



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04659/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 July 2018

Decision & Reasons Promulgated
On 27 July 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

ZAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: unrepresented

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq. She is of Kurdish ethnicity from the IKR. Her date of birth is 18 April 1988. She made a claim for asylum on 7 November 2016. This was refused by the Secretary of State on 4 May 2017. The Appellant appealed. Her appeal was dismissed by First-tier Tribunal Judge Davidson in a decision that was promulgated on 8 December 2017, following a hearing at Hatton Cross on 20 November 2017. Permission was granted by Upper Tribunal Judge Blum. The grant of permission is in the following terms;

2. The grounds, which contends that the judge made “material errors of law” and that the Appellant would be exposed to persecution in Iraq, failed to identify any legal basis for impugning the judge’s decision. I am nevertheless concerned that the judge may have erred in law in stating that there was no Refugee Convention reason ([32], where he appeared to adopt the Respondent’s reasoning without considering that she could be a member of particular social group), that the reasons given by the judge for finding the Appellant incredible were cursory at best (suggesting the judge may not have applied the lower standard of proof), and that inadequate consideration was given to the issue of sufficiency of protection and the availability of internal relocation for a woman with a child sought by her family.”
2. The matter came before me on 4 July 2018 to determine whether the judge erred.
3. The Appellant’s claim was that she is at risk from her family in Iraq because of her marriage to a Syrian national. The judge heard evidence from the Appellant with the assistance of a Kurdish (Sorani) interpreter. She did not make a witness statement. She gave oral evidence and relied on the asylum interview.
4. The Appellant’s evidence was that she met her husband, (“JIA”), whilst he was on holiday in Kurdistan in 2013. He is a Syrian citizen. They met in a cafe in the market and they began a relationship. JIA has leave to remain here in the UK. She did not know why he left Syria. She did not know the basis of his claim for asylum or the grounds of his leave. She did not know what school he attended in Syria. She did not know where he stayed whilst on holiday in Kurdistan. They met on a regular basis for about a week after their first meeting and thereafter had regular telephone contact. They married in an Islamic ceremony on 17 December 2013 within a month of their first meeting. The nikah ceremony was attended by her parents and sister. Her brothers did not attend because they disapproved of the marriage. JIA returned to the UK about a month after the nikah ceremony.
5. JIA returned to Kurdistan in 2015. They had a wedding ceremony in 2015. After the wedding they lived together in Tayrawa in Erbil for nine months before he returned to the UK. During this time they rented a property. He worked as a taxi driver. They had little contact with her family. After JIA left Kurdistan and returned to the UK, the problems escalated. Her family threatened to kill her. They wanted her to divorce her JIA. She was assisted by her uncle in Kurdistan to leave. She came to the UK on 7 November 2017 by lorry.
6. The respondent accepts that JIA was granted leave to remain in the UK in 2012. He is a refugee. The Respondent’s case is that the Appellant should have applied for entry clearance in the normal way and by claiming asylum she is circumventing the financial requirements for entry clearance.

The Decision of the First-tier Tribunal

7. The judge recorded at [5] that the Appellant sought an adjournment to seek legal representation. This application was opposed by the Respondent. The judge refused the application. There had been an earlier adjournment to in June 2017 to enable the Appellant to take legal advice and obtain representation. She told Judge Davidson at the hearing on 20 November 2017 that she was unable to afford a lawyer. She also explained that her baby had been unwell so that she could not look for a lawyer. The judge concluded at [7] as follows:-

“I refuse the application on the grounds that the Appellant gave no reason to believe that the situation would be different at a later date. The main obstacle to finding a lawyer, which she said was the cost, would still be an obstacle. Even if I accept that her baby has been unwell, that would not explain a failure to make progress in finding a lawyer since the last hearing in June 2017.”

8. At [32] to [38] of the decision the judge said as follows.

“32. I find that the Appellant has failed to show that she is at risk of persecution due to her race, religion, nationality, membership of a particular social group or her political opinion. On her own case, she relies on fear of her brothers and that does not bring her within any convention reason. The Respondent’s obligations under the convention are therefore not engaged.

33. I find that the Appellant has failed to show that there are substantial grounds for believing that there is a real risk that she will suffer serious harm if returned to Iraq. She claims that her brothers would kill her but I find that she has not shown that this is likely on the lower standard of proof. Some members of her family attended her wedding and they tolerated her living with her husband in their town for a period of 9 months before he left for the United Kingdom. Her uncle facilitated her travel to the United Kingdom and she has put forward no reason why he would not be able to help her again.

