



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

Appeal Number: PA/08786/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 8 August 2017**

**Decision and Reasons Promulgated
On 23 August 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

Ms PROSHA ABDULLAH

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam (Solicitor)
For the Respondent: M Duffy (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal to dismiss her appeal against the Secretary of State's decision of 28 July 2016 refusing to grant her international protection.
2. By way of brief background, the claimant is a female national of Iraq and she was born, in that country, on 20 March 1997. She is from Suleymania which is located in the part of Iraq which is under Kurdish control. She is of Kurdish ethnicity herself.
3. In making her claim she asserted that because she had been reluctant to enter into a marriage with a man her father had chosen for her, he now wished to kill her. She had been forced into participating in an engagement ceremony and had then fled Iraq assisted by her mother, an aunt and an uncle. After coming to the UK, she had formed a relationship with a man named Mikhail, who is a British citizen. She was expecting their child. She thought she would be at additional risk in consequence of that because having a child born outside of marriage would bring shame upon her family and might lead to her being the victim of an honour killing. The Secretary of State, however, rejected her claim regarding the attempted forced marriage as being untruthful. Accordingly, the view was taken that she would be able to safely return to Iraq. The Secretary of State also thought there was no basis upon which she could rely upon Article 8 of the European Convention on Human Rights (ECHR).
4. The claimant appealed against the decision to refuse her claim and was aided by solicitors (though not those now representing her) in completing and submitting her grounds of appeal. The grounds raised contentions concerning international protection only and no mention was made of Article 8. However, at the appeal hearing the Home Office presenting officer agreed that Article 8 could be considered (see paragraph 16 of the First –tier Tribunal's decision).
5. The First-tier Tribunal held an oral hearing which was attended by the claimant. She gave oral evidence as did Mikhail. Both parties were represented. The claimant was found not to be credible. This was said:

“ 38. I do not consider it reasonably likely that the Appellant was forced into a marriage. I take into account the alleged timeline put forward by the Appellant. She states that she is proposed to on 7th February 2016. The Appellant having undergone an engagement ceremony where she is presented with jewellery she goes to her aunt's house on 9th February 2016. On her account she leaves Iraq on 11th February. Within this tight timescale, the Appellant has tried to commit suicide twice; sold the jewellery and found an agent. This is not credible.

39. When asked in interview on 9th June 2016 at question 270 whether there were any other reasons she wished to remain in the U.K. and she had answered no; she made no mention of Mikhail who she had met in April, entered a relationship with in May 2016. She actually confirmed she moved in with Mikhail 6 days after this interview on 15th June 2016. I find this evidence unsatisfactory. She stated she knew her partner's date of birth but knew nothing of his immigration history. She said she had not discussed his with him. This is despite her evidence that she told him all about her circumstances and he was supportive. She is now expecting a child with him. It is not credible that they have failed to discuss Mikhail's immigration history.

40. The Appellant's account as to how this arranged marriage came to be is vague. On her account Mustafa was a powerful and influential character. Her father was a taxi driver. It is not reasonably likely that her father and Mustafa would have come into contact with one another or to the extent that Mustafa would want to marry a taxi driver's daughter; the Appellant does not appear to have ever met Mustafa prior to the engagement ceremony.

41. The Respondent spent a lot of time cross examining the Appellant about the country information he said he had. This was not produced until after the hearing titled ‘Kurdish Families’. I do not consider that the Appellant was disadvantaged because the point the Respondent sought to make was substantially that there were two parts to the engagement process and this was accepted by the Appellant.

42. However fundamentally I reject the Appellant’s evidence about her arranged marriage because of the factors I set out at paragraphs 38 to 40 above.

43. The Applicant is now pregnant. She has become pregnant whilst her immigration status was precarious. She states that as an unmarried pregnant woman she would be considered to be shameful by her family and therefore at risk of harm. Regrettably I consider her pregnancy to be convenient. The Appellant’s partner says he does not wish to return to Iraq because he has a business and will wait until the Appellant is ready to marry him. I find that this too is a convenient explanation. I accept that there are honour killings in Iraq and women are subject to violence in particular where it is considered that they have brought shame on their family. This could include pregnancy outside wedlock. In my Judgment the Appellant has got pregnant when her immigration status is precarious and to improve her unmeritorious asylum claim. She has indicated that both her aunt and uncle gave her refuge to assist her and appears to have a good relationship with them; she has contacted them since she left. I find that if returned to Iraq (if the Appellant does not marry Mikhail) they are likely to assist her again and provide her with protection. I reject the submission that it is not proportionate or in the public interest to remove the Appellant.

6. At a slightly later point in the determination this was said:

“ 46. On the facts as established in this appeal I find that there are no substantial grounds for believing that the appellant’s removal would breach Article 2 or Article 3 of the ECHR.”

