



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02484/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 11th of January 2018**

**Decision & Reasons
Promulgated
On 5th of February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MRS SARAH MAHMOOD
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali of Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Iraq born on 15th of March 1997. She appealed against a decision of the Respondent dated 24th of February 2017 to refuse to grant her international protection. The Appellant claimed to be a refugee on the ground of her membership of a particular social group, namely a lone female with no family support and being someone at risk of destitution. Alternatively, she claimed to be entitled to humanitarian protection under Article 15(c) of the European Union Directive 2004/83/C.

Her appeal was allowed by Judge of the First-tier Tribunal Gribble sitting at Birmingham on 25th of July 2017. The Respondent appealed with leave against that decision and for the reasons which I have set out below I have set the decision of the First-tier aside. Further I have proceeded to remake the decision and I therefore continue to refer to the parties as they were known at first instance for the sake of convenience.

The Appellant's Case

2. The Appellant's case was summarised by the Judge at [5] to [7] of the determination. The Appellant had married her husband with her family's approval. He was from Iraq initially but had been in the United Kingdom for many years and was now a British citizen. On their marriage he moved to Iraq to live with her although the plan was for the couple to move to the United Kingdom at some point. The Appellant gave birth to the couple's first child a daughter in 2014. During the pregnancy with her 2nd child her father and her husband's father, who were business partners, began having problems. She was asked by her father to divorce her husband in order to create problems for the Appellant and ruin her life. Her father and her husband's father had had a fall out over money. Her father told her to separate from her husband or he the father would make the Appellant abort her unborn baby.
3. The couple's first child A, was living with her husband's family at the time but the Appellant's father came to her house and removed the child in or about March or April 2016 when her husband was at work. The Appellant did not tell her father she was pregnant with her 2nd child until 5 or 6 months of the pregnancy had elapsed. Her husband left for the United Kingdom because he did not want to divorce the Appellant and because he hoped the problem would settle. He did not take the Appellant or the couple's child with him because the Appellant's father had imprisoned the Appellant in the father's house. The Appellant's in-laws were very supportive but could not help the Appellant because everything was under her father's control. These problems were not reported to the police because they would not have intervened but would have viewed it as a family problem.
4. The Appellant contacted her husband's cousin who told the Appellant that the Appellant's husband had gone to United Kingdom. She asked her husband's cousin to help her get to the United Kingdom and he made the necessary arrangements. The journey took 5 to 6 days. The cousin collected her from her father's home but only her grandmother knew she was leaving and she managed to escape without her mother or sister finding out. She had no chance to collect her daughter because questions would have been asked. She did not use passport and left her own passport in Iraq. She did not have her husband's number on arrival in the United Kingdom although her husband and his cousin had been in contact on Facebook.
5. The Appellant relied on a report from a country expert, Ms Julia Guest. Ms Guest was asked to consider the risk to the Appellant on return to

Baghdad, the general security situation, the availability of state protection connecting the Appellant's profile to the region and any relevant comments on the refusal letter. Ms Guest's report accepted the Appellant's account of being at risk due to honour-based violence as plausible and said that she could not return to her home area. Due to age and gender it was unlikely the Appellant would be able to find a job in any part of Iraq and would be at a high risk of becoming destitute. The situation in the area between Baghdad and Kirkuk was highly unstable and unsafe. The Appellant would be at great risk of kidnapping and would not be able to relocate to the Iraqi Kurdish Region (the IKR).

6. The Respondent did not accept the Appellant's credibility finding the Appellant's account vague and not plausible. On the one hand the Appellant had said she was not safe with her in-laws but on the other hand had said her in-laws had not received any threats from the Appellant's parents, only the Appellant and her husband had received threats.

