



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00594/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10th July 2018

Decision & Reasons Promulgated
On 24th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

Z K K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors

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

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Andrew Davies (the judge) of the First-tier Tribunal (the FtT) promulgated on 26th February 2018.
2. The Appellant is a female Iraqi citizen of Kurdish ethnicity born 23rd July 1989. She originates from the Iraqi Kurdish Region (IKR).

3. The Appellant arrived in the UK illegally on 10th August 2017 and claimed asylum on that date. Her claim was based upon being the member of a particular social group. She feared her family, in particular her father, as she had lost her virginity before marriage and refused to enter a marriage that had been arranged for her by her father. The Appellant entered into an Islamic marriage with a British citizen on 20th December 2017. The British citizen, also originates from the IKR and he and the Sponsor had met in the IKR in November 2016.
4. The Respondent refused the application on 10th December 2017 and the Appellant appealed to the FtT.
5. The judge heard the appeal on 13th February 2018. He heard evidence from the Appellant and found her to be an incredible witness. The judge did not accept that the Appellant would be at risk from her father or family if she returned to the IKR. In the alternative, taking the Appellant's case at its highest, if she was at risk from her family, the judge found that she had a reasonable internal relocation option. The appeal was dismissed on asylum and humanitarian protection grounds, and on human rights grounds with reference to Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention).
6. The Appellant applied for permission to appeal to the Upper Tribunal relying upon three grounds which are summarised below.
7. Firstly it was submitted that the judge had materially erred by failing to make findings on paragraph 276ADE(1)(vi) of the Immigration Rules which had been relied upon in the grounds of appeal and the Appellant's skeleton argument. It was submitted that the judge had failed to consider why there would not be very significant obstacles to the Appellant's integration into Iraq as she would be returning as a lone woman. In addition the judge had found that the Appellant had entered into an Islamic marriage in the UK on 20th December 2017, and had failed to assess her family and private life pursuant to Article 8.
8. Secondly it was submitted that the judge had erred by making a material misdirection of law. The judge had at paragraph 36 referred to the Appellant lacking credibility. Reference was made to HK v SSHD [2006] EWCA Civ 1037, and it was submitted that the judge had materially erred in law in assessing the evidence.
9. Thirdly it was submitted that the judge had erred by making a material misdirection. The judge had accepted that the Appellant's father might have wanted her to marry a man of his choice and that the Appellant's fears were consistent with country information about honour crimes in Iraq. The judge had at paragraph 32 accepted that a woman within the IKR at real risk of having an honour crime committed against her would be at risk of serious harm and such crimes are prevalent within the IKR. The judge also accepted that the Appellant had entered into a relationship with a British citizen, and it was submitted that in the light of these positive findings the judge had erred in his assessment of the persecutory risk that the Appellant faced on return to Iraq.

10. Permission to appeal was granted by Judge Keane of the FtT on 4th April 2018.
11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was submitted that the judge had directed himself appropriately and had correctly found that the Appellant had not given a credible or consistent account. The fact that the account was disbelieved undermined the Appellant's claim that there would be serious obstacles to her reintegration in Iraq.
12. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Upper Tribunal Hearing

13. Mr Howard relied upon the grounds contained within the application for permission to appeal. With reference to the first ground he pointed out that both Article 8 and paragraph 276ADE were raised as Grounds of Appeal, and the judge had erred in law by making no findings.
14. With reference to ground 3 it was submitted that the judge had accepted that honour crimes were prevalent within the IKR, and the judge had erred in assessing the risk to the Appellant.
15. Mr Tan relied upon the rule 24 response. With reference to risk on return, it was submitted that the judge had accepted that there are arranged marriages and honour crimes committed within the IKR, but the judge did not find that on the facts of this particular case, the Appellant would be at any risk. This is because she was found to be an incredible witness. The judge gave reasons for this finding at paragraphs 24-29.
16. It was accepted that there was no specific consideration of paragraph 276ADE or Article 8, but it was submitted that the judge had made a finding that there would be no very significant obstacles to the Appellant's integration into the IKR. This is because the judge had not accepted her account as credible, and in the alternative had found a reasonable internal relocation option. With reference to Article 8 it was pointed out that the Appellant had only been in the UK since August 2017 and there was no evidence to indicate that there were very compelling or exceptional circumstances in this case, in relation to her relationship with a British citizen.
17. In response Mr Howard submitted that it could not be said that the Appellant was bound to fail by relying upon paragraph 276ADE, and therefore the judge had materially erred in not making findings.
18. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

19. Dealing with the first ground, I find the judge erred in law in not making specific findings in relation to paragraph 276ADE and Article 8. However in my view the error is not material for the following reasons.

