



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04561/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

On 4th April 2019

**Decision & Reasons
Promulgated
On 29th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**SHOKHAN [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood for IAS

For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge D Birrell, promulgated on 2nd August 2018, following a hearing in Manchester on 19th July 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Iraq, was born on 1st January 1993, and is a female. She appealed against the decision of the Respondent dated 25th April 2017, refusing her claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that she is of Kurdish ethnicity, born in Rania, in Sulaymaniyah, in the IKR. She lived at home with her parents. She had two sisters and a brother. Her father was a member of the Komali Islami political party, he was a traditionalist. He was very controlling. He did not want her to study. The Appellant persisted with her education and completed it in 2014. She then found herself in a relationship, which she confided in her sister. Her sister had been forced to marry someone else and her sister was not happy. The Appellant married her husband contrary to her family's wishes. There were repercussions from the family who expressed their displeasure in no uncertain terms.

The Judge's Findings

4. The judge accepted the basic nature of the Appellant's circumstances. It was accepted that she was in a relationship with her husband contrary to her family's wishes (see paragraph 69) and that the Appellant had a well-founded risk of persecution at the hands of her father and her brother as a consequence. The judge also accepted that the Appellant's account was substantially credible.
5. However, what the judge did not accept (at paragraph 70) was the Appellant's claim that she could not now return because she had no CSID documentation. The judge observed that,

"She asserts that she left her CSID card with her partner's family and told them to destroy it as she did not need it (A148 to 149) but I note she has never asked them if they did destroy it and I find it unlikely that they would do so given the importance of the document ... I am satisfied that she has claimed her CSID has been destroyed in order to frustrate the possibility of her removal ..." (paragraph 70).
6. The appeal was dismissed

Grounds of Application

7. The grounds of application state that the judge, in concluding that the Appellant had not destroyed her CSID card, had simply engaged in speculation. This was important given that much of the Appellant's background evidence had been accepted by the judge. This meant that the explanation with respect to a CSID card or to have been viewed in the context of the wider evidence which the judge did accept. The judge needed to explain why the evidence on the CSID was being rejected in the

manner that it was. Indeed, the Appellant was not asked by the judge if she had ascertained whether her CSID card was destroyed.

8. Second, it was held that there were direct flights to Erbil, so that if the Appellant were to be returned, she could be directly returned to the IKR. There was no such evidence served on the Appellant. The Appellant's representatives were not able to contest that evidence. They did not even have sight of it. It was accordingly material evidence that should have been brought to their attention if it existed and a failure to do so was a clear error of law.
9. Third, if the Appellant's absence to a CSID, was dependent upon her being able to contact her family members, then this in itself raised issues of viability that needed further consideration.
10. On 14th January 2019 permission to appeal was granted by the Upper Tribunal.

Submissions

11. At the hearing before me on 4th April 2019, Mr Wood submitted that the first error in the judge's determination was in relation to the decision on the CSID card. The Appellant asserted that she had given express instructions that it should be destroyed. The judge said she was not satisfied. Indeed, the judge goes on to then say
"Even if it were destroyed that the Appellant could attend at the Iraqi Embassy in Manchester or complete a form online and meet the Iraqi Government website or get a copy of her CSID card in Sulaymaniyah. It will be reasonable for the Appellant and her partner to live with her husband's family who had previously protected them and remain with them until they got on their feet. It is clear from the most recent country guidance that a male family member could visit civil registration office to obtain a new CSID card and in the Appellant's case that would be her husband" (see paragraph 45).
12. Mr Wood submitted that if the CSID card had been destroyed then there was a huge question mark as to whether it could be replaced. But in event, what this shows is that the Appellant's claim always was understood by the Respondent authority as a return to "Sulaymaniyah". That being so, his next ground of appeal was extremely important.
13. Second, the next ground of appeal, which led on from the first, was that, if the return was envisaged, and understood to be as the Appellant being sent back to Sulaymaniyah, then for the judge to hold that there were direct flights to Erbil, was a matter that had to be demonstrated on evidence. The Appellant's side had seen no such evidence. The judge could not simply say that flights existed to Erbil, without such evidence being presented, and the Appellant being afforded the opportunity to challenge it.

14. Third, there was the issue of the Appellant's protection within the IKR anyway. Judge Birrell had taken the view that it was possible for victims of honour crimes to be given protection and escape being traced by their family members in the IKR. Judge Birrell was of the view (at paragraph 74) that the evidence relied upon to support this contention "appears to be the opinion of largely unnamed sources and is contradicted by the evidence on another (unnamed) diplomat ...".
15. However, Mr Wood submitted that this was not so because if one looks at the evidence at page 27 of the Appellant's second bundle, what appears is the following:

"4.3.1 Ability of Relatives to Track down Victims.

Three sources refer to relatives being able to track down women who had run away in KRI [148]. In line with his, UNHCR stated that, in KRI, it would be difficult for a victim of an honour crime to escape the perpetrators and seek protection from the authorities. Journalist Osama Al Habahbeh said that a woman fleeing honour killing cannot hide anywhere in Iraq. A western diplomat, however, said there is no formal system for families to track down their own family members within KRI."