7. The grounds of appeal attacked various aspects of the First-tier Tribunal’s reasoning. There was also a contention, not pursued before me, that the First-tier Tribunal had erred in considering a document which had been provided after the hearing. A judge of the First-tier Tribunal granted permission to appeal and, in so doing, said this:

“It is however arguable that the Judge fell into error at paragraph 38 by failing to give adequate reasons for rejecting the appellant’s account. It is also arguable that the Judge erred in failing to give adequate consideration to the risk to the appellant as an unmarried pregnant woman, regardless of the reasons for the pregnancy (Danian). These grounds are arguable.”

8. In consequence of the grant of permission the case was listed before the Upper Tribunal (before me) so that the question of whether or not the First-tier Tribunal had erred in law could be considered. Representation at that hearing was as stated above and I am grateful to each representative. In fact, it is fair to say that there was a significant measure of agreement between them.

9. I have concluded that the First-tier Tribunal erred in a number of ways. First of all, on my reading of its written reasons, its concerns regarding the genuineness of the claimed relationship and regarding what it thought to be the claimant’s motivation in becoming pregnant formed part of its general adverse credibility assessment and part of its reasons for concluding that the account regarding the forced marriage was fictitious. I have no difficulty, in principle, with the First-tier Tribunal relying upon those sorts of concerns for a general credibility assessment. However, what it said at paragraph 39 was, in my judgment, impermissibly brief as an explanation for the apparent finding that the relationship was not a genuine one. Further, although the Judge indicated that he found evidence about the relationship “unsatisfactory” there is no clear explanation as to why that was or what, in particular, was unsatisfactory. As to the pregnancy issue, the Judge observed “regrettably I consider her pregnancy to be convenient”. What the Judge was saying was that he had found that she had deliberately become impregnated in order to bolster her

claim for international protection. It is not inconceivable that a person might do that. However, it is undoubtedly a dramatic step to take and there is necessarily a degree of an inexactness about when or whether pregnancy could be achieved. Further, it would be a somewhat momentous decision for a person to take bearing in mind that having a child in such situations would necessarily place the child's own future in some jeopardy. I have concluded that the reasoning, in that regard, was simply inadequate and Mr Duffy accepted, before me, that that was so.

10. There is then the question of the way in which the First-tier Tribunal considered the claimed risk stemming from the pregnancy. At paragraph 43 of the written reasons it did not find that the claimant would not be at risk of an honour killing as a result of the pregnancy. Indeed, it accepted that honour killings do sometimes take place in such circumstances. However, it went on to say that the claimant would be able to secure protection from her aunt and her uncle. However, the First-tier Tribunal does not explain how or why it is thought the aunt and uncle could afford protection bearing in mind that, if the claimant was to seek to avail herself of such protection from them, her father would be likely to know exactly where she was.

11. Finally, although the First-tier Tribunal did admit the Article 8 arguments for consideration it did not, in my judgment and on my reading, clearly resolve them. This too was accepted by Mr Duffy. It may be that the Judge was applying his apparent disbelief of the genuineness of the relationship to the Article 8 arguments as well as his belief that the pregnancy had come about for ulterior motives, when he commented at the foot of paragraph 43 "I reject the submission that it is not proportionate or in the public interest to remove the appellant". But it is not entirely clear. Nor is there any other reasoning at all with respect to Article 8. Indeed, at paragraph 46 the First-tier Tribunal only referred, with respect to the ECHR, to Articles 2 and 3 which suggests it might have by that stage, simply lost sight of Article 8.

12. In the above circumstances I have concluded that the First-tier Tribunal erred in law for the various reasons set out above. I have concluded that the Judge's decision is, in consequence, unsafe. Accordingly, it is set aside. Both representatives urged me to remit for a complete rehearing before a differently constituted First-tier Tribunal and that is what I have decided to do.

13. Finally, I have made no anonymity direction. None was made by the First-tier Tribunal and none was sought before me.

Decision

The decision of the First-tier Tribunal involved the making of an error of law. Accordingly, its decision is set aside. The case is remitted, in accordance with the directions appearing below, for a full rehearing before a differently constituted First-tier Tribunal.

Anonymity

No anonymity direction is made.

Signed

Date: 22 August 2017

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed:

Date: 22 August 2017

Upper Tribunal Judge Hemingway

DIRECTIONS FOR THE REHEARING

1. The appeal shall be listed for an oral hearing before a differently constituted First-tier Tribunal to that which considered the appeal on 17 March 2017.
2. The claimant shall be provided with a Kurdish Sorani speaking interpreter at the rehearing.
3. The rehearing shall take place at the Bradford Hearing Centre which appears to be the most convenient centre for the claimant given that she resides in Sheffield.
4. These directions may be amended or supplemented by further directions made by a salaried judge of the First-tier Tribunal.

Signed:

Date: 22 August 2017

Upper Tribunal Judge Hemingway