



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05610/2017

THE IMMIGRATION ACTS

Heard at: Bradford
On: 12th September 2018

Decision & Reasons Promulgated
On 18th September 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HAS + 2
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Ms G. Patel, Counsel instructed by Howells Solicitors LLP
For the Respondent: Mr M. Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1975. Her two dependents are her children aged 6 and 17. She appeals with permission the decision of the First-tier Tribunal (Judge RD Taylor) to dismiss her protection and human rights appeal.

The Appellant's Case

2. The Appellant and her children were brought to the United Kingdom under the 'take charge' provisions of the Dublin Convention. They claimed asylum on the day of their arrival in July 2016. The basis of the claim was as follows.
3. The Appellant asserts that she fled her native Sulamaniyyah because her family had become embroiled in an 'honour' dispute with some neighbours whom she believed to be a supporter of ISIL. The Appellant claims that one man in this neighbouring family accused her husband of having an affair with wife. The Appellant believes that this man murdered his own wife as a result. The neighbour, and his family, demanded that the Appellant and her husband hand over their daughters as 'recompense' for the loss of the woman to their family. Her life was also threatened. The Appellant's husband was chased but managed to escape. The Appellant's husband told her that they would all need to leave Iraq for their own safety.
4. In September 2015 the Appellant, her husband, the two children that are dependents to this appeal and another older daughter all left their home and went to stay with relatives in another part of Sulamaniyyah. They stayed there for ten days before making their way to Turkey. They engaged the services of an agent to get them to Europe. They were taken by taxi to a beach where they were to be loaded onto rafts to get them across to Greece. The Appellant and the two younger children went together in one taxi; her husband and eldest daughter went in another. She and the children were ordered to board a raft, and was assured that she would see her husband and daughter on the other side. She has not seen or heard from them since. She tried to find them once she landed in Greece but to no avail. The Red Cross have tried to trace them but have been unable to find them. The Appellant believes that they may have drowned.
5. The Appellant and the younger children managed to get to France, where an application was made on their behalf for them to join the Appellant's brother in the United Kingdom. The Appellant's brother N has lived in this country since 2002 and now has indefinite leave to remain.
6. The Appellant asserts that she cannot return to Sulamaniyyah because she is at risk there from her neighbours. That risk is particularly acute now that she has lost her husband. She further asserts that it would not be safe to return her to Iraq because of her current circumstances. She is a lone woman and both her children have special needs. Her son L is aged 6. He has Down's Syndrome and she has been told that he has heart problems. Her daughter R is aged 17 and has some learning disabilities. Although the Appellant had formerly worked as an accountant for the Kurdish government she would not be able to do so on return because she needs to be there to look after her children. Without her husband to support her she and the children would face destitution. This factual matrix is

relied upon by the Appellant in respect of the risk she faces, the ‘reasonableness’ or otherwise of internal relocation, and in any assessment of her Article 8 rights. In respect of the latter she also relies on the needs of her children, and their close relationship with her brother and his family in the United Kingdom.

The Refusal

7. The Respondent’s reasons for refusal letter is dated the 5th May 2017. The Respondent did not accept that the Appellant’s neighbour had any association with ISIL, or that she had anything to fear from that organisation. Other than that the assertions in respect of the ‘honour’ dispute are rejected for one reason alone: that the Appellant had failed to make a claim for asylum at the earliest possible opportunity in a safe third country. At the outset of the hearing before the First-tier Tribunal the HOPO conceded that this element of the refusal had to be withdrawn given that the United Kingdom had expressly accepted responsibility for consideration of the claim and the family had been transferred from France to the United Kingdom under a formal ‘Dublin’ procedure.
8. The Respondent’s letter goes on to consider the claim ‘at its highest’ but rejects it on the basis that the harm feared does not engage the Refugee Convention, the Appellant could avoid her former neighbours by moving elsewhere, and because she has failed to demonstrate that the Iraqi government could not provide a ‘sufficiency of protection’. These elements of the refusal were maintained before Judge Taylor.