16. Mr Wood submitted that what the suggestion was that the Appellant would not be able to be safe in the IKR. This was not to suggest that the Appellant would not be safe throughout Iraq. However, the Appellant was not being returned to the country of Iraq in general. She was clearly understood to be returned to the IKR. In that small province, it was clear that there was evidence that those accused of honour crimes will not be safe.
17. For his part, Mr Bates submitted that first, the suggestion that "a woman fleeing honour killing cannot hide anywhere in Iraq" was plainly incorrect, because on that basis every woman fleeing an honour based crime would be able to seek asylum in the UK. Second, there was no reason to believe that the Appellant's father had connections in the IKR to be able to locate the Appellant. This was the express finding of the judge in relation to the position in IKR itself. Judge Birrell had made it clear (see paragraph 74) that, "there is therefore no reason to believe that her father would have the connections, power or influence to know that she had returned or to trace her if she chose to live elsewhere in the IKR".
18. In that case also, submitted Mr Bates, the judge observed how

"Mr Wood argued that family members can trace their own family members but the passage relied on (AB2 page 70) does not describe how this is possible and appears to be the opinion of largely unnamed sources and is contradicted by the evidence of another (unnamed) diplomat" (paragraph 74).
19. Finally, Mr Bates submitted that the issue of there being direct flights to Erbil, was a red herring. The fact here was that the Appellant, if she did

not have a CSID card, the Appellant would be returned to Baghdad. If she then had a CSID card, she would be returned to the IKR. It has been well-known that there are internal flights to various parts of the IKR and this is the procedure that would then be followed.

No Error of Law

20. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
21. First, there is the issue of the CSID card. The Appellant states that “she left her CSID card with her partner’s family and told them to destroy it as she did not need it” (paragraph 70). The judge was sceptical about this. Indeed, in a country as heavily previously documented as Iraq, and given in particular the difficulties in being able to acquire the CSID, the judge was entitled to disbelieve such a decision being taken by the Appellant, which directed her partner’s family to destroy the CSID. Mr Wood has submitted that the judge at no stage followed this up by asking the Appellant whether she had then proceeded to enquire of her partner’s family whether they had destroyed the CSID. It is unnecessary for the judge to do so. It is enough if the judge, making a finding of fact on this issue, comes to the decision that this was simply improbable and unlikely to happen. This, accordingly, was a decision that the judge was entitled to come to.
22. Second, assuming for a moment that the CSID had indeed been destroyed the latest country guidance case of **AAH (Iraq Kurds - internal relocation) Iraq CG [2018] UKUT 00212** is relevant. The head note of **AAH** makes it clear at paragraph 1(i) that what will be significant will be,

“whether P has any other form of documentation or information about the location of his entry in the civil register. An IMC passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process could be straightforward ...”.
23. It is also made clear at head note 1(iii) that it is relevant to ask, “are there male family members who would be able and willing to attend the civil registry with P?” In this case there was evidence to this effect. Accordingly, even if the CSID has been destroyed, a replacement document could have been procured.
24. Third, there is the question of the Appellant being able to find a safe haven by relocating in the IKR. The judge found (at paragraph 74) that the evidence produced before her “appears to be the opinion of largely unnamed sources”. Mr Wood has replied that if one looks at page 27 of the Appellant’s bundle, one finds there are three sources, including one from the UNHCR, and this makes it quite clear that “it will be difficult for a victim of an honour crime to escape the perpetrators and seek protection

from the authorities". However, the judge dealt with this in a manner which it was open to the judge to do. She makes it clear that there was also included "the evidence of another (unnamed) diplomat" and what is said here is that "a western diplomat, however, said that there is no formal system for families to track down their own family members within KRI". Indeed, the judge had gone on to say that the Appellant would be able to find protection with her husband's family which she had previously been able to do" (see paragraph 72).

25. Finally, there is the question of the Appellant's return to Erbil through a direct flight. When permission was given in the Upper Tribunal on 14th January 2019, it was in terms that,

"If it be the case that the only evidence before the First-tier Tribunal was in respect of the availability of direct flights to Sulaymaniyah (a claim that would require substantiation by way of a signed statement from the Appellant's representative) then it is arguable that the Tribunal erred in finding without evidence that there were direct flights to Erbil".

26. This was not the only evidence. As Mr Bates has submitted, the Appellant would be returned to Baghdad. Enforcement proceedings are to Baghdad. Indeed, it would seem, that insofar as there are flights to other parts of Iraq, such as to Erbil, they are for "voluntary" returnees. This is not such a case. Therefore, although the judge may well have erred in concluding in this respect, it is not a material error, because it does not affect the eventual outcome in any material way. If the Appellant's claim is rejected, and dismissed on appeal, then she will be returned to Baghdad. The decision of the First-tier Tribunal, accordingly, did not fall into error.

Notice of Decision

The decision of the First-tier Tribunal does not amount to an error of law. The decision shall stand.

An anonymity direction is not made.

Signed

Date

Deputy Upper Tribunal Judge Juss

25th April 2019