34. In any event, she would have the protection of the Iraqi authorities as her brothers are not state actors. In addition, she would be able to relocate internally as her family are not influential or politically active and would not be able to reach her in another part of the country.

35. Although she may not have Iraqi ID in her possession, her husband has ID and she would be able to obtain Iraqi ID as she is a known person, she attended higher education and members of her family are contactable.

36. I find that the Appellant lacks credibility. I base this finding on the account of her encounter where the evidence of the immigration officer is not consistent with the Appellant’s account of arriving by lorry. I also rely on the Appellant’s answers to questions which showed that the real reason for coming to the United Kingdom was for economic reasons and to be with her husband. I find that the Appellant is attempting to obtain entry to the United Kingdom without going through the normal entry clearance process and, as such, is trying to circumvent the immigration rules.

37. The Appellant has not shown that she complies with the Immigration Rules on the basis of her private or family life. She has the opportunity to make an

application under the rules and has not shown any reason why she should be permitted to be granted leave outside the rules.

38. I find that the Appellant has not shown that the Respondent is in breach of her obligations under Articles 2, 3 and 8 of the European Convention on Human Rights."

Conclusions

9. Ms Ahmad indicated that it was accepted that JIA is a Syrian national and that he and the Appellant were married. She informed me that his leave is due to expire and he has now made an application to extend his leave on which the Appellant is dependent. The application is pending.
10. The Appellant attended the hearing before me late in the morning and after the interpreter had been released. The clerk was able to locate the interpreter before he left the building. She had attended the Tribunal on her own. However, she told me that her husband and child were behind her and she was not sure whether they had arrived. She also told me after I made enquiries that her husband had attended the hearing before the FtT, but he had remained outside the court room to look after their child.
11. Whilst the findings of the judge are succinct, there was very little evidence before her. The Appellant did not produce a witness statement. There was no evidence from her husband or any witnesses in support of her appeal. There was the Appellant's oral evidence, a transcript of the interview (the Appellant was asked 114 questions) and the screening interview. I am satisfied that the judge took this evidence into account. The length of the decision reflects the scant evidence. The judge resolved the main determinative issue; namely, whether the Appellant was at risk from her family. She was best placed to determine credibility having had the benefit of hearing the Appellant give oral evidence. She gave brief reasons for finding that her account was not credible. However, those reasons are grounded in the evidence and adequate.
12. From a proper reading of the decision, it is made clear why the Appellant's appeal was dismissed. The judge did not find it credible that her family disapproved of the union. She attached weight to family members having attended the marriage and that the Appellant was able to secure funds from a family member (her uncle) to leave Iraq. I am satisfied that the judge applied the correct burden and standard of proof (see [33]). The judge was entitled to infer that the Appellant's family tolerated her living with her husband for nine months prior to him returning to the UK and to attach weight to this. Whilst I agree with Judge Blum about the engagement of the Refugee Convention, relocation and sufficiency of protection; this is not material because the judge properly considered risk on return. It was open to her, on the evidence, to conclude that the Appellant would not be at risk on return to Iraq.
13. The judge briefly engaged with Article 8 at [37] finding that the Appellant could not meet the Rules. This conclusion was inevitable. There is no assessment of the child's best interests; however, the child was very young and on the evidence before the judge

the inevitable conclusion would be that she should remain with her parents. The Appellant's husband was a Syrian refugee but there was nothing to prevent him from living in Iraq with his family. The problem for the Appellant is that there was very little evidence before the judge. It is unarguable that she meets the Rules. The Appellant knew very little about her husband when asked questions in the AIR. There was no evidence before the judge that he would not be able to return to Iraq with the Appellant where he has previously lived and worked in Kurdistan.

14. I have some sympathy with the Appellant. She was upset and wanted a re-hearing of her case. She could not afford legal representation. However, the judge enabled her to participate in the proceedings. There is no unfairness arising from the decision. Ultimately the burden of proof was on the Appellant and the judge was entitled to conclude that she failed to discharge it.
15. The Appellant came to the hearing before me with a bundle of paperwork which she stated was before the FtT. I considered the paperwork, after Ms Ahmad had looked at it. There was nothing in the documentation that would support the Appellant's claim to be at risk.
16. There is no material error of law identified in the grounds. There are no *Robinson* obvious points arising that would have an impact on the outcome in this case. If the Appellant is able to submit further evidence it is open to her to make further submissions under paragraph 353 of the Immigration Rules.
17. There is no material error of law. The decision of the FtT to dismiss the appeal is maintained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Joanna McWilliam*

Date 20 July 2018

Upper Tribunal Judge McWilliam