



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

Appeal Number: AA/09491/2014

**THE IMMIGRATION ACTS**

**Heard at : IAC Birmingham**

**Determination  
Promulgated**

**On : 24 June 2015**

**On : 30 June 2015**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**B B A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Vokes, instructed by D & A Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal comes before me following the grant of permission to appeal on 2 February 2015.
2. The appellant is a Kurdish national of Iraq from Sulaimaniya in Kurdistan, born on 12 July 1986. She left Iraq in June 2014 and entered the United Kingdom illegally on 23 June 2014, having travelled by lorry from Turkey with an agent and with her two young children (born in 2005 and 2007). She claimed asylum on arrival and, following an interview on 26 September 2014, her claim was refused on 27 October 2014. A decision was made the same day

to remove her from the United Kingdom. The appellant appealed that decision and her appeal was heard in the First-tier Tribunal on 23 December 2014 and dismissed in a decision promulgated on 7 January 2015.

### **The Appellants' claim**

3. The appellant's parents were taken away by the Saddam Hussain regime in 1988 and she went into the care of her paternal uncle and his family. She claims to fear persecution from her uncle as a result of his discovery of her relationship with a man who worked as a gardener in the house where she worked as a cleaner. Her husband, whom she had married in July 2004 in a marriage arranged by her uncle, died in July 2012, and she had subsequently entered into the new relationship which was discovered by her uncle in May 2014. Her aunt overheard her uncle and cousins talking about murdering her because she had brought shame on the family honour by having the relationship without permission. She therefore fled Sulaimaniyah and went to Duhok on 10 June 2014 with her partner and her two children from her marriage and from there travelled by car to Turkey, where she became separated from her partner as there was insufficient money to pay the agent to bring them all to the United Kingdom. She came to the United Kingdom by lorry together with her children.

4. The respondent, in refusing the claim in her letter of 27 October 2014, accepted the appellant's account of her relationship and of her uncle's threat to kill her but considered that there was a sufficiency of protection available to her from the Iraqi authorities or in a shelter, and that she could also relocate to another part of the KRG in Iraq. It was considered that she would not be at risk on return to Iraq and that her removal would not breach her human rights.

5. The appellant's appeal against the decision to remove her came before Judge Asjad in the First-tier Tribunal on 23 December 2014. The judge noted that the appellant's claim was accepted as credible and went on to consider sufficiency of protection and internal relocation. She found that sufficiency of protection was not available to the appellant but she concluded that internal relocation was a viable option and she accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

6. Permission to appeal that decision was sought on the grounds that the judge had failed to make specific findings as to where the appellant could relocate; that her finding that the appellant's uncle was unlikely to find her was inconsistent with the background information; that there was inadequate consideration of the welfare of the appellant's two children; that there was a failure to take account of the Home Office Iraq Operational Guidance Note (OGN); and that the appeal should have been allowed.

7. Permission to appeal was granted on the grounds that it was arguable that further reasoning was required in relation to internal relocation, given the vulnerability of the appellant being responsible for two young children.

### **Appeal hearing**

8. The appeal came before me on 24 June 2015 and I heard submissions on the error of law.

9. Mr Vokes referred to the country guidance in MK (documents - relocation) Iraq CG [2012] UKUT 126 in relation to the difficulties for women heads of household. On the basis of the patriarchal nature of Iraqi society as identified in the guidance, the judge's finding, that it was unlikely that the appellant's uncle would find her, was inconsistent with the background evidence which suggested that her family would be contacted at the airport in order to locate her male protector. Although the judge referred to the OGN she did not actually consider it and make findings on it. Neither was there any consideration of the impact of internal relocation on the children and the vulnerability of the family as a whole. There was no consideration of the risk of sexual exploitation in the case of the appellant's daughter and no consideration of the best interests of the children. The judge's findings on where the appellant could actually relocate were vague. The decision was insufficient in its findings.

10. Mr Mills submitted that it was clear that the judge had considered areas to which the appellant could relocate. The OGN confirmed the guidance in MK, which the judge had considered. There was nothing in the findings in MK to suggest that the appellant's family would be contacted when she arrived at the airport. The appellant's circumstances put her outside the finding in the OGN of a general risk to lone women and women heads of household. The judge had made adequate findings in that regard and in regard to the children.

11. Mr Vokes, in response, reiterated the points previously made.

### **Consideration and findings.**

12. I am satisfied that the judge's decision discloses a material error of law in her consideration of internal relocation and I find much merit in the submissions made by Mr Vokes. Indeed whilst Mr Mills sought to defend the decision he acknowledged that it was not without its shortcomings.

13. Mr Vokes accepted that the strength of his case did not lie in his submission as regards contact being made with the appellant's uncle from the airport in order to facilitate the appellant's identification documentation and he was correct to do so, in light of the findings in MK. However there is merit in his assertion that the judge failed to undertake a proper assessment of the likely conditions to which the appellant would return together with her children when considering whether internal relocation would be unduly harsh. I agree with Mr Vokes that the judge's error lay, in her examination of the appellant's particular circumstances pursuant to paragraph 4 of the head-note to MK, in placing undue weight upon her living conditions and circumstances prior to her departure without considering how the more recent country situation and background information impacted upon future conditions, such as accommodation, employment and protection in general. I agree with Mr Vokes' submission that the judge, whilst referring to the OGN of 22 August 2014, did not actually engage with its findings and conclusions in that respect. She simply found that, because the appellant had previously been able to find accommodation and employment and live alone with her children without the protection of her uncle, and because she had managed to travel alone to the United Kingdom with her young children and was thus a resourceful and adaptable woman, she would be able to utilise such skills on return to Iraq.

