



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04530/2016**

Appeal Numbers:

**PA/04532/2016
THE IMMIGRATION ACTS**

**Heard at Manchester, Piccadilly
Reasons Promulgated
On 12th October 2017
October 2017**

**Decision &
On 17th**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

**MRS KHOSHI HAMASHARIF
MR EZADIN MOHAMMAD RASHED
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Pratt (Counsel)

For the Respondent: Mr Bates (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellants' appeal against the decision of First-tier Tribunal Judge Fox promulgated on the 14th February 2017, in which he dismissed their asylum appeals and claims for humanitarian protection and under Articles 2 and 3 of the ECHR.
2. The Appellants have now sought to appeal against that decision for the reasons set out within the Grounds of Appeal. It is argued within the Grounds of Appeal that the Judge fell into error by taking against the Appellants' credibility points in relation to Section 117 of the Nationality, Immigration and Asylum Act 2002, when that should have played no part in the assessment of the appeal there being no Article 8 consideration within the appeal. It said that at paragraph 15 the Judge made a number of findings in relation to Section 117 including a finding that "*I consider that the restrictions on their integration into local society require the engagement of the Public Interests Protocol on Removal*" and that the Judge therefore gave weight to the public interests considerations on removal whilst assessing the Appellants' credibility. It was argued the Appellants did not claim under Article 8 in this case. It is argued that the claim is based upon credibility of the Appellants' account and that improper considerations taken against credibility were material errors and that the decision requires remaking in its entirety.
3. Permission to appeal was granted by First-tier Tribunal Judge Astle on the 5th June 2017 who found that it was arguable that the Judge should not have considered Section 117 of the Nationality, Immigration and Asylum Act 2002 as there was no Article 8 claim within the appeal and it was arguable that the Judge erred in referring to Section 117.
4. Within the Rule 24 Reply from the Respondent dated the 12th June 2017, although it was conceded that the Judge's findings in relation to Section 117 of the Nationality, Immigration and Asylum Act 2002 was an irrelevant consideration, it is argued that they did not themselves form any part of the credibility findings of the Judge and therefore although an irrelevant consideration, the reference to Section 117 did not constitute a material error of law.

5. I have also fully heard and taken account of the oral arguments made by Mr Pratt on behalf of the Appellants and Mr Bates on behalf of the Respondent, which are fully recorded within the record of proceedings.

Findings in Respect of Error of Law and Materiality

6. At both [18] and at [50], the Judge noted that there was not Article 8 claim in respect of the Appellants' private or family life in the UK under the ECHR.
7. Section 117A of the Nationality, Immigration and Asylum Act 2002, makes it clear that it is dealing with the public interest considerations when the court or tribunal is considering Article 8 of the ECHR under Part 5 of the Nationality, Immigration and Asylum Act 2002. It states specifically at Section 117A(1) that this part applies where a court or tribunal is required to determine whether a decision made under the immigration acts:
 - (a) breaches a person's right to respect for private and family life under Article 8; and
 - (b) as a result would be unlawful under Section 6 of the Human Rights Act 1998.
8. In such circumstances, the considerations under Section 117A-D of the Nationality, Immigration and Asylum Act 2002, had no relevance to the Appellants' asylum claim. At [15] of his decision, First-tier Tribunal Judge Fox has gone on to make findings under Section 117 of the Nationality, Immigration and Asylum Act 2002 and found that neither presented any form of qualifications demonstration competency in the English language and he was satisfied that their lack of English may present an obstacle to integrating into local society. He further found that neither Appellant would be an easily marketable commodity in the local job market and they had not demonstrated any skills or assets that would make them attractive to prospective employers and they had not sourced any education courses that might help with their English language skills, nor had they demonstrated that

they would be successful in the local job market. He therefore found that each of the Appellants would be likely to be a drain on the public purse in the immediate and near future and therefore he found that the “restrictions on their integration into local society required the engagement of the Public Interests Protocol”.

9. Although clearly Judge Fox was in error by making findings in reference to Section 117 of the Nationality, Immigration and Asylum Act 2002, and although that was a finding he made under his section entitled “Credibility and Findings”, I am not satisfied, having carefully considered this appeal and the written and oral submissions made, that in fact, the Judge’s findings in respect of Section 117 have been taken by him as affecting the credibility of the Appellants’ account as to their risk upon return to Iraq. Although the Section 117 findings at [15] are part of the background, the Judge has not specifically stated that these have impacted upon his credibility assessment. The Judge at [16] has gone on to make findings damaging to credibility under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and between [17] and [38] inclusive, has given clear, adequate and sufficient reasons for rejecting the Appellants’ account that they would be unlawfully killed by members of the First Appellant’s family for having helped her sister avoid an arranged marriage by fleeing Iraq, and thereafter, having remained in contact by telephone with her. Those findings were specifically not challenged by Mr Pratt of Counsel at the appeal hearing before me. Indeed, as Mr Bates correctly points out, in the summary paragraph at [38], although the Judge brings together the reasoning for rejecting the Appellants’ account regarding the risks said to be faced by them upon returning to Iraq, he has not within that paragraph made any reference to the adverse findings pursuant to Section 117 of Nationality, Immigration and Asylum Act 2002. Such findings under Section 117, do not amount to credibility findings, and there is no evidence having closely and carefully read the decision to indicate that Judge Fox actually took those findings into account, when assessing the credibility of the Appellants’ claim.

10. In such circumstances, although clearly the Judge did err by reference to Section 117, I am not satisfied that, in fact, the error was material, and I am satisfied that the Judge would reach the same conclusions, given his findings on credibility, irrespective of that error.

11. In such circumstances I dismiss the Appellants' appeal against the decision of First-tier Tribunal Judge Fox as the decision does not contain any material errors of law.

Notice of Decision

The decision of First-tier Tribunal Judge Fox does not contain any material error of law and is maintained;

I make no order in respect of anonymity, no such order having been made by the First-tier Tribunal and no such order having been sought before me.

Signed

Handwritten signature in black ink, reading "RFM McGinty".

Deputy Upper Tribunal Judge McGinty

Dated 12th October 2017