The Decision of the First-tier Tribunal

9. The determination records the Respondent’s decision to withdraw the challenge to the Appellant’s credibility at §9. The findings then begin, a §24-27, with several reasons why the account is not to be believed. First, the Appellant was “vague” about whether or how her (female) neighbour might have been killed, and she was “vague” about the incident where her husband was chased and threatened in the street. She had introduced evidence at hearing that she had not mentioned at the asylum interview, namely that once when watching a wedding video with the woman next door she had noticed an ISIL flag in the background of the picture and had been shocked. Her family have experienced no problems since she left.
10. Having set out those findings the determination then reads, at §27:

“In conclusion in relation to the alleged fear of the neighbour and his family and connections, I find that the alleged threats did not take place as claimed, that the appellant and his wife were not in fear of the neighbour either in his own right or on the basis of any connections with ISIL which I also reject and the appellant left Sulaymaniyah and Iraq for other reasons of their own which have not been disclosed and not because of any well founded fear whether on the basis of membership of a PSG or any other Convention ground. It follows that the asylum claim cannot succeed and since there is no well founded fear in Sulaymaniyah, the issue of internal relocation (which it is clear if it had

been necessary would present considerable difficulties for the appellant) does not arise”.

11. Having dispensed with the protection claim the determination proceeds to consider Article 8. The Tribunal accepts that it would be in the best interest of the Appellant’s son to remain in the United Kingdom with his mother, but directs itself that this is not determinative. The Appellant has “extensive” family in Iraq to whom she would be able to turn for support, and there is some provision for disabled children in Sulaymaniyyah. The Tribunal noted the evidence of the Appellant’s brother that the family in Iraq are struggling themselves and would not be able to help the Appellant; it rejects that evidence because “culturally it sounds rather counter intuitive” [at §33]. It then “notes in passing” a comment in the Appellant’s medical notes that her brother was “currently in Iraq visiting family”. This is difficult to square with his evidence that the family are not close and that he has very limited contact with his brother in Iraq. Overall the Tribunal is satisfied that that the removal of the Appellant and the children would be proportionate and the appeal is also dismissed on human rights grounds.

The Challenge and Response

12. I heard the Appellant’s appeal against Judge Taylor’s decision on the 6th July 2018. The Appellant was that day represented by Mr G. Brown of Counsel and the Respondent by Senior Presenting Officer Mr A. McVeety. The grounds alleges several errors of law: the Tribunal failed to put matters to the Appellant before drawing adverse conclusions; failed to consider expert evidence before reaching its conclusions; failed to weigh in the balance the supporting evidence of the Appellant’s brother; failed to ‘properly consider the Article 8 claim’ and failed to make any findings on the risk to the Appellant as a lone woman with two children. Permission to appeal had been granted by Upper Tribunal Judge Plimmer on the 16th January 2018.
13. Before me Mr Brown concentrated his submissions on the final ground: the determination contains no finding on the *current* position of the Appellant and her dependants. The Tribunal had made no finding on whether the Appellant’s husband and daughter had gone missing, and this was plainly relevant to the assessment of risk, as well as the Article 8 issues arising.
14. For the Respondent Mr McVeety accepted that the First-tier Tribunal had not made any express findings on whether the Appellant’s immediate family members had gone missing but he submitted that in the context of the decision overall it was not material. The Tribunal had found as fact that the Appellant does have other family members in Sulaymaniyyah to whom she could turn for support. It was her evidence that she had worked when her children were first born. She had sheltered with family members after she left her home.

My Findings on 'Error of Law'

15. There are two difficulties with paragraph 27 of the First-tier Tribunal decision (set out at my §10 above). First of all, I would mark the unfortunate error in the determination here referring to the “appellant and his wife”. It must be difficult for the Appellant to understand why the Tribunal was apparently under the impression that she was somehow dependent to a claim by her husband, a husband whom she fears to have drowned in the Mediterranean along with her first-born child. Mr Brown did not contend that this error betrayed a lack of anxious scrutiny, but that at the very least it was grossly insensitive, given the facts advanced by the Appellant. Second, this paragraph contains a material misdirection which I find goes to the heart of this appeal. Having rejected the historical account advanced (a matter to which I turn below) the Tribunal says this (I have added emphasis):

“... and the appellant **left** Sulaymaniyah and Iraq for other reasons of their own which have not been disclosed and not because of any well-founded fear whether on the basis of membership of a PSG or any other Convention ground. **It follows that the asylum claim cannot succeed**”

16. Very few, if any, protection appeals before the First-tier Tribunal turn purely on whether claimed historical events are proven to be true. Article 1A of the Refugee Convention requires decision-makers to make an assessment of *current* risk: Secretary of State for the Home Department v (ex parte) Adan [1998] UKHL 15. What paragraph 27 of the decision reveals is that in this instance the Tribunal believed its task to be otherwise. Having rejected the claimed reasons that the Appellant left her hometown in 2015, the Tribunal apparently considered the appeal resolved. The failure to make findings on the fate of the Appellant’s husband and daughter must be seen in that context. It was no accidental omission: the Tribunal apparently did not consider that matter to be relevant. As Mr McVeety was prepared to concede, it was a matter of at least potential relevance, in that it went to the second limb of the Appellant’s case. That second limb, that she would *today* face a real risk of harm as an unaccompanied woman, is not addressed at all in the determination.

