



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

Appeal Number: PA/11952/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> September 2017**

**Decision & Reasons Promulgated  
On 22<sup>nd</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MS HNSS  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Saifolahi, Counsel, instructed by Indra Sebastian Solicitors

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

**DECISION AND REASONS**

1. The Appellant is a national of Iraq whose appeal was heard by First-tier Tribunal Judge Andonian and dismissed on all grounds in a determination promulgated on 23<sup>rd</sup> June 2017.
2. Extensive grounds in support of an application for permission to appeal were lodged. In particular, it was said that the judge whilst recording some of the Appellant's mother's evidence makes no findings on her evidence. In addition, her claim that her mother's husband had written the Statement of Additional Grounds and she was not aware of all the

contents failed to take account of material evidence - namely that the errors in the Statement of Additional Grounds were obvious ones and the Appellant's explanation as to why she was not aware of what was written had not been considered. Importantly, there was expert evidence which the judge had not considered. In particular, the judge had failed to engage with the report of Dr Lawrence and had also failed to engage with the report from Dr Fatah. The Appellant's explanation for her loss of virginity was given in her witness statement but this had not been considered. It was also said that the judge had been wrong to conclude that the report of Sonya Landesmaan was "hugely subjective" and "not objectively well-balanced". The judge had failed to address the contents of Dr Fatah's report other than with reference to the loss of virginity. Dr Fatah had addressed the issue of risk on return and being the victim of honour crime and risk as a westernised woman. The judge had completely failed to address the second issue which was material to the issue of risk on return.

3. In terms of Article 8 the judge had failed to consider whether there was family life between the Appellant and her half-siblings. This had not been addressed anywhere within the decision and the conclusion on Article 8 was confined only to a consideration of the relationship between the Appellant and her mother.
4. Permission to appeal was granted. The Secretary of State lodged a Rule 24 notice opposing the appeal and saying that the grounds were lengthy and seek to attack the judge on every conceivable aspect of his findings and reasons, which was unwarranted. The judge had given cogent reasons for rejecting the Appellant's account and the Grounds of Appeal essentially sought to relitigate the hearing and amounted to no more than a lengthy disagreement with the findings open to the judge on the evidence.
5. Before me Ms Saifolahi relied on her grounds. The judge had not rejected or accepted the mother's evidence. He had failed to engage with the expert reports. The important point about the Statement of Additional Grounds was that the Appellant did not know what the grounds contained - that was her evidence and the judge had not dealt with that. All the grounds were relied on including Article 8 where the judge had simply not engaged with the submissions and the evidence laid before him.
6. For the Home Office Mr Clarke stated that the decision of the judge was strangely laid out but argued that it was sustainable. The judge had found that the mother's evidence did corroborate that of the Appellant. The judge had dealt with Dr Fatah's report. In terms of paragraph 50 of the decision the judge had noted that she was aware of what the mother's husband was writing down. Reliance was placed on the Rule 24 notice and I was asked to uphold the decision.
7. I reserved my decision.

## **Conclusions**

8. I agree with Mr Clarke that this decision is a strangely laid out one and would add that the reasoning is not easy to follow. It seems to me that the first Ground of Appeal is well stated – the judge does say that the mother’s evidence corroborated that of the Appellant but goes no further than that. Accordingly, what we have is corroboration of the Appellant’s account by the mother but no finding on whether or not the mother’s evidence is true or otherwise and the account of the Appellant being rejected. It was open, of course, for the judge to reject the mother’s evidence if he considered that appropriate but if that was the case reasons were required.
9. Plainly, there are other difficulties in this decision. The point about the statement of grounds is that the Appellant says she was not aware of all the contents. In my view the terms of paragraph 50 of the decision do not fully connect with the Appellant’s evidence on this. He does say she was aware of what he was writing down and goes on to say that he does not find the Appellant credible. He was required to specifically deal with the fact that the Appellant maintains that she was not aware of all the contents and, in my view, the judge failed to make a clear finding in that regard and failed to give proper reasons. There are other concerns about the expert evidence, all set out in the grounds. I note that in Ground 9 it is said that there was clearly evidence from the Appellant that she had lost her virginity – which there was – see her witness statement at paragraphs 16 and 17 – and it was clearly a material issue. Dr Fatah dealt with this matter in detail. When the judge said in paragraph 45 that there was no evidence on this aspect he was proceeding on a misunderstanding of the facts presented to him. It is clear that the judge failed to deal with this issue which amounts to a material error of law.
10. In my view there is also an error of law issue under Article 8 ECHR. The fact of the matter is that the judge was bound to consider whether there was family life between the Appellant and her half-siblings with whom she has resided for seven and a half years. This is not addressed within the decision. It was necessary for the judge to have made a finding in this regard and this was material evidence on which no assessment was made.
11. For all these reasons it seems clear to me that the judgment is not safe and cannot stand. The Appellant has not had a fair hearing. It therefore seems to me that the decision of the First-tier Tribunal has to be set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of practice statement 7.2 the nature the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

**Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

I shall continue the anonymity order.

**Order 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 her or any member of her family. This order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *J Macdonald*

Date 22<sup>nd</sup> September 2017

Deputy Upper Tribunal Judge J G Macdonald