



**The Upper Tribunal
(Immigration and Asylum Chamber)**
PA/04117/2015

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Glasgow
On 24th April 2017**

**Decision & Reasons Promulgated
On 9th June 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

**A F O
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Devlin, Counsel, instructed by Quinn, Martin and Langan.

For the Respondent: Mr.Mullen, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. In a decision promulgated on 16 December 2016 First-tier Tribunal Judge D H Clapham dismissed the appellant's appeal on the basis of credibility. Permission to appeal the decision has been granted.
2. The appellant is from the independent Kurdish region of Iraq. Her husband came to the United Kingdom in 2011 in order to study for a Ph.D. He was sponsored by the Kurdish Ministry of the Interior and had been employed in the police laboratories in Erbil as a DNA expert. The appellant and their two children came with him and the children have been enrolled in local schools. The family made several visits back to Iraq.
3. Her husband was granted a visa in June 2011. His last visa was issued in September 2012, valid until February 2016. He was due to have completed his studies by October 2015. The appellant's passport confirmed that she had entered the United Kingdom in September 2012, August 2013, May 2014 and August 2015. Five days after her last arrival she approached the respondent and made a claim for protection.
4. Her claim was that in July 2015 she and her husband were driving in Iraq when a telephone call came through the car speakerphone. The caller threatened her husband. Afterwards her husband explained the caller, OB, was an influential member of the PUK who had asked him to falsify DNA results which he refused to do. He told her that caller's son allegedly raped his wife's sister who then had a child. The DNA results were relevant to the paternity of the child and a case started in 2011 involving OB's son and the husband of the child's mother's. The case was being reopened because of the DNA evidence.
5. They immediately went home, collected their children, and then drove to a farm outside the city. The family flew to Scotland a few days later. They passed through immigration control and then took legal advice. The advice was that rather than interrupt her husband studies the appellant should become the lead claimant for protection.
6. When the claim was made she produced evidence which she said a family member had obtained for them when on holiday in Iraq. This included a paternity DNA report and a letter dated July 2015 from her husband and a colleague to the director of the laboratory saying they had been threatened.

7. The respondent accepted the appellant's nationality and that her husband had been employed by the police in Erbil as a forensic scientist. The country information confirmed the person alleged to have threatened them had been involved with the PUK party but his present position was not known. No evidence could be found identifying his son.
8. The respondent questioned why her husband did not immediately seek protection from the police in Erbil rather than writing a letter to the director of the laboratory. It was suggested this letter was not genuine but was an attempt to bolster the claim. The respondent also highlighted that although the appellant's husband was the one alleged to have been threatened he had not made the claim to protection. The appellant had not identified the legal firm she claimed advised her that she could claim rather than him. Furthermore, the family did not claim when they were at the airport in Scotland. The appellant had not produced the passport of the friend she claimed obtained the documents from Iraq to show their presence. It was also unclear how he could have obtained sensitive official documents or why her husband could not have obtained these before leaving or sent for them from the United Kingdom.

The First tier Tribunal

9. There was no presenting officer in the First-tier tribunal. The appellant was represented. First-tier Tribunal Judge D H Clapham heard from the appellant and her husband and his sister. She was also provided with the documents the appellant claimed were brought from Iraq. The judge asked some questions directed towards the possibility of the family living in Baghdad. At paragraph 58 the judge made general comments about the assessment of credibility. Thereafter she set out her findings and the reasons for doing so. Her view was that the appeal turned on the credibility of the appellant and witnesses and concluded they were not credible.
10. The judge accepted there was some truth to the claim about earlier proceedings in 2011 involving the paternity of a child. She accepted that the appellant's husband was in Iraq in 2015. At paragraph 63 she questioned why in 2015 her husband would be approached. She also questioned why, if OB was so influential, he could not otherwise have altered the results without involving the appellant's husband. The judge went on to indicate in the next paragraph she did not find it credible her husband would refuse to change the results given that he would have been aware of the influence of OB from his earlier involvement. Furthermore, she comments on the fact he did not immediately report the threat and the steps he took were limited. Regarding the letter allegedly written by the appellant's husband and a colleague to their employer the judge reiterated the respondent's point that there

were more direct sources of protection. She concluded the letter were self-serving and had been written for the purposes of claiming asylum rather than seeking help.