17. Mr McVeety submitted that notwithstanding this error, the determination must stand because the Tribunal has expressly found (in the context of Article 8) that the Appellant has family members to whom she can turn. Having considered the Tribunal’s reasoning on this point, I am unable to accept that submission.

18. Both Appellant and her brother had given evidence to the effect that they have little contact with family members in Iraq and that those family members are themselves struggling and would have no means or inclination to assist the Appellant. The Appellant had given unchallenged evidence of a personal history which demonstrated little, if any, reliance on extended family. It was her evidence that when her first children were born she was able to work because her employer (the regional government) provided a creche. When her severely disabled son was born she was forced to give up her job because he could not otherwise be catered

for. The independent evidence – provided by clinicians and a support worker who attended the hearing – is that the child has complex needs and exhibits very challenging behaviour.

19. The finding that the Appellant has “extensive” family in Iraq to whom she could turn for support are primarily found at paragraph 33 of the decision. The Tribunal first finds the evidence of the Appellant’s brother “to be somewhat lacking in credibility especially when one contrasts the evidence displayed in it to that in his statement of support in June 2016”. I am unable to understand what that means. I have read the statement in question – prepared by the Appellant’s brother in support of the Dublin Convention application – and am unable to identify what material inconsistency the Tribunal thought it contained. As I read it that statement lends some support to the claim that the family are distant: at paragraph 5 the witness states that after he left Iraq his contact with his sister was confined to telephone calls “every so often”, but that he had made a trip to Iraq in the summer of 2014 to see the Appellant, her husband and the children. He makes no reference to seeing anyone else during that trip. The next reason given is that the claimed lack of contact “culturally sounds counter intuitive”. With respect, that does not amount to a well-reasoned finding. Presumably the Tribunal did not intend to reject the specific evidence relating to this family on the basis of its own assessment of how Kurdish families in Sulaymaniyah behave. The determination then deals, at some length, with a comment recorded in the Appellant’s medical notes to the effect that the Appellant’s brother was away staying with family in Iraq. Mr Brown protested that this was not a matter that was put to the witness at the hearing, and that had it been put to him the witness would have had the opportunity to clarify that the ‘family’ he was visiting was the family of his wife. The Tribunal was clearly alive to the potential procedural unfairness arising from this matter, since it is at pains to underline that it placed no weight on the matter. Striking that part of paragraph 33 from the record then, one is left with the unidentified inconsistency in the brother’s evidence, and the fact that the account here is “culturally counter-intuitive”. Neither are sustainable reasons.
20. Mr McVeety quite understandably attempted to salvage the finding on the family by pointing to the overall negative credibility findings. He submitted that if the Tribunal had rejected the evidence as a whole, it was entitled to reject the specific evidence about what support might be available. I would accept that submission, but for two matters.
21. First, the credibility findings are themselves poorly reasoned. The Appellant’s evidence is given little weight because she is unable to speak to events that she does not claim to have witnessed herself. She does not claim to have seen her female neighbour murdered, nor was she there when her husband was chased and threatened in the street. It is hardly surprising that her evidence was “vague”. The only other matter weighed in the balance was the late introduction of the evidence that the Appellant had seen some indication of ISIL affiliation in a

wedding video shown to her by her female neighbour. Whilst that have been a finding open to the Tribunal it only went to the issue of whether the neighbours were ISIL supporters. It did not go to the underlying account. As the Respondent's (amended) refusal letter illustrates, it was perfectly possible to accept that the dispute had arisen, but reject with reasons the ISIL element of the account.

22. Second, there was evidence before the First-tier Tribunal capable of corroborating at least part of the 'lone woman' narrative. The bundle contained letters from the Red Cross confirming that they were trying to trace the Appellant's husband and daughter; there was an article that appeared in the Sunday Times in January 2016 for which writer AA Gill travelled to the 'Jungle' and *inter alia* interviewed the Appellant, who was there alone with her two children; there was a witness statement by support worker Deborah Rea (who has attended both hearings with the Appellant) who had also met her in France and confirmed that she had been on her own the entire time that she had known her; Ms Rea was able to relate the Appellant's consistent anxiety and grief about the fate of her family members. None of that evidence was weighed in the balance by the Tribunal.
23. For the reasons set out above I determined, in my written decision of the 13th July 2018, that the determination of the First-tier Tribunal must be set aside. None of the findings were preserved.