The Decision at First Instance

7. At [48] the Judge noted significant inconsistencies between the Appellant's account and that of her husband both in their written and oral evidence. The Judge did not find the Appellant's asylum claim to be credible at all. She found that the Appellant and her husband had fabricated the account of risk in order to justify the Appellant's arrival in the United Kingdom in August 2016 when the Appellant was heavily pregnant.
8. At [49] and following the Judge gave her reasons for finding the account fabricated. There was no credible explanation for the Appellant's father threatening the Appellant directly and not his former business partner. It simply made no sense to threaten his own daughter for a matter in which she was not involved at all and about which she could have had no influence. The Appellant had been inconsistent about whether her father-in-law had been threatened at all, with her oral evidence being that he was but the account in the asylum interview being that he was not.
9. The Appellant's husband in oral evidence had said that his father had been threatened with something but again this was not consistent with the initial account from the Appellant. There were other inconsistencies too. Neither the Appellant nor her husband gave a consistent response to the actual nature of the business their respective fathers were involved in, whether it was importing goods or simply buying and selling them. It was wholly implausible the Appellant would not know something at least of her father and her father-in-law's business bearing in mind that she lived with her father for 16 years then lived with her father-in-law then lived with her husband who would also be expected to know.
10. The account of how the Appellant came to leave Iraq was wholly contradicted by her husband's version of his involvement. The husband had denied any responsibility for the arrangements when the Appellant said he was fully involved and had helped to pay for the journey. The Judge found it reasonably likely that the Appellant and her husband had agreed

that he would say he was not involved to protect himself and to place responsibility on his cousin. The account that the Appellant had no means of contacting her husband was simply not credible if he had been involved in the arrangements. There was no evidence to support the claim from either the Appellant's father-in-law or her husband's cousin which could reasonably have been expected to be given. She rejected the explanation for the absence of this evidence that the Appellant and her husband had not thought about this aspect of the case. Both were in contact with people in Iraq very regularly and there was no satisfactory reason why a letter or statement could not have been provided from either the father-in-law or the cousin.

11. The Appellant and her husband knew they could not meet the requirements of the Immigration Rules within a reasonable time after his return to the United Kingdom in June 2016 and made a plan accordingly due to the Appellant's pregnancy. Even to the lower standard of proof the Judge could not accept the account of risk and potential death as being reasonably likely to be true. The couple had avoided meeting the strict requirements of the Immigration Rules. The Appellant was not in fear of her father and there was no feud. She wished to jump the queue and took a risk her daughter would be safe in the meantime in Kirkuk with her grandparents until a passport could be arranged. The Appellant could not be a refugee on account of the membership of a particular social group.
12. The Judge then went on to consider the Article 15(c) risk at [55] onwards. The Judge noted that the country expert, Ms Guest, had accepted the Appellant's claims as plausible and evaluated the risk to the Appellant on the basis that the Appellant would have no family to return to. By contrast the Judge had found the Appellant's claim to be fabricated but she approached the expert's report on the basis that the Appellant would not be returning to Baghdad as a lone woman without family support but rather as a woman with either a passport or a *laissez passer* and CSID.
13. Kirkuk was still a contested area and the Judge considered what risks the Appellant might face upon return to Baghdad. The Appellant's husband was free to accompany her to Baghdad if he wished. He had a passport and he could go with his wife to Baghdad and ensure she transited from there to the IKR. As she had documents including the CSID she would be able to transit to Erbil by air and gain access to the IKR. She might not even have to leave Baghdad airport. She would be accompanied by her husband.
14. The question was whether it would be unduly harsh for the Appellant to move to the IKR. Citing the case of **Januzi [2006] UKHL 5** the test was whether the Appellant would be able to live a relatively normal life without undue hardships. The Appellant was a healthy young woman who had no work history and whose family were in Kirkuk, apparently without problems. Employment opportunities for women in the IKR were low and for low skilled woman even lower with an economic crisis underway due to the sheer number of internally displaced persons (IDP). At [61] the Judge concluded her determination with the words "I agree with [Ms Guest's] conclusion at paragraph 35 that given the Appellant's age, lack of skills

and gender she is likely to find herself in an IDP camp in the IKR. Conditions there would be unduly harsh and would breach Article 3". She allowed the appeal.

The Onward Appeal

15. The Respondent appealed against that decision arguing that the Judge had failed to take into account a material factor in finding the Appellant would be at risk of having to go to an IDP camp this was that the Appellant was not in fear of her father and there was no feud. The Appellant would not therefore be returning to Iraq as a lone female. The Judge accepted that the Appellant had family in Iraq who she was clearly in contact with. The Judge had failed to consider why the Appellant's family would be unable or unwilling to provide support for her as the Appellant's daughter was living in safety in Kirkuk and had been so since 2014.
16. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Gillespie on 27 October 2017. In granting permission to appeal he found it arguable that there was an unresolved conflict in the determination. This was between the finding of the Judge rejecting the asylum claim (based on an alleged fear of an honour killing) and the finding that despite having supportive family in Iraq and that her husband could accompany her the Appellant would be likely to be displaced and suffer inhumane privation in an IDP camp.