11. She questioned how the caller could have known her husband's mobile telephone number. The judge also commented that it was just too convenient that the call came through the car speakerphone so the appellant could say she heard it. The judge then commented that the claim of collecting the children and then driving to a remote farm as being implausible.
12. The judge commented on the failure to claim on arrival in the United Kingdom and the fact the claim was being made by the appellant rather than her husband. The judge did not accept as credible that as the principal person involved he would not claim because he wanted to continue his studies. The judge also commented adversely on the failure of the appellant's husband to obtain documentation before he left to support the claim and then claiming he got his sister to bring documents when she visited on holiday. The judge pointed out the appellant has close family members still in Iraq who have not come to any harm.

The Upper Tribunal

13. Permission to appeal was granted on the basis it was arguable that the judge had made her decision based on the plausibility of the account rather than determining its truth.
14. At hearing the appellant's representative adopted his written grounds of appeal. He argued that aspects of the reasoning were flawed to such an extent that they contaminated the entire decision and the good could not be extricated from the bad.
15. The judge had queried at paragraph 63 of the decision why, if the PUK member was such an important a person, he would need to involve the appellant's husband. Mr Devlin contended there was no basis for suggesting OB was in a position to prevent an enquiry and made a distinction between legitimate inferences which can be deduced from the evidence and conjecture.
16. He then referred me to paragraph 64 of the decision where the judge commented on the credibility of the appellant simply refusing the demands of a powerful individual and the limited steps he took in reporting the threat. Mr Devlin suggested that the judge in questioning why he had not coalesced was assumed he would act as the judge might have done. With regard to the steps taken by the appellant's husband about the threat he submitted that the judge misunderstood what was being said. Her husband in his statement said when first approached he was approached he was

not threatened and on the second occasion he immediately contacted his superior. His superior said he could not help because it was a weekend so he went to a friend who told him to go back to the superior.

17. I was referred to paragraph 62 where the judge questioned why the appellant's husband would have been approached given he had been out of Iraq and was only back for a short period. Mr Devlin referred to the statement of the appellant's husband at page 7 where he said he had returned to Iraq in July 2015 to complete fieldwork on DNA for his thesis. Mr Devlin suggested that her husband had an ongoing involvement with cases in Iraq despite his physical absence. It was submitted that the First-tier judge had not taken this into account.
18. Mr Devlin then referred me to paragraph 65 of the decision where the judge questions how the mobile telephone number of the appellant husband would be known. The judge also felt it was implausibly convenient that the appellant could hear the call because of the car loudspeaker. Mr Devlin submitted that it could not be so far-fetched or contrary to reason or belief that her husband's telephone number would not be known, particularly on the part of an influential individual.
19. Paragraph 66 was highlighted. There, the judge recorded as implausible the claim that after receiving the telephone call they then drove to her father's house, collected the children, and then went away to the unoccupied farm of her father's cousin. He submitted this was a bare assertion on the part of the judge.
20. I was referred to paragraph 67 and 68 of the decision where the judge commented on the apparent delay in claiming asylum. In particular, the judge commented on the fact the appellant husband has not made a claim on behalf of the family. Reference is made by Mr Devlin to the statement of the appellant's husband where he said he felt if he claimed would prejudice his ability to complete his studies. He argued that the judge failed to have regard to this explanation.
21. I was then referred to paragraph 69 of the decision where the judge said it was not credible that the appellant's husband would have left Iraq without bringing documentation simply on the basis he was under stress and given he was an intelligent man. However, Mr Devlin argued that no reasoning had been advanced for this proposition.
22. The final ground of appeal relates to paragraph 71 where the judge commented on the evidence of a family member who claim to have brought documentation over.