Re-Making the Decision

24. At the date of the resumed hearing I was helpfully provided with a bundle of up to date evidence relating to the Appellant and her children. This included a statement from the Appellant, a letter from the Red Cross and a detailed medical / psychological assessment. Having had an opportunity to read that material in detail I asked Mr Diwnycz, at the outset of the hearing, to clarify the Respondent's position on where the best interests of these children lay. Mr Diwnycz adopted the formulation in the refusal letter (and reflected in Home Office policy) that the best interests of the child will normally lie with remaining with the parent(s). He was however unable to advance any argument as to why it might be in the best interests of these children to return to their country of nationality. In particular, he acknowledged that the youngest child has complex needs that could not be met in Iraq. I agreed that the best interests of these children strongly lie in remaining in the United Kingdom with their mother as primary carer. Given that indication I asked Mr Diwnycz to identify the public interest in their removal. Although he reminded me of the importance of maintaining immigration control (see s117B (1) of the Nationality, Immigration and Asylum Act 2002), he conceded that in a case such as this, where the best interests of the children lie so strongly with remaining in the United Kingdom, that public interest is outweighed. For the reasons set out below, I agreed. I therefore indicated to the Appellant at the outset of the hearing that her appeal would be allowed on Article 8 grounds.

25. There followed a short recess whilst Ms Patel took instructions on whether the Appellant wished to pursue the protection aspect of her claim. Having indicated that she did, I heard evidence from the Appellant followed by submissions by the parties. I reserved my decision, which I now give below. For reasons that will become clear, I have found in remaking this decision that my findings on the 'historical claim', if I can put it like that, assume some significance in the Article 8 analysis. I have therefore set out those findings under the heading 'Article 8'.

Article 8

26. It is not in dispute that the Appellant and her children share a family life with each other. Mr Diwnycz further agreed that the Appellant, and her daughter, enjoy an independent 'private life' in this country. He was not prepared to make that concession in respect of the youngest child, who at only six years old has limited cognition of the world around him, a limitation exacerbated in his case by his disability.

27. I find that the Appellant and her daughter R certainly enjoy a private life. I have been provided with a detailed assessment of R by an educational psychologist Dr Elizabeth Williams. I return to this report below but for the purposes of this part of my decision it suffices to note that it confirms that R is attending Sheffield College where she has established a close relationship with her teachers and other students, but in particular with her specialist teaching assistant. Her experiences have made her particularly vulnerable and Dr Williams emphasises the need for R to be consistently and sensitively supported by this network. The Appellant herself has an extremely close relationship with her brother and his family, who have offered her substantial support both before and after she arrived in this country. Her brother N was instrumental in getting her out of the Jungle and accepted into the 'Dublin' procedure. He has consistently supported her emotionally and financially. Although I was not asked to find a *Kugathas* dependency¹ between the two, on the evidence before me that is a test that is plainly met. The Appellant has also received significant support and assistance from Deborah Rea (the support worker who visited her in Calais and maintained contact with her after her arrival) and others. That is a network of friends and supporters who are of enormous significance to her.

28. Whilst I appreciate Mr Diwnycz's distinction between the older appellants and the youngest, L, I am satisfied that he too enjoys a private life in this country. Dr Sathya Alladi, Consultant Paediatrician in Neurodisability has advised, in his letter dated the 31st August 2018, that L is "fully dependent" on his team of carers to meet his needs. L is supported by a multi-disciplinary, multi-agency team of carers who seek to "meet his needs and optimise his potential". I am satisfied that these relationships constitute a private life in Article 8 terms.