The Hearing Before Me

17. At the hearing before me to determine whether there was a material error of law in the determination the Presenting Officer relied on the grounds arguing that the Judge's findings were contradictory. The Appellant had a CSID and would be able to transit via Erbil.
18. For the Appellant, Counsel relied on a skeleton argument which had been filed at the Tribunal on the day of the hearing. This argued that the Judge set out relevant aspects of the Appellant's case in the correct context having addressed the Respondent's country policy information and the recent Court of Appeal decision in **AA Iraq [2017] EWCA Civ 944**. The Judge recognised that Kirkuk was a contested area and the agreed position was that the Appellant would be returned to Baghdad from where she would be expected to return to her home area.
19. The expert instructed by the Appellant had noted at paragraph 35 of her report that due to the Appellant's age and lack of employment experience in general it was highly unlikely she would gain employment in any part of Iraq due to the current situation with IDPs and refugees in the region. There was a very high chance the Appellant would become destitute and a high risk of abuse including rape if she was not able to return to her family or her husband's family. The Judge's findings on other matters were not the answer to the issue of internal relocation. The Judge was entitled to accept the expert's report and she had taken a balanced approach towards

it. This was demonstrated by the Judge departing from the expert's view as to the plausibility of the Appellant's subjective claim. The Judge was not required to give detailed reasons but sufficient reasons which she did give.

20. In oral submissions Counsel argued that the Judge had set out the guidance which was annexed to **AA Iraq**. She had looked at the personal history of the Appellant who had no work history. The Judge was aware of country conditions. I raised with Counsel the argument that the expert's report was based on an acceptance of the Appellant's credibility (see the reference cited in the skeleton argument that the Appellant was at risk if she was not (my emphasis) able to return to her family). Counsel replied that family considerations were not the only ones. There was a risk of violence because of the existence of an armed conflict.
21. The Presenting Officer reiterated that the Appellant was not at risk on return and could be accompanied by her United Kingdom citizen husband. The expert's report was based on a wrong premise, that the Appellant had no family to return to. In conclusion for the Appellant Counsel reiterated that the Judge had properly looked at the risk to the Appellant upon return to Baghdad.

The Error of Law

22. The Judge rejected a substantial part of the Appellant's case which was that she had fallen out with her family and would be at risk from them upon return. On the contrary the Judge found the Appellant was not in fear of her father and there was no family feud. In travelling to the United Kingdom and making an asylum application the Appellant was simply jumping the queue and taking a risk that her daughter could remain in Kirkuk until the Appellant acquired status and could bring the daughter to the United Kingdom. The difficulty with her case which relied heavily on Ms Guest's report was that the report was based on an acceptance of the Appellant's claim that she had no family to rely upon in Iraq because of the family feud.
23. As a result, the Judge did not adequately explain how she got from the position that the Appellant's claim for asylum lacked credibility to establishing that the Appellant was nevertheless at risk generally because of the adverse country conditions. If the Appellant could be supported by her family that would as the Respondent pointed out make a substantial difference to the assessment of risk. The Judge did not factor that into her determination and as a result the losing party (in this case the Respondent) was left in the situation where they did not understand why they had lost. That was a clear material error of law relating to the core of the claim and I therefore set the First-tier decision aside. I canvassed with the parties during the hearing that if I was to find a material error of law whether it would be appropriate to proceed to remake the decision as there was no challenge to the findings of fact made by the Judge at first instance. There was no disagreement with that course of action and I am therefore in a position to proceed to remake the decision in this case.

