



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04975/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Newport

Decision & Reasons

On 21 November 2017

Promulgated

On 4 December 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

S H A

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Grubb instructed by Qualified Legal Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is subject to an anonymity direction imposed in my decision sent on 3 October 2017 prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant or her child. A failure to comply with the direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq. She is Kurdish and comes from Suleymanih in the IKR. She arrived in the United Kingdom on 8 November 2015 and claimed asylum the next day. The basis of her claim was, at

that time, that she had divorced her husband in 2014 and was at risk of an 'honour killing' by her husband and his family on return.

3. On 3 May 2016, the Secretary of State refused the appellant's claims for asylum and humanitarian protection and under the ECHR.
4. The appellant appealed to the First-tier Tribunal. By this time, the appellant was pregnant as a result of a relationship in the United Kingdom. In addition to claiming that she will be at risk from her ex-husband and his family and as a lone returning woman, the appellant also claimed that she will be at risk from her own family (in particular her brother) because of the shame that she had brought upon her family by becoming pregnant outside of marriage.
5. Judge Fowell, who heard the appellant's appeal, dismissed the appellant's claims. Whilst he accepted that, if she were at risk of an honour killing, she would not be able to obtain a sufficiency of protection in the IKR and could not reasonably be expected to internally relocate, he found that she was not at risk from her ex-husband (on account of her divorce) or from her own family as a result of becoming pregnant out of wedlock or as a returning lone woman.

The Appeal to the Upper Tribunal

6. The appellant appealed to the Upper Tribunal with permission granted by the Upper Tribunal (UTJ Coker) on 17 May 2017.
7. The appeal was initially listed before me on 19 September 2017.
8. In my decision sent on 3 October 2017, I concluded that the First-tier Tribunal had erred in law principally by failing to properly take into account the expert evidence of Dr Fatah whose evidence was before the First-tier Tribunal.
9. Consequently, I set aside the First-tier Tribunal's decision and adjourned the hearing to be relisted for a resumed hearing to remake the decision in the Upper Tribunal.
10. The resumed hearing was listed before me on 21 November 2017.
11. The appellant was represented by Ms C Grubb and the respondent by Mr I Richards.

The Issues

12. At the outset, Mr Richards acknowledged that Judge Fowell's findings in the appellant's favour in respect of there not being a sufficiency of protection against an honour crime and that the appellant could not internally relocate stood.
13. That is undoubtedly correct and follows from my direction in para 28 of my decision sent on 3 October 2017. None of those positive findings in the

appellant's favour were challenged by the respondent in the Upper Tribunal proceedings.

14. Mr Richards acknowledged that, given the accepted facts, the appellant's claim was supported by the objective evidence and the Home Office's "Country Policy and Information Note, Iraq: Kurdish 'Honour' Crimes" document (August 2017) ("*CPI Note*") which Mr Richards placed before me. He candidly accepted that the only basis upon which the appellant would not succeed was if I found that the appellant's brother was not someone who would behave in the way recognised in the background material in respect of the appellant given that she had become pregnant outside marriage.
15. Ms Grubb relied upon her skeleton argument and, set out therein, a number of passages from the *CPI Note* placed before me. She also relied upon Dr Fatah's report at paras 55-58. She submitted that even if the appellant's brother was more liberal, the societal pressure would, nevertheless, pressurise the family to act against the appellant because of her 'honour' crime.

Discussion

16. The underlying fact which creates the risk of an 'honour' crime is accepted in this appeal, namely that the appellant has since she came to the UK become pregnant, and given birth to a child, outside of wedlock. As Dr Fatah points out at para 54 of his report, one of the sources of "offences against the family's honour" includes "sex outside of marriage". That is also recognised in the Home Office's *CPI Note* at para 7.1.1.
17. At paras 94-96, Dr Fatah deals explicitly with the risk to the appellant as a result of a relationship with a man outside marriage as follows:

"5.6 Risks from [the appellant's] family

94. I understand that [the appellant] is currently pregnant. [The appellant] was in a relationship with a man who she met in the UK. [The appellant] is not married to the father of her unborn child. [The appellant] states that she cannot return to Iraq because having a child outside of wedlock is considered to be shameful and damaging of her family's honour.
95. As mentioned above, sex outside of marriage in Iraq and the IKR is forbidden. Having sex outside of marriage would constitute as an honour offence and the tainting of the family's honour which is attached to a female of the family. The most common cause of an honour crime in Iraq and Kurdistan is having sexual intercourse outside of wedlock.
96. [The appellant] is having a child out of wedlock, she will be considered by her family and wider society to have committed an honour offence. This may result in her family, namely the male members carrying out an honour crime to 'cleanse' the family's honour."