¹ *Kugathas* v Secretary of State for the Home Department [2003] EWCA Civ 31

29. The consequences of the Respondent's decision are that the Appellant and her family will be expected to leave the United Kingdom. This will have a very substantial interference with the private and family life that the Appellant and her children enjoy in this country. I accept that Article 8 is therefore engaged².
30. There is no dispute that the decision is lawful in the sense that the Respondent has the power in law to make it, the reasons for it are intelligible and in pursuit of the legitimate Article 8(2) aim of protecting the economy.
31. I now give my reasons for concluding that the decision to refuse leave to this family is, in all the circumstances, disproportionate.
32. Neither child is a 'qualifying child' as defined at s117D of the Nationality, Immigration and Asylum Act 2002. There is therefore no scope for considering their Article 8 private lives within the framework of the Immigration Rules. The Appellant could however succeed with reference to paragraph 276ADE(1)(vi) if she could show the following criteria to be met:
 - (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.
33. If the Appellant cannot meet that test, she must show the decision to be 'unjustifiably harsh'. For the reasons that follow I am satisfied that both tests are met.
34. First, I accept on the lower standard of proof that the Appellant and her children had good reason to leave Iraq and seek asylum.
35. The Appellant's account is a straightforward one. In the autumn of 2015 northern Iraq was still reeling from ISIL advances. Although Kurdish forces had made substantial gains against the terror group, I accept that there remained an atmosphere of fear and lawlessness. It was against this background, says the Appellant, that a male neighbour unjustifiably accused his wife of adultery with the Appellant's husband. He murdered his wife. He and his family threatened the Appellant's husband - and his family. As a matter of 'honour', there was a debt to be paid.
36. There is nothing in this account that is inconsistent with the background material. The expert witness Thomas McGee³ states that the rate of 'honour' based violence

² Boultif v Switzerland (2001) 33 EHRR [at 3940], AG (Eritrea) v Secretary of State for the Home Department [2007] EWCA Civ 801 [at 28]

³ Mr McGee describes himself as an 'independent researcher' with particular expertise on Kurdistan. After graduating from Cambridge he undertook a Masters in Kurdish Studies at Exeter University. He speaks fluent

in the IKR is difficult to quantify but it is believed to be widespread. One local NGO reported that it had documented the murder of 58 women over an 18 month period in 2015-16. Both the UKVI and the UNHCR have recorded instances of 'honour' based killings in Sulamaniyyah during the same time period. When Mr McGee was stationed in northern Iraq with the UNHCR he was involved in a case where an aggrieved tribe demanded that a family, perceived to have insulted the tribe's honour, hand over a daughter as recompense. That the account is consistent with the country background material lends support to the Appellant's claim.

37. Before me Mr Diwnycz did not identify any internal discrepancies in the Appellant's account and having read her interview record and statements with care, I have been unable to identify any material inconsistencies. That the account has remained consistent at its core is a matter that weighs in the Appellant's favour.

38. I have also placed some weight on the fact that the Appellant and her family chose to leave at all. Although I emphasise that this has played a very small part in my deliberations I have placed some weight on the fact that an educated and financially secure family decided to leave their home town and make an extremely perilous journey across land, and the Mediterranean sea. Although I accept that many thousands of migrants make that journey without protection needs, it is in my view striking that this family did so with two disabled children in tow. It is perhaps self-evident that any parent choosing to place their child in such danger is driven by some degree of desperation, but to my mind the heightened risk associated with a child such as L - a child with profound disabilities, challenging behaviour and (I presume) no ability to swim - is an indication that this family would not have made that journey unless they felt that they really had to.

39. I am therefore satisfied, on the lower standard of proof, that this family had protection needs when they left Iraq and claimed asylum in the United Kingdom. Whilst the maintenance of immigration control is in the public interest, I find that the weight to be attached to that aim is reduced in this case by the fact that the Appellant had a genuinely held subjective fear, and good reason to seek international protection. I further note that she came to be in this country when the United Kingdom 'took charge' of her case under the provisions of the Dublin Convention. She entered the United Kingdom lawfully and has remained in contact with the immigration authorities throughout her stay here.

40. It is in the public interest that persons who seek to settle in the United Kingdom are able to speak good English, and that they are financially independent. That is because these attributes aid integration into UK society. This Appellant can do

Arabic and Kurdish and has been writing and researching on the region since 2009. He has worked with the UNHCR in Iraqi Kurdistan and has had articles published in various academic journals, the Guardian newspaper and BBC website. His expertise was not challenged by the Respondent. His report is dated the 22nd September 2017.

neither. Those are therefore matters that weigh against her in the balancing exercise.

