



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00280/2018

THE IMMIGRATION ACTS

Heard at Liverpool  
On 25 July 2018

Decision & Reasons Promulgated  
On 06 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS S M I  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss Sachdev, Legal Representative

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity order made in the First-tier Tribunal. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of her family. This direction applies to amongst others, the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a national of Iraq. The appellant claimed to have arrived in the United Kingdom on February 15, 2017 and claimed asylum the same day. She stated that she

had left Iraq on January 31, 2017 having paid an agent to arrange her transportation to a safe country. The respondent refused her claim for protection under paragraphs 336 and 339M HC 395 on December 17, 2017.

3. The appellant lodged grounds of appeal on January 2, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. Her appeal came before Judge of the First-tier Tribunal McCall (hereinafter called "the Judge") on February 7, 2018 and he dismissed the appellant's appeal on protection and human rights grounds on February 20, 2018.
5. The appellant appealed this decision on March 6, 2018 on the grounds that the Judge had erred:
  - (a) By failing to properly consider the report of Dr Fatah who supported the appellant's claim that she came from a "traditional" family as evidenced by her marriage to her deceased husband's brother.
  - (b) By wrongly finding she was not poor.
  - (c) By failing to have proper regard to the evidence of her bereavement and depression.
  - (d) By wrongly suggesting an X-ray was a treatment and therefore something she should have mentioned in her interview.
  - (e) By failing to have regard to her witness statement when making a finding of inconsistencies.
  - (f) By failing to have regard to the evidence generally when considering her account.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Mailer on March 19, 2018 who found it arguable the Judge "might not have properly appreciated the significance of the expert report that the appellant came from a traditional family" and he also gave permission on all other matters.

### **SUBMISSIONS**

7. Miss Sachdev adopted her grounds of appeal and submitted that the Judge had made a number of errors in his assessment of the evidence. These can be summarised as follows:
  - (a) The Judge had before him an expert report and background evidence which indicated that where a person was part of a traditional community and family then there was a practice that a widow would marry her husband's brother with a view to keeping the wealth in the family. The Judge did not make a finding as to whether the appellant was a member of a traditional family and if so why this practice would not have been carried out and by failing to do so she submitted the Judge erred.
  - (b) The Tribunal had found the appellant was not poor on the basis that she stood to inherit a quarter of her husband's estate as well as her death dowry. The Tribunal

failed to take into account that until this occurred she would have no income and the issue of where she stayed following her husband's death rested upon the type of family/community she was from.

- (c) The Tribunal further failed to take into account that the appellant had suffered a bereavement and was in a bad state and had attempted suicide following her husband's death. She had not been keen to deal with the estate because her property held memories of her husband. The Tribunal erred by failing to take this into account.
- (d) The Tribunal suggested that an x-ray was a form of treatment but she submitted that this was an error in itself as an x-ray was a form of detection not treatment.
- (e) The Tribunal suggested that she had attempted to embellish her account but Miss Sachdev submitted that the appellant had described her brother-in-law's advances not only in her interview but also in a statement that she had provided two days before her interview.
- (f) As regards the finding by the Tribunal that her brother-in-law did not attend at her mother's home she submitted that he sent other members of the family which would not be unusual. He was the head of the family and was unlikely to attend in person. The fact she was able to sell items without her brother-in-law knowing should not be held against her. She had stored her possessions at her sister's house including cash and there was nothing unusual about this.
- (g) Finally, the Judge had noted an inconsistency in her interview and failed to put this matter to the appellant and this amounted to procedural unfairness.

8. Mr McVeety opposed the application. He submitted:

- (a) Dr Fatah's report was misrepresented in the grounds of appeal. At paragraph 32 of her decision the Judge referred to the expert report and Miss Sachdev's submission that a widow would remain with her deceased husband's family. Mr McVeety submitted that the expert accepted there were circumstances this could happen, but they did not apply in this case. The Judge had noted that there were no children in this case and adopted the view of the expert, stated at paragraph 56 of the report, where he stated that when a widow had no children the responsibility for her would commonly revert back to her own family rather than her husband's family. Additionally, he argued that the appellant did not come from a rural area and the expert stated the practice of widows marrying their deceased husband's brother was present only in traditional conservative societies in more rural areas. The Judge had found that the appellant and her husband lived in Sulaymaniyah and that she had parents to return to and other family members. He submitted the report did not support the argument now advanced.
- (b) The Tribunal was entitled to find the appellant was not poor. The expert suggested that if the widow was poor she would usually become dependent on her husband's family and sometimes may be forced to marry one of her husband's brothers. However, he submitted there was evidence that the appellant had cash and jewellery available to her, valued at \$12,000, and her

argument that she would have had to return to her deceased husband's family therefore had no merit.