23. Mr Devlin concluded by saying that the findings made by the judge highlighted above were flawed and infected the outcome. As they were bad findings they could not be disentangled from the unchallenged findings.
24. Mr Mullen opposed the appeal. He acknowledged some of the points made in the grounds were valid but overall they did not amount to showing a material error of law. The case put forward amounted to a general disagreement with the conclusion made by the judge and did not indicate genuine error.
25. At paragraph 63 he submitted that the judge's reasoning could have been clearer but the motivation and means open to OB could only be determined from the information provided by the appellant's husband. He accepted that at paragraph 64 the comment about the appellant husband refusing suggested the judge was, as Mr Devlin suggested, reflecting on how they might act. He referred me to the case papers where there was reference to DNA evidence from another provider based in the United Kingdom. There was reference to an inability to change the results even had he wished.
26. He submitted that the judge's comment that the appellant's husband took little action after receiving the threat was open to the judge.
27. Even if OB were influential it was open to the judge to question how he could have obtained the private mobile number for the appellant's husband.
28. He submitted that the comments made at paragraph 66 about plausibility of collecting the children and going to a farm were not determinative of the appeal.
29. He submitted there was weight in the judge's commenting on the failure of the appellant's husband to claim in person.
30. Whilst he may have been stressed there was no medical evidence that his cognitive ability was affected. Consequently, the judge's comment is about his failing to bring evidence were legitimate. Regarding paragraph 71 it was a matter for the judge to weigh up whether the appellant's husband would endanger his sister.
31. Both representatives were in agreement that if a material error of law established the most appropriate course would

be for the appeal to be remitted for a rehearing before the First-tier Tribunal. This was because of the fact-finding involved.

Consideration

32. Mr Devlin has carefully carried out a forensic examination of the decision of First-tier Tribunal Judge D H Clapham and has highlighted particular paragraphs of the decision which he submits indicate errors of approach. He contends that these amount to material errors of law which infect the decision to such an extent that is not possible to disentangle the unchallenged aspect. To this end he has provided me with various authorities supporting the points he has made.
33. In considering the appeal I have considered the points made in respect of individual paragraphs but I have also sought to step back and look at the decision as a whole. I start by considering the general background that the judge was faced with. The appellant and her family came to the United Kingdom in 2011 and have sought to make their life here. It is stated her husband now considers himself to be Scottish. The children are enrolled in a local school. He came to study for a doctorate and his leave is due to expire in October 2015. He was sponsored by the authorities in Iraq because of his work in the police laboratories in Erbil. The family returned to Iraq in July 2015 and then returned to the United Kingdom in August 2015. They pass through immigration control in Edinburgh and five days later the appellant rather than her husband makes a claim for protection. The reasons advanced are that she has taken legal advice and the reason she was claiming was so that her husband studies would not be disrupted. She subsequently produces documentation said to be obtained through her husband's sister on a visit to Iraq. It includes a letter apparently written by her husband and a colleague to his employer about being threatened.
34. The refusal letter rejects the claim on credibility grounds and a number of issues are highlighted. These include questioning why her husband would write a letter to his employer rather than seeking help from the police. It was also unclear how he was able to meet his colleague and do this. Furthermore reference was made to the fact protection was not claimed on arrival in Edinburgh as well as the fact that her husband was not the claimant.
35. The judge did not find the appellant or her husband and his sister credible. She has set out a number of reasons. I acknowledge that when those reasons are dissected some aspects are open to legitimate challenge. For instance, the comments about how the mobile number could be obtained or the family immediately collecting the children and then going to an isolated farm. The

comment that OB could have other means of changing the results is arguably speculation.

36. However, the decision has to be read as a whole and in context. I note in paragraph 24 of the decision of Y -v- SSHD [2006] EWCA 1223 Lord Justice Keene, commenting on adjudicators decision, said particular passages should not be analysed as though they emanated from a parliamentary draughtsman. Although this is not an answer for all of the points made on behalf of the appellant that spirit should be born in mind

37. The judge refers to the failure to claim immediately on arrival in Edinburgh. The judge also comments on the appellant's husband not wanting to be the claimant because it would interfere with his studies. Given the claimed fear I find the judge was entitled to draw adverse inferences from these features. I find these were significant features. The judge also commented on the fact the appellant has family members in Iraq who experienced no problems. There were other issues going to credibility which have not been raised. For instance, at paragraph 75 the judge found the appellant was evasive, particularly in suggesting her children only spoke English. The judge is entitled to bring in peripheral matters in the overall evaluation of credibility. Credibility factors can feed into each other in this way. I do not find that the specific features highlighted by Mr Devlin so contaminate the decision that it cannot stand. The judge clearly appreciated the issues arising and correctly summarised the issues from the refusal letter. When the decision is looked at as a whole and in context it is sound.

Decision.

No material error of law has been demonstrated in the decision of First-tier Judge. Consequently, that decision dismissing the appeal shall stand.

Deputy Judge Farrelly

8th June 2017