41. Against the public interest there are a number of factors that weigh heavily in favour of allowing this mother and her children to remain here.
42. The most significant factor is that it is, for the reasons that follow, strongly in the best interests of these children that they remain in the United Kingdom.
43. The youngest child L has Down's Syndrome, with, I am told by his GP Dr Rachel C Kemp, "associated bicuspid aortic valve" (a congenital heart defect). Physically he is able to run and walk but he has extreme behavioural problems and the family GP has had to organise respite arrangements for him to give the Appellant a break from the '24 hour' care that she gives him. He suffers repeated ear and tonsil problems and is being treated by an ENT specialist. Dr Kemp states that he is under continual monitoring for his Down's-related conditions including his thyroid function. Mentally he has profound learning disabilities and has only a few words. His communication difficulties exacerbate his behavioural challenges. Dr Alladi, the Consultant Paediatrician in Neurodisability who heads the multi-disciplinary team taking care of L describes him as having a "severe lifelong disability which will have a significant impact on his day to day life". He is fully dependent on his carers, is non-verbal and in the United Kingdom has been placed in a specialist school. In Dr Alladi's opinion, if this level of care is not consistently provided to L, he is likely to deteriorate significantly.
44. Before the First-tier Tribunal it had been the Respondent's case that there was at least once 'children's rehabilitation centre' in Sulaymaniyah that could provide L with care. That submission was not pursued before me in light of the view expressed by Dr Alladi that L's needs were specialist and complex, and his opinion that they could not be met in Iraq. The Appellant herself had never heard of anywhere in her home city that could provide L with care and she relied on research produced by Fiona Louise McWhirter, a Speech and Language Therapist who worked in Erbil between 2009 and 2011. Ms McWhirter continues to have contacts in the region and to keep updated on developments there in her field. When she worked in Erbil she was placed in the one school that served the needs of children with Down's or Cerebral Palsy. She describes the staff as "well-meaning" but poorly trained or equipped to deliver the care that the children needed. Procedures and care that would have been considered basic in this country were not implemented. She writes that the instability and financial crisis in the region has subsequently placed huge strain on these services that were already extremely limited. Foreign specialists (such as herself) who had previously gone to work in the region to share their expertise have been kept away by ISIL and the ensuing war. Although there are small scale projects run by NGOs that have benefitted some children, overall provision is "extremely limited".

45. The Appellant states that it is not only the lack of specialist care for L that concerns her. She has also witnessed first-hand the ignorance in societal attitudes towards children such as L. She explains that her own family found his behaviour and appearance difficult to deal with and as he grew older and his disability more apparent, they distanced themselves from her. She recounts how, for instance, during Eid celebrations she and her husband would take the children on trips so as to avoid their questions as to why no one was visiting or they were not spending it with family. That is the background to why she received no help from her family in caring for her children, and why she was forced to give up her work in order to care for L. In her latest statement she states that these attitudes are prevalent in Iraqi Kurdish society, where many people consider that disabled children should be hidden away. Recently she had a bad experience in this country when a Kurdish woman she considered a friend visited her at home and then berated her for allowing L to eat in the same room as them. The Appellant's evidence is supported in this regard by Ms McWhirter:

"I was told stories of disabled children being beaten on their feet by Muslim faith healers to remove the causes of their disabilities. There are not the services in place nor the culture to protect children from abuse and many horrific things go on behind closed doors, especially to the vulnerable".

46. Having considered all of this evidence I conclude that it is strongly in L's best interests that he remain in the United Kingdom and that he continue to receive the care that he currently does.

47. The Appellant's daughter R has what Educational Psychologist Elizabeth Williams refers to as "educational additional needs" and what her Tutor-Mentor at Sheffield College, Mr Mehdi Najefi, classifies as "moderate learning difficulties". These are reported to primarily manifest in a delay in speech and language development and a difficulty in understanding and remembering instruction. Dr Williams and the Appellant both allude to R's difficulties being exacerbated by her "traumatic life events": I take this to be a reference to the loss of her elder sister and father. Notwithstanding these challenges R is enjoying college in Sheffield. She told Dr Williams that she has a good relationship with her teaching assistant (this is, I think, a reference to Mr Najefi) and her other teachers. In Iraq she did not do well in school as she could not keep up with class and ended up in groups with children who were not her peers in age. Here she has been helped a lot and is looking forward to having a career, perhaps in hairdressing. She would like to have her own business and name it after her little brother.