Findings

24. The Judge cited the background material quite extensively at [20] of the determination including the most recent guidance given by the Court of Appeal in **AA Iraq**. This noted that in Kirkuk there was substantial grounds for believing that any civilian returned there, faced a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15 (c) solely on account of their presence there. Decision-makers should assess the individual characteristics of the person claiming humanitarian protection in order to ascertain whether those characteristics were such as to put that person at a real risk of harm under Article 15 (c). The return of former residents and all other Iraqis would be to Baghdad which was where the Appellant would be returned.
25. The Iraqi authorities would allow an Iraqi National to enter Iraqi only if they were in possession of a current or expired Iraqi passport or laissez passer. This Appellant had that latter document. The guidance continues that regardless of the feasibility of the Appellant's return it would be necessary to decide whether the Appellant had a CSID. Again, this Appellant has one. That document is required in order to access financial assistance from the authorities, employment, education, housing and medical treatment. Where an Appellant demonstrates that there are no family or other members likely to be able to provide means of support to them they were likely to face a real risk of destitution amounting to serious harm.
26. That was the basis of the expert's report in this case. However, the Judge found the Appellant did have family and other member members likely to provide her with means of support. They were in fact already doing so by assisting the Appellant by looking after the Appellant's daughter. The guidance goes on to deal with situations where there are problems obtaining a CS ID but this is not relevant to this Appellant. As a general matter it would not be unreasonable or unduly harsh for a person from a contested area such as Kirkuk to relocate to Baghdad. The factors to be considered in deciding whether relocation is unduly harsh are whether the Appellant has a CSID which this Appellant has, whether she has family members or friends in Baghdad able to accommodate her (she has family in Kirkuk) and whether she is a lone female (she has an Iraqi born husband).
27. The Judge's cogent findings very clearly established that the Appellant was not a lone female and would not be returning as a lone female. Further the Appellant could be joined by her husband who was of Iraqi heritage and would be able to assist her. The IKR was virtually violence free and there was no Article 15 (c) risk there. An Iraqi citizen of Kurdish ethnicity such as the Appellant would be able to obtain entry for 10 days as a visitor and then could renew this entry permission for a further 10 days. There was no evidence that the IKR authorities proactively removed Kurds whose permits had come to an end. Whether an Appellant could reasonably be expected to avoid any potential undue harshness in Baghdad by travelling to the IKR would be fact sensitive. It was likely to involve an assessment of the practicality of travel from Baghdad to the IKR (such as to Erbil by air), the

likelihood of the Appellant securing employment in the IKR and the availability of assistance from family and friends. In this case as the Respondent pointed out the Appellant would be able to travel to Erbil by air and as the Judge found there would be assistance available from family and friends.

28. On the findings of the Judge it was clear that the Appellant was in a much stronger position upon return to Iraq than many other applicants for international protection of Kurdish ethnicity. It is not for me to speculate on whether that prompted the Appellant to put forward a weak claim for asylum that was disbelieved by the Judge at first instance. There is no doubt that the Judge gave cogent reasons for her findings that there was no family feud and that the Appellant faced no risk from her father. It was also clear that the Judge gave cogent reasons for finding that the Appellant's daughter was being adequately cared for by the Appellant's family.
29. In those circumstances given that the Appellant had the correct documentation and could rely on family support upon return supplemented by her husband accompanying her if he so wished, meant that there was no risk to the Appellant which engaged either the Refugee Convention or Article 15(c). The expert's report does not assist the Appellant in this case as she predicated that report on the assumption that the Appellant was returning as a lone female. In the light of the country guidance if that were the factual situation the Appellant would have a significantly stronger case but that is not the factual matrix in this case and it does not appear that the expert's report was written on an "even if" basis, that even if the Appellant could not make out the facts of her case that nevertheless conditions in Iraq were so bad the Appellant would still be at risk. The expert's report was thus of limited assistance to the Tribunal.
30. The risk categories are carefully delineated in the Upper Tribunal country guidance case and supplemented by the Court of Appeal decision. This Appellant does not come within those risk categories. As the guidance makes clear it is important to consider the personal profile of the applicant. The weaker the elements of the personal profile, the stronger must be the risk from generalised violence. In this case the Appellant has virtually no indicators of risk based on her personal profile and she would be able to pass safely through Baghdad airport and from there to Erbil. In those circumstances I find that the Appellant cannot establish a claim for international protection and I dismiss the Appellant's appeal against the Respondent's decision to refuse the claim.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I remake the decision by dismissing the Appellant's appeal against the Respondent's decision to refuse to grant international protection

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 31st of January 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge
TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 31st of January 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge