



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04020/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 24th January 2018

Decision & Reasons Promulgated
26th January 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

L R A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W McCready (instructed by Duncan Lewis & Co Solicitors)

For the Respondent: Miss R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, in relation to a Decision and Reasons of Judge Hollis following a hearing at Bradford on 2nd June 2017. In a Decision and Reasons promulgated on 13th June 2017 the appeal was dismissed on all grounds.
2. The Appellant is a citizen of Iraq who claimed asylum on the basis that she was at risk of an honour killing on account of an extra-marital affair with Mr T. She arrived in the UK with her eldest child in October 2016. Mr T came to the UK in 2003. The

couple live together in the UK. Mr T was granted leave to remain and then Indefinite Leave to Remain in the UK. They live with their two children, the eldest born in Iraq in 2014 and the younger born in the UK in December 2016. By reason of her father having Indefinite Leave to Remain that younger child is a British citizen.

3. The matter came before me to decide first whether the First-tier Tribunal had made a material error of law and if so whether and to what extent the Decision and Reasons should be set aside.
4. The grounds upon which permission to appeal was granted argue firstly that the Judge erred in dismissing the Article 8 claim without reference to the Secretary of State's policy in relation to whether it is reasonable to expect British children to leave the UK. This arises in considering s.117B(6) of the Nationality, Immigration and Asylum Act 2002 and Appendix FM of the Immigration Rules.
5. After I gave an indication that I did consider that failure to be a material error of law, the Appellant, after receiving advice from her representative, withdrew the remaining grounds which sought to challenge the adverse credibility findings.
6. The Secretary of State's guidance to her case workers states that, absent criminality, it is never reasonable to expect a British child to leave the UK. That guidance does not sit easily with Appendix FM or s.117B(6) but it nevertheless remains her published guidance. If the Secretary of State's view is that the British child in this case cannot be expected to leave the UK then she cannot go behind it. Miss Patterson accepted that to be correct. Clearly given that the child is an infant, her parents and older sibling must remain with her and thus the Appellant and her dependants all succeed on Article 8 grounds.
7. Thus, having found the Judge made a material error of law in dealing with Article 8, I set aside that part only of the Decision and Reasons and in redeciding that part of the appeal I allow it on Article 8 grounds.

Notice of Decision

The appeal is allowed on Article 8 grounds.

Direction 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 him or any member of their family. Failure to comply with this direction could lead to contempt of court proceedings

Signed

Date 24th January 2018

Upper Tribunal Judge Martin