48. The second factor I identify as adding weight to the Appellant's side of the balance is that there are here 'exceptional compelling circumstances'. That is a phrase that has appeared in various guises in this jurisdiction for many years, in statute, the Immigration Rules and policy. Its meaning is not always easy to understand. In this case it is. This is a family who, I accept, left Sulaymaniyyah because they were afraid that they would come to serious harm at the hands of a man who had already killed his own wife. The adults took what must have been the difficult

decision to take the overland/sea route to Europe. I accept without hesitation the truth in the Appellant's assertion that on this journey, two members of the family have been lost. I do so for the following reasons. The Appellant has consistently reported that to be so: before she ever reached these shores she told support workers in Calais (including Deborah Rea who testified before the First-tier Tribunal) that she had not seen her husband and daughter since Turkey. The bundles before me contain extensive correspondence with the Red Cross evidencing the Appellant's attempts to trace her husband and daughter. Her GP records show her having repeatedly reported depression and hopelessness (and on occasion, suicidal ideation) arising from her loss. She has received specialist counselling as a result. Although the GP, and counsellor, have confirmed in writing their concerns about the Appellant's mental wellbeing, I hardly needed such evidence to conclude that a mother who has lost her child is likely to be devastated by that loss. She is not the same person, with the same capabilities and resilience as she was before her daughter went missing. She is now a single mother coping with a tragic double bereavement. The children have in turn lost both their father and sister, and must deal not only with their own grief, but on a day-to-day basis, with their mother's.

49. The third factor follows from the foregoing. The grief that the Appellant is experiencing is a significant contributing factor to her diagnosis of anxiety and depression, which in turn, reports her GP Dr Kemp, exacerbates her stress-related severe dermatitis. The "very severe state of stress" that she presented with when she first sought Dr Kemp's help has obvious ramifications for her ability to parent her children. In this country she is managing because she has the support of a multi-agency team, and importantly, her brother N and his family. I cannot be satisfied that such support would be available to her in Iraq. The Appellant has given detailed and consistent evidence about the distance between her and family members in Iraq. She does not deny that she has close family members there, but has, particularly in her most recent statement, given cogent reasons why she would be unable to look to them for support. The Appellant and her children have, in effect, been ostracised because of disability, and there is no evidence before me to indicate that any of the family members remaining in Sulaymaniyah has had a change of heart. The Appellant and the children would not starve in Iraq. Although she would, as full time carer for L, be unable to work, she would be able to turn to her brother in the United Kingdom for financial support, and if for any reason that failed to materialise she is eligible for governmental rations, being in possession of a CSID card. She would however be facing extremely challenging living conditions. With no social network, no support and no socio-medical care for L or R, it is likely that she would return to the "very severe state of stress" to which Dr Kemp refers, with its attendant consequences for her mental health. It is very difficult to see how the Appellant could, if returned to Iraq, have any kind of life beyond a constant and unremitting struggle for survival.

50. This is a family who are likely to cost the taxpayer a significant amount of money. They have complex needs and are unable to finance themselves. It is however a

family who face huge and unpalatable challenges if removed to their country of nationality. That their removal would be disproportionate is recognised by the immigration rules which provide that where the returnee is to face such “very significant obstacles to integration”, leave should be granted.

51. For these reasons I find the refusal to grant leave a disproportionate interference with the composite Article 8 rights of mother and children.

Protection

52. As I note above, I accept, on the lower standard of proof the ‘historical’ claim advanced by the Appellant as why she left Sulaymaniyyah. I accept that at the date that the family left the city they did so because of a well-founded fear of persecution because they were members of the family of the Appellant’s husband. The Respondent disputes that such a fear would fall within the ambit of the Refugee Convention. As Ms Patel correctly submits, this position is inconsistent with the jurisprudence. She referred me to the following discussion in EH (Blood Feuds) Albania CG [2012] UKUT 00348 (IAC):

60. In the respondent’s December 2010 submissions, she argued that following the decision of the Asylum and Immigration Tribunal in SB, the Upper Tribunal should find that members of families or clans involved in blood feuds or vendettas were not capable of constituting a particular social group.
61. That position is inconsistent with the judgment of the House of Lords in 2006 in Secretary of State for the Home Department v. K, Fornah v Secretary of State for the Home Department [2006] UKHL 46 (K and Fornah), in which the respondent accepted that a family can constitute a particular social group for the purposes of Article 1A of the Refugee Convention. At paragraph 45 in the opinion of Lord Hope of Craighead in K and Fornah, he said this:

“45. It is universally accepted that the family is a socially cognisable group in society: *UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud*, 17 March 2006, p 5. Article 23(1) of the 1966 International Covenant on Civil and Political Rights states that the family "is the natural and fundamental group unit of society and is entitled to protection by society and the State." The ties that bind members of a family together, whether by blood or by marriage, define the group. It is those ties that set it apart from the rest of society. Persecution of a person simply because he is a member of the same family as someone else is as arbitrary and capricious, and just as pernicious, as persecution for reasons of race or religion. As a social group the family falls naturally into the category of cases to which the Refugee Convention extends its protection.”

