



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

Appeal Number: PA/11373/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 18 November 2019**

**Decision & Reasons Promulgated
On 25 November 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Imamovic, instructed by UK & Co solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1994 and is a female citizen of Iraq. She entered the United Kingdom on 25 January 2017 with their eldest daughter who is now aged five years. She has another child who will be two years old in January 2020. The children and the appellant's husband (R) are British citizens. R was born in Iran was granted asylum in the United Kingdom.
2. By a decision of Deputy Upper Tribunal Judge Chamberlain, the decision of the First-tier Tribunal was set aside. The Deputy Upper Tribunal Judge directed that the resumed hearing should take place before any Upper

Tribunal Judge. Accordingly, I conducted the resumed hearing at Birmingham on 18 November 2019 following which I reserved my decision.

3. The Deputy Upper Tribunal Judge directed that the only outstanding issue to be determined concerns the appeal on Article 8 grounds. He did not disturb the conclusion of the First-tier Tribunal that the appellant's asylum appeal should be dismissed. The First-tier Tribunal had found that the appellant and her husband were not witnesses of truth.
4. The standard of proof in the Article 8 appeal is the balance of probabilities. The parties accepted before the Upper Tribunal that the appellant did not satisfy the provisions of Appendix FM of HC 395 (as amended). The appeal falls to be considered, therefore, under Article 8 ECHR outside the rules.
5. Both the appellant and husband gave evidence Kurdish Sorani with the assistance of an interpreter. The appellant said that her eldest child is now in a reception class at infants school. The child speaks English 90% of the time; she now speaks little Kurdish. Her youngest child speaks mainly English also. The appellant explained that the husband is working so she mainly cares for the children. The appellant possesses only basic education qualifications.
6. Cross-examined by Mrs Aboni, who appeared for the Secretary of State, the appellant said that she had no family living in Iraq. She said that her life in the United Kingdom were safe and settled. She believed her husband had obtained his British nationality in 2008. She confirmed that he had travelled to Iraq in the period 2011 - 2016; the couple had married in Iraq in 2013.
7. I heard evidence from the appellant's husband, R. He stated that he had entered the United Kingdom as minor or in December 2004. He had become a British citizen in June 2011. He said that he had travelled to Iraq in 2012 in order to try to make contact with his mother who had remained living in Iran. He had supported himself in Iraq by working for the appellant's uncle in a car body shop. The appellant now works in the United Kingdom as a manager of a Tesco hand car wash.
8. This is an appeal which turns on the question as to whether it would be reasonable to expect the two children of the appellant and her husband to travel abroad to live in Iraq. The parties accept that, if it is found to be not reasonable, then the operation of section 117B(6) of the Nationality Immigration and Asylum Act 2002 (as amended) renders the removal of the appellant without public interest. Consequently, the removal of the appellant would not be proportionate (Article 8 ECHR (2)).
9. The litigation history of this appeal is unfortunate. It is clear that, if the First-tier Tribunal had applied the Home Office policy which was in force at the date of the hearing before it, it would have found that the respondent did not consider it to be in the public interest British citizen children to have to leave the jurisdiction of the United Kingdom. That policy, which

has subsequently been superseded, made a distinction between children who are 'qualifying children' under the 2002 Act only because they have lived in this country for seven years or more and children who are British citizens. Children in the latter category are now treated in exactly the same way as other qualifying children under the policy now in force. That policy (Version 4) provides that 'starting point is that [the Secretary of State] would *not normally expect* qualifying child to leave the United Kingdom.' [my emphasis] The policy goes on to record that 'the Supreme Court found that 'reasonableness' is to be considered in a real-world context... the parents' immigration status is a relevant fact to establish that context.' The policy also stresses the need for decision-makers to have regard to the best interests of the children (section 55 of the Borders, Citizenship and Immigration Act 2009).

10. I am required to determine this appeal by reference to the facts and the law (including, by extension, the relevant policies of the respondent) appertaining as at the date of the Upper Tribunal resumed hearing. Mrs Aboni submitted that the First-tier Tribunal had found that the appellant and husband were not credible witnesses. Accordingly, it had also rejected their claim that they had no family members living in Iraq who would be able to assist them. Whether or not that finding is of relevance in the Article 8 appeal, I note that the appellant's husband found work with the appellant's uncle when the couple were living in Iraq for a considerable period of time ending in 2016. They claim that they are no longer in touch with that uncle but, in the light of the previous credibility assessment of this couple and their failure to give any proper reason for having fallen out of contact with the uncle, I find that that claim is not accurate. If the couple return now to Iraq, I find that they will have contact with the appellant's uncle and, even if his body shop has now closed as the husband of the appellant claimed, I find that he would be able to assist the husband in finding work in Iraq as he had in the past and by assisting the reintegration of the family generally.
11. As regards the children, I accept that the eldest child may now be more proficient in English than she is in Kurdish. However, the fact remains that she does speak some Kurdish, in particular to communicate with her mother whose own English is poor. The eldest child has lived in Iraq and, whilst I accept that she has now started school, she is still very young and there is no evidence to show that she would not adapt to living in Iraq. The younger child was born in the United Kingdom but she is of such a young age that her language skills are only now beginning to develop; there is no evidence to suggest that she would not be able to adapt readily to living in Iraq and mastering the Kurdish language. I am fully aware that both children would be unable to exercise their rights as British citizens in full whilst they are living in Iraq. However, both children would be returning to the country of their own and their parents' heritage. Above all, I am aware that, whilst the appellant's husband is a British citizen, the appellant herself has no right to remain in this country. Moreover, I have find that her husband would have no difficulty whatever integrating into a country where he has lived and found employment as recently as three years ago.

I find that, on the particular facts, it would be reasonable to expect both children to live in Iraq with their primary carer, the appellant. I find that the test contained in section 117B(6) is not satisfied in this instance and that family life may be continued in Iraq. I find that the removal of the appellant to Iraq is proportionate and that her appeal on Article 8 grounds is dismissed accordingly.

Notice of Decision

I have re-made the decision. The appellant's appeal against the decision of the respondent dated 14 September 2018 is dismissed on human rights grounds (Article 8 ECHR)

Signed

Date 19 November 2019

Upper Tribunal Judge Lane

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

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