Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10667/2015

THE IMMIGRATION ACTS

Heard at Stoke	**Decision Promulgated**
on 12 May 2017	**on 23 May 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

B A-A
(AKA ISA)
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented
For the Respondent: Mr Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Colyer ('the Judge') promulgated on 11 November 2016 following a hearing at the Nottingham Justice Centre on 4 October 2016. The Judge dismissed the appellant's appeal on both protection and human rights grounds.

2. The appellant appealed. Permission was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge McGeachy, on 14 January 2017 in the following terms:

> 1. The grounds of appeal, drafted by the appellant, refer to the rights of the appellant under Article 8 of the ECHR and to those of her children. She emphasises that one of her children is British. She asserts that she would be the victim of an honour killing. She states that her husband cannot return with her to Iraq as he is settled here.
> 2. It is clear that the judge set out and applied the relevant standard of proof and gives clear and detailed reasons for finding that the appellant is not credible and that she would not suffer persecution on return to Iraq.
> 3. With regard to the appellant's rights under Article 8 of the ECHR while it is of note that her claimed husband did not give evidence on her behalf and there is scant evidence of the relationship there is evidence that the second child is British. The Judge does appear to have been in error when stating that the second child is not British. That may be a material error when considering then appellant's rights under Article 8 and I will therefore grant permission on that ground only.

Discussion

3. With the application for permission to appeal the appellant refers to the status of her second child as a British citizen. The appellant contends in the Grounds that she is married to her husband who has indefinite leave to remain in the UK and is, therefore, settled.
4. The difficulty for the assertion relating to the child's nationality is that the Judge specifically refers to there being no evidence to support the contention the appellant's youngest child is a British citizen in the evidence that was made available to the Judge. Indeed, at [124] the Judge specifically finds:

> 124. As in the above case, I find the appellant's children are not British citizens. I find the children have no right to future education and health care in this country. The children are of an age when the children's emotional needs can be fully met within the immediate family unit. I find that any integration that has occurred into United Kingdom society has been predominantly in the context of that family unit. Most significantly, I find that the children can be removed to Iraq in the care of the appellant without serious detriment to the children's well-being.

5. It now transpires, by the production of documents that were not before the Judge, that the child SY, born on 18 April 2016, is a British citizen.
6. Mr Bates having now seen evidence in the form of the child's birth certificate, passport, and father's status, which he has checked with the Home Office records, accepts that SY is a British child.
7. Had these documents been before the Judge a different decision may have been made but, as the Judge had no evidence regarding the child's status as a British citizen, it cannot be shown that the Judge has made a mistake of facts sufficient to amount to an error of law. The hearing took place on 4 October 2016 and it has not been shown that the birth certificate or documents relating to the status of the

father were not in existence at that time. The copy UK passport shows a date of issue of 26 May 2016 which was also therefore a document in existence at the date of the hearing. It has not been properly explained why these documents were not made available to the Judge which appears to be because of a failure to produce the same by the appellant, for which she is responsible.

8. The Upper Tribunal was able to engage in discussion with both the appellant and her husband who attended to look after the children, to discuss how they wish to proceed in light of the facts now known.

9. It is understood that the respondent's published policy regarding a British national child makes it likely that SY will be able to remain in the United Kingdom, where his father is settled, and where his mother is likely to be granted status as the child is only very young. The appellant indicated, with her husband's consent, that she wished to make a fresh application for leave to remain on Article 8 grounds which it is anticipated will be given proper consideration by the decision-maker.

10. In relation to the name appearing on any subsequent application, it was agreed that it will be the appellant's proper lawful name which should be that appearing on the previous visit visa application forms referred to in the refusal letter relating to this matter.

11. As no arguable error of fact sufficient to amount to an error of law has been made out, and considering the fact the appellant elected to make a fresh application rather than pursue the matter any further, the appeal shall be dismissed and the determination stand.

Decision

12. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

Anonymity.

13. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 22 May 2017