62. It is settled therefore, that members of families or clans are capable of constituting a particular social group and that the Refugee Convention would be engaged where there existed a reasonable degree of likelihood that members of a particular family would be at risk of serious harm on return, subject of course to whether internal relocation was available, or whether the state provided sufficient protection against such risk.
53. I am therefore satisfied that the claimed fear was, and is, for a 'Convention reason'. I would note that this is also the conclusion drawn by the Respondent himself in his Country Policy and Information Note of August 2017 *Iraq: Kurdish 'Honour' Crimes* [at 2.2.1].
54. Paragraph 339K of the Immigration Rules codifies as Home Office policy the Demirkaya principle that where a risk has existed in the past, the decision maker must look to see whether there have been changes in circumstances such that the risk has been effectively diminished:
- 339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
55. Are there good reasons to consider that the Appellant's neighbour will no longer pose a threat to her or her children?
56. In his report Mr McGee specifically addresses whether the threat posed by an 'honour' feud is likely to diminish over time. He cites research including that published by the Danish Immigration Service to the effect that it does not. Local informants told the DIS that wrong-doings against honour are considered "unforgivable". An NGO worker in Sulaymaniyah emphasised that "honour is not a short-term matter. Honour is eternal in the sense that the offended family may seek retribution for years to come, or even for generations". In light of this country background material it would appear unlikely that events in 2015 will already have been forgotten.
57. There is a possibility that being a supporter of ISIL the neighbour (and any allied relatives) have fled Sulaymaniyah or that he has been arrested. Mr Diwnycz pointed to evidence that the Kurdish security services are actively pursuing any ISIL affiliated individuals or families. Mr McGee writes that the Kurdish authorities have "consistently taken any such report extremely seriously" and that there have been many cases of individuals being detained based on accusations or suspicion alone: see further AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 (IAC) at paragraphs 41-46. Even if this has not already occurred, there has been a significant change in circumstances in that since the military defeat of ISIL in Iraq, the 'neighbour' is now in a vulnerable position. It would only take the accusation of the Appellant - a former government worker - to see him arrested, and the threat he poses to her and her family neutralised.

58. I am satisfied, having had regard to the circumstances overall, that the threat to the Appellant from this neighbour will have diminished to the point where it falls below the required standard of 'real' risk. Even if this man would still consider it 'honourable' to pursue a lone woman and her two disabled children, it is likely that there would be a sufficiency of protection provided by the Kurdish security services, whom evidence indicates would not hesitate to arrest this man if they were aware of his ISIL sympathies. I bear in mind that there has been no suggestion that he has sought to pursue any other members of the Appellant's husband's family.
59. There remains the matter of whether, as a single mother with two children, the Appellant faces a real risk of serious harm in Sulaymaniyyah. I have found that she would face very significant obstacles to her integration. She would face social isolation, straightened circumstances, stigma as the parent of disabled children and the daily struggle to manage their needs - and her own - without the assistance of a support network. Although I do not underestimate the challenge that this will represent, I am unable to find that it amounts to 'persecution' in the sense in which that term is used in the Refugee Convention. The 'harm' arises from a combination of factors - socio-economic deprivation in Kurdistan, ignorance and social attitudes - and none can be directly connected to the Appellant's civil or political status. There being no nexus of causation, her plight as a single parent is not one that engages the Convention.
60. Nor can I be satisfied that the Appellant's circumstances are such that Article 15 of the Qualification Directive would be engaged under any of the three alternative heads. She does not face death or torture, and Ms Patel did not seek to persuade me that the circumstances prevailing in Sulaymaniyyah are such that there is a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".
61. It follows that the appeal must be dismissed on protection grounds. Had the Appellant established a real risk of serious harm in Sulaymaniyyah today there is no doubt she would have succeeded in her claim since there is plainly no 'internal flight alternative' for a woman in her position: that much was accepted by the First-tier Tribunal, and indeed by the Home Office's own policy on internal relocation in Iraq.

Decisions

63. The determination of the First-tier Tribunal is set aside.
64. The decisions in the appeal are remade as follows:

"The appeal is allowed on human rights grounds.

The appeal is dismissed on protection grounds”.

65. There is an order for anonymity.

Upper Tribunal Judge Bruce
15th September 2018