



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

Appeal Number: PA/11617/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 24th June 2019
Given extempore**

Decision & Reasons Promulgated

On 2nd July 2019

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

**ZRYAN [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel instructed by Broudie Jackson & Canter

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Iraq. She claims to have arrived in the United Kingdom on 5th July, 2018 clandestinely and made a claim for asylum on 5th July that year to the respondent. The respondent refused the appellant's claim and the appellant appealed to the First-tier Tribunal. The appeal came for hearing before First-tier Tribunal Judge Mark Davies at Manchester Piccadilly on 31st October, 2018. The appellant gave oral

evidence to the judge and adopted as part of her evidence a witness statement she had previously made.

2. During cross-examination she claimed that she had left Iraq with Kawa Mahmood her boyfriend, in the company of an agent and they had travelled to Turkey. However, she became separated from her boyfriend in Turkey because at the time she was pregnant and had had an abortion. It appears that she then corrected her evidence and claimed that she had suffered a miscarriage. When she returned to where she had been staying with her boyfriend she discovered that he was missing. She was asked why she had said that she had an abortion and replied that it could have been her mistake. She spent two nights in hospital but was not able to provide any written form of evidence to confirm that.
3. She was asked whether she had asked the agent if he knew where her boyfriend had gone and she said simply "they took some of the males separately". When asked if she had contact details of the agent the appellant was evasive. He does not explain in what way she was evasive. The judge noted that she said she did not have a mobile phone but her boyfriend did although he had lost it in Turkey. She was asked if she had asked the agent where they had taken her boyfriend and she simply replied that she had. He said that they had, "taken him somewhere and is waiting for you there". When asked where somewhere was she said, "I am not familiar with Turkey". The appellant was asked the name of the place where her boyfriend was taken to and said "I do not know and when I went there he was not there".
4. At paragraph 56 the judge's first finding he finds that the appellant has not been a truthful witness. At paragraph 57 he finds that the appellant has fabricated her evidence in its totality. At paragraph 60 he found that the appellant's claim to have separated from her boyfriend in Turkey was wholly incredible. He said "taking into account that she has not told me the truth I believe it was reasonably likely that she never had a boyfriend and thus never left Iraq and went to Turkey with him. Even if the appellant did have a boyfriend and went with him to Turkey. She has given no credible explanation as to the circumstances in which they separated.
5. Mr Tan drew my attention to paragraph 61 in which the manner in which the appellant answered questions in cross-examination was described by the judge as being wholly incredible. At paragraph 61 he went on to say "she claims she was hospitalised and when she returned to the address where she had been living with her boyfriend she was told he had been sent away somewhere and she would meet him later in this place at a later date". She was not able to give me any information as to where this place was and was evasive in cross-examination.
6. With very great respect to the judge, it is hardly surprising that she was not able to give any information to him as to where this place was because

that she was in a strange country and did not speak the language. She was wholly dependent upon an agent. There appears to be nothing in what the judge says about having separated from her boyfriend in Turkey to be “wholly incredible”.

7. I have concluded that the determination of First-tier Tribunal Judge Mark Davies cannot stand. I set it aside. Whilst clear findings have been made they are wholly inadequately reasoned. It is necessary for clear findings to be made properly supported by clear and logical reasons. The matter will be remitted to the First-tier Tribunal for hearing afresh before a judge other than First-tier Tribunal Judge Davies a Kurdish Sorani speaking interpreter will be required and three hours should be allowed for the hearing of the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley

Date

28th June 2019