18. The evidence clearly indicates that the shame is brought upon the family as a whole and the risk of 'honour' crimes arises from male members of the family, including a father and brother.
19. I accept what is said by Dr Fatah concerning the societal pressure on a family where a female member of that family is considered to have brought shame upon the family set out at paras 55-61 of his report as follows:
 - “55. The killing of women is mostly due to social pressure. Sometimes it is the case that her immediate family will think that physical abuse or confinement is punishment enough. However, they can be pressured into killing her by other relatives who will sympathize less and pressurise the family by discussing relentlessly the effects it has had on the honour of the family or tribe.
 56. Depending on the family or tribe's social background or the tradition of the region, the extended family may get involved. It is customary for male members of the immediate family and first and second cousins to take part in planning and executing the killing of those deemed as 'dishonourable'.
 57. Another reason relatives will do so is because they believe that not killing the woman in question will make the family appear as one who tolerates such behaviour. The consequence of this can be dire to the image of the family and the number or kind of suitors other girls in the family will have or even the family businesses.
 58. On 01 November 2012, the family of a woman were sentenced to a collective 80 years of imprisonment after she was found beheaded in a village. Indicating that external pressures had influenced the killing, the director of the department responsible for following up on cases of violence against women in Erbil stated:

There are fathers who are willing to receive their daughters back into the family, but they cannot due to family and tribal traditions.
 59. Many men, who are fathers and brothers, in conservative communities of Kurdistan believe that the women (maharem) are their honour (namus or sharaf) and that Islam gives them power over them: what they do is right in the society's eyes.
 60. A man who in the past worked for a women's empowerment centre, but now wishes to remain anonymous, said that women are treated more or less as objects for men to use for their own needs, which is why it's acceptable to kill them when they step out of line from their role as subordinates; for example, if they have a sexual relationship with a man to whom they are not married.
 61. Women who have been accused of a dishonourable act are often subjected to many types of violence before the killing occurs. These can vary from psychological harm and insults, to separation from the rest of family and society. They are also forced to leave their place of work and not return to school, college or university. This period preceding the killing, gives the male members time to make a decision about the woman's life and how to cleanse the perceived stain she has brought on the family's honour.”

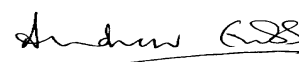
20. The burden of proof is upon the appellant to establish a real risk of persecution for a Convention reason, namely as a member of a particular social group in Iraq.
21. Whilst the evidence before the judge, which he accepted, was that the appellant's brother was supportive of her divorce that does not lead me to conclude that he would adopt a liberal or similar supportive approach as a result of the appellant becoming pregnant outside of marriage. Nothing in Dr Fatah's report is supportive of such a conclusion. In my judgment, the background evidence well demonstrates the approach to "honour" crimes committed by male members of families where a female member has, like the appellant, brought shame upon that family by becoming pregnant and having a child out of wedlock. I also bear in mind that, as Dr Fatah points out in his report and I set out above, societal pressure is likely to affect the attitude of the appellant's family to her.
22. I find as a fact that there is a real risk that the appellant's family will, as a result of her becoming pregnant in the UK outside wedlock, consider that she has brought dishonour upon her family and there is a real risk that they will commit an honour crime against her. As the Home Office *CPI Note* states at para 2.3.5:

"A woman at real risk of having an 'honour' crime being committed against her will be at risk of serious harm".
23. I agree. The appellant has established a real risk of suffering serious harm as a result of an honour crime being committed against her by her family.
24. As I have already pointed out, Judge Fowell's findings at para 60 and 61 that, if at risk, the appellant would not obtain a sufficiency of protection from an honour crime in the IKR and could not reasonably be expected to internally relocate within the IKR or Iraq generally were not challenged in the Upper Tribunal and, therefore, stand.
25. For these reasons, therefore, I am satisfied that the appellant's return to Iraq would breach the Refugee Convention and that she is entitled to refugee status.

Decision

26. The decision of the First-tier Tribunal to dismiss the appellant's appeal on asylum grounds was set aside by my decision sent on 3 October 2017 as it involved the making of an error of law.
27. I remake the decision allowing the appellant's appeal on asylum grounds.

Signed



A Grubb
Judge of the Upper Tribunal
1, December 2017