20. Reading the decision as a whole, it is clear that the judge found that there would be no very significant obstacles to the Appellant's integration into the IKR.
21. The judge's primary finding was that the Appellant was not credible, and therefore could return to her home area without risk, as the judge found that she would not be at risk from her father or family.
22. In the alternative, the judge took the Appellant's case at its highest, and found that there was a reasonable option of internal relocation. The judge found at paragraph 40 that the Appellant is well educated with a university degree, and found that he had seen "no evidence of any weight to suggest that internal relocation would not be possible". The judge also made a finding that he had seen no evidence to suggest that the Appellant's father, even if he were inclined to seek her out and kill her, would be in a position to trace her and do so.
23. The judge found at paragraph 38 that there was no evidence to suggest that the Appellant's father had any power or influence in his own area, "let alone in the IKR generally". The Appellant's father was not associated with the government within the IKR.
24. The judge found at paragraph 41 that no reason had been given by the Appellant's British partner as to why internal relocation would not be possible.
25. The judge therefore found that there is a reasonable option of internal relocation within the IKR, should that be required, although his primary finding was that the Appellant could return to her home area. It is clear from those findings, that the judge found there would be no very significant obstacles to the Appellant's integration into the IKR.
26. Turning to consider Article 8 outside the Immigration Rules, there was no evidence before the judge to indicate that the consequences of the Appellant having to leave the UK would result in unjustifiably harsh consequences for the Appellant or her partner, both of whom had entered into an Islamic marriage, knowing that the Appellant had entered the UK illegally and had no leave to remain.
27. The judge found at paragraph 22 that the British partner had been back to Iraq many times since he was granted British citizenship. He and the Appellant had in fact met within the IKR in November 2016. The judge found at paragraph 24 that the British partner "gave no reasons why he could not return to Iraq and live with the Appellant".
28. Although the judge did not specifically consider Article 8, it is clear from his findings that he found no insurmountable obstacles to the Appellant and her British partner living together in the IKR. It is equally clear that the judge found no exceptional or compelling circumstances. If the British partner did not wish to return and live with the Appellant in the IKR, he could remain in the UK and it would not be unjustifiably harsh for the Appellant to return to the IKR and make an entry clearance application through the proper channels.

29. Referring to the second ground of appeal, it was not specified in the grounds, or at the hearing, how the judge had erred in law in assessing the evidence. An extract from HK was referred to in the grounds, but this decision is not authority for submitting that a judge must accept everything that an Appellant asserts, and the decision is not authority for stating that a judge cannot under any circumstances find an Appellant to be incredible.
30. In this case, the judge made a finding that the Appellant was not credible because of inconsistencies in her account. The judge gave examples of those inconsistencies, and gave sustainable reasons for finding the Appellant to be incredible. I find no merit in this ground of appeal.
31. Referring to the third ground I find no error of law. It is correct that the judge considered the background evidence in relation to “honour offences” within the IKR. The judge at paragraph 34 recorded that in the light of the background country information, an account of a threat of death by a male member of a family in the light of a woman’s refusal to enter into an arranged marriage is one to which some credence can be attached. However the judge went on to find that that was not the case in this appeal. Reasons were given for this conclusion, those reasons being that the Appellant had given an inconsistent account, which caused the judge to “have little confidence that she has presented the full picture”.
32. The judge made credibility findings open to him on the evidence and gave sustainable reasons for those findings. The grounds contained within the application for permission to appeal amount to a disagreement with the conclusions reached by the judge but they do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The decision is not set aside and the appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made because the Appellant has made a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 17th July 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 17th July 2018

Deputy Upper Tribunal Judge M A Hall