



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02060/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 8 May 2018

**Decision and Reasons
Promulgated
On 11 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RB

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown instructed by Morgan Dias Immigration Consultants Ltd

For the Respondent: Mr Mills Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 12 December 2017 the Upper Tribunal set aside the decision of the First-tier Tribunal following the respondent conceding errors of law in the earlier decision, set out at paragraphs [4] and [5] of the grant of permission to appeal to the Upper Tribunal. The matter returns to the Upper Tribunal for the purposes of a Resumed hearing after which the Tribunal shall substitute a decision to either allow or refuse the appeal.

Background

2. The appellant is a national of Iraq born in Hawija on 22 February 1982. The appellant claims to face a real risk on return as a result of her father being a member of the Ba'ath party under Saddam Hussain. The appellant states her home area is now controlled by Shia militia who will persecute her. The appellant also claims that she married her husband without getting permission from her family which would cause problems for her culturally; as it is claimed the man needs to seek permission to marry from the prospective spouse's parents. The appellant claims that as a result of not obtaining such permission from her family she will be seen to have dishonoured the family which may lead to her death or ill-treatment.
3. The appellant claims she cannot internally relocate within Iraqi as her family will be able to find out where she lived and claims there is no guarantee that she will not be spotted and that her family will therefore find her.
4. The appellant claims in her recent witness statement that her father has passed away and so there will be no one to stop the family trying to kill her as they will see that she has dishonoured them, without asking their permission first.
5. The appellant claims she cannot relocate to the IKR as a result of her father's involvement in the Ba'ath party where it is claimed he treated Kurds very badly; being involved in burning houses and displacing them which the appellant claims will make her a target.
6. The appellant also claims if returned to the IKR she would find it practically impossible to obtain employment, would have no one to care for her daughter whilst she works, even if she was even able to obtain employment due to her father's previous activities.
7. The appellant also claims she would find it difficult to obtain accommodation for her daughter. The appellant claims not to have a CSID, a legal document which is needed to obtain accommodation, and claims people do not rent properties to single women with a child as they would expect her to be living with her husband and not on her own.
8. The appellant claims her husband will not be able to support her daughter whilst in Iraq and they will be at risk if he returned to Iraq or the IKR. To find accommodation she would still have to live there with just her daughter.
9. The appellant refers to the fact that her daughter is a British citizen and would not be safe in Iraq.
10. The appellants husband in his witness statement dated 15 January 2018 confirms that he was originally from Iraq. He was born on 1 January 1980 and states he is now a British citizen. The appellants husband entered the United Kingdom on 15 February 2002 claiming he was persecuted by the Ba'ath party. The appellants husband claims he was

granted Indefinite Leave to Remain in July 2010 and claims he obtained British citizenship in 2014.

11. The appellants husband states he has never returned to Iraq. His mother still lives in that country but he believes his life will be in danger. The appellants husband maintains contact with his mother to whom he speaks once or twice a month on the telephone, who has told him no one is safe in Iraq. The appellants husband claims that he has been threatened whilst in the United Kingdom with the police having been involved on two occasions. The appellants husband claims to have been away from Iraq for the last 16 years and so would not find work and will be unable to integrate into the community.
12. The appellants husband speaks of daily suicide bombings which he claims are a daily occurrence, lack of law and order, and no real functioning government. The appellant's husband claims that he will face a high risk of being kidnapped as a British citizen which will place both him and his daughter in danger.
13. The appellants husband claims that he has his own business; a car wash franchised with Tesco Supermarkets in the United Kingdom.
14. There was no challenge to the factual analysis set out above.

Discussion

15. The hearing considered both protection and human rights issues following the hearing on 12 December 2017.
16. Preliminary discussions led to the protection appeal being withdrawn by the appellant leaving only the issue of the human rights aspect to be considered.
17. In this appeal, the appellant is a national of Iraq. Her husband is a British citizen having entered the United Kingdom from Iraq in 2002. The couple have a young child who is also a British citizen.
18. Under the Immigration Rules it is necessary to consider the provisions of Appendix A EX.1, and the question of whether it would be reasonable or not to expect the child to leave the UK. It was not made out it would be reasonable to expect a young female British national child to live in Iraq at this point in time.
19. It was held in *Agyarko [2017] UKSC 11* that the definition of "insurmountable obstacles" at EX.2 as meaning "very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner" was consistent with Strasbourg case law.

20. The appellant's partner and child are British citizens who have a right to remain in the United Kingdom. They are also EU nationals with the right to remain in the territory of the European Union.
21. Whilst nationality is not the determinative aspect, in that it cannot be said the mere fact of being a British national prevents a person being removed from the United Kingdom, it is a relevant factor.
22. The appellants husband and child will remain in the United Kingdom as it is unreasonable on the facts to expect them to return with the appellant to live in Iraq.
23. The appellant would therefore have to be returned alone as it would not be possible or reasonable to expect this family unit to continue their family life together in Iraq.
24. I do not find it reasonable in all the circumstances for the appellant and her child to be split as would occur if the appellant was removed in isolation. It is clear the child has a good relationship with her mother. Removing this mother from this child would entail very serious hardship for the appellant.
25. The question in cases of this nature turns upon the reasonableness of the decision under challenge; for a decision that is not reasonable cannot be said to be proportionate.
26. At [19] of the decision of the Court of Appeal in *R (MA (Pakistan))* [2016] EWCA Civ 705 the Court said the following:
 19. In my judgment, therefore, the only questions which courts and tribunals need to ask when applying section 117B(6) are the following:
 - (1) Is the applicant liable to deportation? If so, section 117B is inapplicable and instead the relevant code will usually be found in section 117C.
 - (2) Does the applicant have a genuine and subsisting parental relationship with the child?
 - (3) Is the child a qualifying child as defined in section 117D?
 - (4) Is it unreasonable to expect the child to leave the United Kingdom?
 20. If the answer to the first question is no, and to the other three questions is yes, the conclusion must be that article 8 is infringed.
27. In this appeal the answers are no, yes, yes and yes, when answering the above four questions.
28. On the facts of this matter find that the appellant succeeds pursuant to article 8 ECHR on the basis of an ability to satisfy the immigration rules in EX.1 and pursuant to section 117B(6) and the failure to establish it is reasonable in all the circumstances for this family to be split to secure

the appellant's removal to Iraq. It is not made out the public interest requires the appellants removal from the United Kingdom sufficient to outweigh the positive elements in her favour.

29. I allow the appeal on the basis it is not a proportionate decision.

Decision

30. **I remake the decision as follows. This appeal is allowed on human rights grounds only.**

Anonymity

31. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 8 May 2018