



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

Appeal Number: PA/03078/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Decision & Reasons Promulgated  
Centre  
On 9<sup>th</sup> May 2017                      On 23<sup>rd</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[ B R ]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No Legal Representation  
For the Respondent: Mr D Mills (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge D S Borsada, promulgated on 13<sup>th</sup> October 2016, following a hearing at Birmingham Sheldon Court on 22<sup>nd</sup> September 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a citizen of Iraq, a female, and was born on [ ] 1990. She appeals against the decision of the Respondent dated 23<sup>rd</sup> September 2016, rejecting her claim for asylum and humanitarian protection, on account of having undergone an illicit relationship with a man from the Yazidi Christian community, whereas she herself was a Sunni Muslim, from a large family consisting of her parents, four brothers and one sister, all of whom are still living in Iraq. The Appellant became pregnant with the child of this man from the Yazidi Christian community by the name of Elyas and is now with a child, and her claim is that Elyas himself has been killed by ISIS insurgents in Iraq, and that she would be returning back to that country as a lone woman and a failed asylum seeker, which will subject her to risk of persecution and ill-treatment.

### **The Judge's Findings**

3. In an extensive, comprehensive, and detailed determination, Judge Borsada, set out the Appellant's claim (see paragraph 5); the submissions by the Respondent (paragraph 6); the submissions from the Appellant's representative (at the time was legally represented), which are set out at paragraph 7; before proceeding to make detailed findings of fact himself (see paragraphs 8 to 15). The judge decided that the Appellant could not succeed because essentially, her claim was not credible.

### **Grounds of Application**

4. The grounds of application state that the judge wrongly considered the claim from an advantage point of a judge sitting in the UK, and made wrongful assumptions in relation to cultural attributes of the community in Iraq, so as to lead him to erroneous conclusions. For example, it is asserted that the judge was wrong in taking the view that the Appellant could not have come from a conservative family, if she had been allowed by the family to go to university, to be in possession of a mobile phone, and to move about freely. It was also said that it was not necessarily implausible that the Appellant would have continued to drive to see Elyas, after it was made clear to her by her father that the relationship was unacceptable, and that threats had been issued. This was despite the Appellant making clear that she was careful not to be seen with him holding hands or kissing in public. It was also said that the judge was wrong to have concluded that the family would have allowed her to go out in public on her own given her illicit relationship.
5. On 9<sup>th</sup> November 2016, permission to appeal was refused by the First-tier Tribunal, on the basis that the judge had given a proper consideration to all the issues that had arisen before him. However, on 16<sup>th</sup> December 2016, the Upper Tribunal gave permission to appeal on the basis that it

was arguable that the judge's credibility findings were flawed and that the issue of risk as a lone female without support needed proper consideration.

6. On 10<sup>th</sup> January 2017, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge had delivered a comprehensive determination, considered all the evidence, and reached negative credibility findings at paragraphs 9 to 10, which were well reasoned and could not in any way said to be rational. Moreover, the Appellant came from the Iraqi Kurdish Region and the country guidance case of **AA (Iraq)** suggested that she could safely return back there.

### **Submissions**

7. At the hearing before me, the Appellant was unrepresented on 9 May 2017. She appeared with a McKenzie Friend, [AA], with her child who was with her, and she had difficulty understanding English, so that [AA] assisted her during the hearing. She explained that she was without funds and could not any longer pay the fees of her lawyer who had drafted her grounds of appeal, and who had represented her in the Tribunal below, but she had additional documentation that she wished to hand up, and this consisted of two articles, which purportedly demonstrated that there is a risk for alone woman to return back to Iraq. These consisted of a Daily Mail article, which was as old as 17<sup>th</sup> May 2007, in relation to an honour crime of a girl by the name of Dua Khalil Aswad, who had fallen in love with a Sunni boy, but had herself come from the Yazidi religion, and she was stoned to death. Another article was about "sexual harassment in Iraqi Kurdistan: a problem for all girls" from the Huffington Post of 22<sup>nd</sup> March 2017. She handed these up for Mr Mills, the Senior Presenting Officer to consider, and then they were passed on to the Tribunal for consideration.
8. Since it was Mr Mills' appeal, on behalf of the Respondent Secretary of State, he began by saying that he would rely upon the Rule 24 response. The judge had found the Appellant to be lacking in credibility. He did not find that the Appellant's family would threaten her or that she was at risk from them. She could return back to the cradle of her family, and if this was the case then she would not be returning back as lone woman, and everything else falls by the wayside. If, however, this was not so, then in the alternative the Appellant can return to Iraqi Kurdistan where she could find safe relocation.
9. For her part, [BR], the Appellant, stated that she could not go back because her life was in danger and she will be killed. She said that what will befall her if she returns to Iraq will be worse than what happened in the documents that she had handed up. She said that there is no support for herself or her child. She could not return.

### **No Error of Law**

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a part of law (See Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
11. First, the grounds of application do not disclose all the reasons given by the judge in coming to his decision, which are more detailed and more extensive than appeared to be the case from the grounds. The question that the judge directed himself to was that the fact that the Appellant was pregnant, and now had a baby, does not in itself prove that she was in an illicit relationship with a man by the name of Elyas. Nor does it prove that her family disapproved of her relationship with the child's father. The fact that the child's father was not named on the birth certificate "is significant and in particular her failure to have the certificate amended and that this does tend to suggest to me a lack of truthfulness on her part as to the real identity of the father" (paragraph 11). The decision by the judge is nuanced. He does not require corroboration, which is unnecessary in a protection claim, but he does say that "the lack of documentary evidence has not assisted in circumstances in which there were many other reasons to doubt the veracity of her evidence as detailed above" (paragraph 11).
12. Second, one of these reasons is that Elyas is said to have returned back to Iraq to make arrangements for the future, and given the risk that had already been alluded to, this was most unlikely, and not least because "there was a sympathetic uncle who already helped and surely could have done so again", and "there was also Elyas's family who are clearly not opposed to the match and would have been able to help without Elyas running the risk of returning" (paragraph 10).
13. Third, it was not plausible, as the judge found, that the Appellant remained fifteen days in Iraq without her whereabouts becoming known, in circumstances in which the uncle was clearly in communication with her family when the father and brother of the Appellant had already found out about her pregnancy, together with the fact that the Appellant's brother was a policeman who had influence and connections with the authorities (paragraph 10).
14. Finally, the judge does address the issue of the Appellant returning as a lone woman but concludes that there is no risk of ill-treatment being visited upon her (see the reasons given at paragraphs 12 to 13).
15. For all these reasons, the decision reached by the judge was entirely sustainable on the facts as found by him.

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

22<sup>nd</sup> May 2017