- (c) Mr McVeety submitted that the remaining grounds of appeal amounted to nothing more than a disagreement.
  - (d) The Judge considered the procedure that was in place to enable the appellant to obtain "probate" and at paragraph 33 of her decision he set out how an inheritance is dealt with by the courts in the IKR. He had considered the explanation put forward by the appellant and rejected it.
  - (e) There was no dispute that the appellant had gone for an x-ray and the grounds argued that the Judge erred by making an adverse finding against her for failing to mention this in her interview. The Judge went on to say that the appellant had not produced any medical evidence from her time in the United Kingdom to support her claim that she had at any time suffered or continued to suffer from a mental health disorder that would lead to self-harm. He submitted that this ground was a matter of semantics.
  - (f) With regard to whether her brother-in-law did make advances and whether she had embellished her account Mr McVeety submitted both this finding and the subsequent finding that the Judge did not find it credible he would not have attended at the appellant's mother's house to take her back were both open to the Judge. If her brother-in-law was as powerful as she claimed, then he submitted the Judge was entitled to make that finding that he would have known about her attempts to sell jewellery. He submitted that this finding when taken in the round was sustainable.
  - (g) The Judge possibly should have put an inconsistency to the appellant, but he submitted that when looked at in the round it was not material.
9. Miss Sachdev disagreed with the Mr McVeety's submissions and submitted that the appellant's father was a shopkeeper and was not affluent and they did not live in a big city. She relied on the content of the expert report. She submitted that the Tribunal should have given more weight to the fact that the appellant had lost her husband when considering why she had not obtained "probate". She reiterated her argument that an x-ray was not the treatment but a test and that any finding on this issue should not have damaged her credibility.

## **FINDINGS**

- 10. The appellant had claimed protection on the grounds that she could not be returned to the IKR because she feared persecution as a member of a particular social group who had offended her family and had been threatened and would be the subject of an honour killing were she to return.
- 11. In a very detailed decision the Judge rejected her claim, with reference to both objective evidence, case law and an expert report, and made adverse credibility findings on her account.

12. A number of the grounds centred on the expert evidence of Dr Fatah and objective evidence contained within the bundle. Miss Sachdev argued that the Judge had erred (a) by not making findings on whether the appellant would be at risk as a member of a traditional family; (b) by making a finding the appellant was not poor and (c) by making an adverse credibility finding on the time taken by her to deal with her husband's estate.
13. I have considered both the decision, the expert report and evidence when considering these specific three issues. Miss Sachdev relied to a large extent on the expert report, referred to above, but the expert made clear the traditional practice of a widow having to marry another family member only came into play if certain conditions were present. In this particular case, the Judge concluded none of those conditions were present.
14. I have heard submissions from both Mr McVeety and Miss Sachdev in so far as they related to paragraphs 4 to 6 of the grounds of appeal.
15. The appellant and her late husband had no children. According to the evidence the appellant had been living in Qualadze (Qaladiza) and Miss Sachdev submitted that this was not a rural area. She submitted no evidence to support this argument and background evidence suggests that it is a city of over 120,000 inhabitants. She originated from Ranya, which is also a large city of over 200,000 in population. Additionally, whilst Miss Sachdev submitted that his family did not know of her savings and the value of her jewellery or where it was stored I failed to see the relevance when assessing whether the appellant was poor or had access to some form of resources. I am satisfied that the findings made in paragraph 32 were open to the Judge. There was no evidence to support the appellant's claim that she would have been obliged to marry her deceased husband's brother.
16. The appellant had family to whom she could turn to and she clearly had access to funds. She could not claim she had no income when she was able, quite quickly, to raise \$12,000. On the basis of my finding that the Judge was entitled to conclude she did not have to live with her husband's family I further find that the appellant did not need to fall back on her deceased husband's family for support because firstly, she had recourse to funds and secondly, she had the support of her own family network.
17. The Judge was critical about the appellant remaining in Iraq for four years based on the account she had given. Whilst she may, understandably, had been depressed following her husband's death the Judges finding she had the support of her family to enable her to deal with the inheritance procedures was a finding open to the Judge because he had rejected her claim that her deceased husband's brother had control over her. Miss Sachdev's submission is merely a reiteration of the argument advanced to the Judge and that account was rejected by him with reasons.
18. The Judge is criticised for not taking into account the fact she had suffered a bereavement. In paragraphs 30 and 31 the Judge considered her mental and medical condition but there was an absence of medical evidence before the Judge and whilst I

accept an x-ray is not a treatment I am satisfied the Judge, at paragraph 31, did not make an adverse finding on this point but did make an adverse finding that she had failed to produce any medical evidence to support her claims that she had at any time been suffering from a mental health disorder that would lead her to self-harm.

19. The matters raised at paragraphs 8, 9 and 10 in the grounds of appeal are a disagreement with the Judge's conclusions. Those findings have to be considered against the earlier findings which the Judge had made regarding her background.
20. In particular, the Judge considered her account of threats made but rejected her account that the brother-in-law would not have attended at the house in circumstances where she claimed he was an influential member of the KDP.
21. The Judge also assessed and considered her interview about her brother-in-law and whilst the statement may have been submitted to the respondent the adverse finding that she has embellished her claim is one that has to be looked at against the whole evidence and not in isolation. On its own, it could be argued the Judge had made an error but when considered against the totality of other findings I am satisfied that any error is not material.
22. The Judge's findings at paragraph 38 were clearly open to him and the argument advanced today are a disagreement with that conclusion.
23. Mr McVeety did accept that an inconsistency in her interview was not put to her, but I am satisfied that this would not amount to material error.
24. This was a detailed and well-constructed decision in which all issues were properly considered. There is no material error in law

### DECISION

25. There is no error in law and I dismiss the appeal.

Signed

Date 25/07/2018



Deputy Upper Tribunal Judge Alis