14. The skeleton argument before the judge, and the submissions made to her, referred in particular to paragraphs 3.13.13, 3.13.14, 3.13.16, 3.15.18 and 3.15.21 of the OGN of 22 August 2014. Paragraph 3.13.13 refers to women at risk of “honour crimes” at the hands of their family being extremely vulnerable since they had lost their primary source of protection and support.

15. Paragraphs 3.13.14 and 3.15.18 refer to difficulties in finding accommodation and protection:

“In relation to shelters and other services, UNHCR notes that women’s options are “very limited”. According to UNHCR, “In the Kurdistan Region, local authorities and NGOs have established several shelters with limited capacity. While these shelters can, for a limited time, provide physical protection as well as social, legal and psychological counselling, they generally do not offer a durable solution. [...] In the central and southern governorates, there are no official shelters, although some women’s organizations provide victims with temporary shelter in hidden locations. Such arrangements are, however, not to be considered an effective form of protection”.

“In the IKR four Ministry of Labor and Social Affairs (KMOLSA) -operated women’s shelters and one private shelter provided some protection and assistance. Space was limited, and service delivery was poor, with the private shelter providing a slightly higher level of service. In areas outside the IKR, NGOs ran shelters without official approval. Some NGOs assisted victims through community mental-health workers. Other NGOs provided legal assistance to victims. NGOs played a key role in providing services to victims of domestic violence who received no assistance from the central government. Instead of utilizing legal remedies, authorities frequently attempted to mediate between women and their families so that the women could return to their homes. Other than marrying or returning to their families (which often resulted in the family or community victimizing the shelter resident again), there were few options for women housed at shelters.”

16. Paragraph 3.13.16 provides the following conclusion in relation to cases involving honour crimes:

“Women fearing ‘honour killing’ or ‘honour crimes’ in either central or southern Iraq or in the Kurdistan Region of Iraq are unlikely to be able to access effective protection. Each case must be considered on its own merits to assess whether internal relocation would be possible for the particular profile of claimant, but in general an internal relocation alternative is unlikely to be available for lone women.”

17. Paragraph 3.15.21 provides a conclusion on the situation for women:

“Since the last hearing of MK in February 2012, the evidence shows that Iraqi women continue to experience legal and social discrimination and that sexual and gender based violence is widespread. Applicants may be able to escape persecution by internally relocating to another area of Iraq, but it needs to be noted that women, especially single women with no support network, are very likely to be subjected to destitution and vulnerable to trafficking for sexual exploitation and prostitution.”

18. I do not accept that the above simply reiterate the findings in MK, but consider that the OGN provides further information that had to be properly assessed by the judge, which she failed to do. Neither do I accept that the

appellant's previous "resourcefulness" provides an adequate answer to the concerns raised by this background material. It is clear from the background material that there are real concerns as to the appellant's ability to access accommodation and protection, either in south or central Iraq or the KRG. Those concerns have not been adequately addressed by the judge.

19. Furthermore, with regard to the judge's reliance upon the appellant's past resourcefulness, it is relevant also to note, as Mr Vokes submitted, that she did not travel alone to the United Kingdom and was under the care of an agent and that, whilst it was not accepted that she was living under the protection of her uncle and his family, she clearly had some form of family support from her uncle and his family prior to her problems arising whereas that would not exist on return. It is also relevant to have regard, which the judge plainly failed to do, to the fact that the appellant's circumstances differed to those of MK in that the Tribunal in MK found that that appellant retained family ties in Iraq (as paragraph 91 makes clear) and, furthermore, that she would be accompanied on her return by her two adult sons, who were considered to be able to offer a degree of protection and were of an age to be able to work. This appellant, however, would be returning to a situation of no family support, to very limited employment opportunities, as indeed acknowledged in MK, to difficulties finding accommodation and to no male protection, with two young children to look after and support. On the basis of the background information, she would undoubtedly be vulnerable and at risk of exploitation, whether she would be relocating within the KRI or in central or south Iraq, and I consider that it was not open to the judge to conclude that internal relocation would not be unduly harsh.

20. For all of those reasons I find that the judge's decision cannot be defended and has to be set aside and re-made. Mr Mills accepted that if that were the case the decision would have to be re-made by allowing the appeal and I find that that has to be the case.

21. Accordingly I find that the appellant has demonstrated, to the lower standard of proof, that she has a well-founded fear of being persecuted in Iraq for one of the reasons set out in paragraph 6 of the 2006 Regulations and that her removal would breach Article 3 of the ECHR and I allow her appeal.

## **DECISION**

22. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and re-make it by allowing the appellant's appeal on asylum and human rights grounds.

### Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Upper Tribunal Judge Kebede

Dated: