th</sup> July 2016 with her husband A H Z, who claimed to be an Iranian citizen, and her son M A born in Turkey on 8<sup>th</sup> October 2013. The Appellant subsequently applied for asylum as an Iraqi Kurd. That application was refused for the reasons given in the Respondent's letter of 17<sup>th</sup> January 2017. The Appellant appealed, and her

appeal was heard by Judge of the First-tier Tribunal S Clarke sitting at Stoke-on-Trent on 1<sup>st</sup> March 2017. He decided to dismiss the appeal on asylum grounds but to allow it on humanitarian protection grounds for the reasons given in his Decision dated 19<sup>th</sup> March 2017. The Respondent sought leave to appeal that decision and on 25<sup>th</sup> July 2017 such permission was granted. There was no cross-application from the Appellant.

### **Error of Law**

2. I must first decide if the decision to allow the appeal on humanitarian protection grounds contained an error on a point of law so that it should be set aside.
3. The Judge decided to allow the appeal on humanitarian protection grounds as he found the Appellant to be credible and accepted that the Appellant feared persecution on her return to Iraq from her father as she had dishonoured her family by separating from her first husband who was a high ranking official in the PUK and had influence throughout the IKR. The Judge was satisfied that on return the Appellant faced a real risk of suffering serious harm and for that reason would be unwilling to avail herself of any State protection. Further, because of her personal circumstances it would be unreasonable by way of being unduly harsh for the Appellant to relocate to other areas of Iraq.
4. At the hearing before me, Mr Mills argued that the Judge had erred in law in coming to this conclusion. He relied only on Ground 2 of the Grounds of Application which referred to the Judge's decision at paragraph 28 of the Decision. That "it is far from certain that he (AHZ) would be able to return to Iraq with her". This was a fundamental error of fact. The Appellant's husband is in fact an Iraqi citizen who made a voluntary return to Iraq in 2012 under the VAR programme. He did not make use of any fraudulent documents to do so. It was irrational of the Judge to find to the contrary. Therefore it was open to the Appellant to return to Iraq with her husband and have his support there. The Judge failed to provide a reasoned finding that the Appellant would be destitute in Iraq.
5. In response, Mr Sidhu submitted that the Judge had made findings open to him on the evidence before him. He had looked at all the evidence in the round and found the Appellant to be credible. The Respondent had not disputed that the Appellant's husband was from Iran. The Judge was entitled to find that the Appellant's husband could not return with the Appellant to Iraq as he was an Iranian citizen.
6. I find a material error of law in the decision of the Judge to allow the appeal on humanitarian protection grounds which I therefore set aside. Reading the Decision, and in particular paragraphs 26 to 30 inclusive thereof, it is apparent that the Judge found that the Appellant qualified for humanitarian protection because she would face a real prospect of suffering serious harm on return to Iraq from her own family. This decision is based upon the Judge's finding that on return to Iraq the Appellant

would not have the support of her own family and that AHZ would not be able to return with her as he is an Iranian. There was sufficient evidence before the Judge to find that despite what AHZ said on his arrival in the UK, he is not an Iranian citizen but a citizen of Iraq who had previously returned voluntarily to that country in order to visit the Appellant there. The Judge did not deal at all with this evidence which amounts to an error of law.

7. This evidence is referred to in paragraphs 35 to 41 inclusive of the Refusal Letter.
8. I decided not to proceed to remake the decision in the appeal. This is in accordance with the provisions of paragraph 7.2(b) of the Practice Statements as fresh fact-finding needs to be carried out. It is appropriate to remit the case to the First-tier Tribunal for the decision in the appeal to be remade there.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal as to humanitarian protection will be remade in the First-tier Tribunal.

### **Anonymity**

The First-tier Tribunal made an order for anonymity which I continue for the same reasons given by the First-tier Tribunal.

Signed

Date 6<sup>th</sup> October 2017

Deputy Upper Tribunal Judge Renton