



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/18870/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 8 February 2018

**Decision & Reasons
Promulgated**

On 12 February 2018

Before

**RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
SITTING AS A JUDGE OF THE UPPER TRIBUNAL**

Between

**MRS NADA ABDULHAQ TAQIADEEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTYR CLEARANCE OFFICER AMMAN

Respondent

Representation:

For the Appellant: Mr Koka, counsel

For the Respondent: Mr Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. She sought entrance clearance to enter the UK as a partner under Appendix FM of the Immigration Rules. This was refused on the grounds that she has not passed the English language test. She appealed that decision to the First-tier Tribunal. The appeal was refused by Judge NMK Lawrence by a decision promulgated on 29 August 2017. Before the FtT the appellant maintained that for medical reasons she was unable to complete an English language course. She produced a medical certificate but Judge Lawrence rejected this evidence. Leave to appeal on this ground was refused.

2. In the alternative the appellant submitted that a decision to refuse entry clearance would interfere with her rights and those of her partner and children under article 8 ECHR. Her partner is British and can support her in the UK. The children are British though are currently living with their mother in Iraq. That ground was refused by Judge Lawrence. Permission to appeal against that decision was granted by Judge Saffer on 8 December 2017. He said that it was arguable that there were insufficient reasons given as to whether there were compelling circumstances such as to engage an article 8 assessment, and regarding any proportionality assessment required.
3. At the start of the hearing Mr Duffy conceded that Judge Lawrence had failed to carry out an adequate proportionality assessment and that the article 8 ground of appeal required to be reheard.
4. I am satisfied that Judge Lawrence has failed to carry out a proper article 8 assessment and accordingly the appeal must be allowed. Both parties were agreed that the case should be remitted to the First-tier Tribunal. In doing so it is agreed that the appellant cannot comply with the rules as she has not passed an English language test.

Notice of Decision

The appeal is allowed and remitted to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date 09 February 2018

Lord Boyd of Duncansby
Sitting as a Judge of the Upper Tribunal