



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

Appeal Number: PA/05313/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On 5 October 2018

**Decision & Reasons
Promulgated
On 31 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms H Aboni, Senior Home Office Presenting Officer

For the Respondent: Mr R Sharif of Fountain Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Birk promulgated on 15 December 2017 in which she allowed the appeal of RA on protection grounds against a decision of the Respondent dated 24 May 2017 refusing asylum in the UK.
2. Although before me the Secretary of State for the Home Department is the appellant and RA is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the Secretary of State as the Respondent and RA as the Appellant.

3. RA is a 24 year old national of Iraq. She was born in Chamchamal, which is currently in the Iraq Kurdish Region ('IKR'). It is her case that at the age of 18 she entered into a marriage with a significantly older man, H. She says it was a forced marriage arranged by her father and stepmother. She went to live with H in Kirkuk.
4. Kirkuk is not in the IKR. It was common ground between the parties before me that Kirkuk is approximately 50 kilometres from Chamchamal, and that the two places are connected by a road upon which it is possible to travel between them: e.g. see the 'reasons for refusal' letter ('RFRL') at footnote 11, and the reference to Google Maps therein.
5. The Appellant was delivered of a son, Q, in August 2014.
6. In September 2016 she claims to have been falsely accused of having an adulterous relationship. The accusation arose during the course of events on 11 September 2016. The Appellant had opened the front door to see a man with whom she had enjoyed a flirtatious relationship prior to her marriage. Although this was an unexpected visit it was nonetheless observed by her husband, who jumped to a conclusion that there was something untoward in this relationship. In consequence the Appellant was beaten, stabbed, and locked in her room whilst her husband went to inform her parents about the situation. It is the Appellant's case that she was then able to escape from the locked room, and she fled to her sister who lived in Chamchamal. Whilst at her sister's house, where she says she only stayed for a day, her father and her husband arrived to make enquiries of her - they were told that her sister did not know anything about her whereabouts.
7. Thereafter, with the assistance of her sister's husband, arrangements were made for the Appellant to leave Iraq. She left on 14 September 2016 for Turkey. Approximately a month later she left Turkey for Greece, and then gradually made her way to the United Kingdom via Bulgaria and France. She entered the United Kingdom on 24 November 2016, on which day a screening interview was also conducted. A substantive asylum interview took place on 5 April 2017, which was continued on 17 May 2017.
8. The application for asylum was refused for reasons set out in the RFRL of 24 May 2017.
9. The Appellant appealed to the IAC.
10. By the date of the appeal the Appellant was pregnant. (In this context it appears that there is an error at paragraph 5 of the decision of the First-tier Tribunal Judge wherein it is stated that the child was due to be born in May 2018; this is contradictive of the reference in paragraph 7 to the Appellant being 31 weeks pregnant. I am told today that the Appellant

was delivered of a daughter in January 2018, which would be consistent with the notion that she was approximately 31 weeks pregnant at the date of the hearing.) The pregnancy was said to have arisen during the course of a brief relationship of some three weeks in May and June 2017 with a man with whom the Appellant was no longer in touch.

11. The fact of the Appellant's pregnancy was introduced into her claim for protection as an additional element at the appeal hearing. The following appear at paragraph 9 of the decision of the First-tier Tribunal Judge:

"On behalf of the Appellant it was submitted that she is a single lone woman who will have a child out of wedlock"; and

"The crux of the claim is whether or not she is pregnant by her husband or not. If it is another individual then she will be seen [sic.] as breaching the family honour by her father and her husband".

For the avoidance of any doubt these passages appear to be part of the Judge's summary of the submissions made on the Appellant's behalf.

12. The First-tier Tribunal Judge essentially accepted the Appellant's narrative account of the events that had preceded her departure from Iraq, and also accepted the circumstances of her pregnancy in the UK. The Judge found that the Appellant was consequently at risk from members of her family:

"26. I find that she cannot return to her husband or her father and step-mother in Kirkuk as they have treated her poorly and abusively in the past and that the circumstances of her marriage to a person who has abused her by locking her inside the house means that they will not offer support to her. The fact that she would arrive pregnant means that there is very strong possibility that they will reject her completely. Further that they would all regard it as an insult to their honour.

27. I find that there is a high risk of her being persecuted by her family due to the dishonour that she has brought to the family ...".

13. In this context the Judge also concluded that there would be no adequacy or sufficiency of protection: see paragraph 27.

14. The Judge then addressed the issue of internal relocation:

"I find that she cannot show access to male support in the place of relocation. I find that there is a level of vulnerability in her position due to her pregnant state and a child who is aged 3. She is not an educated woman and has no financial support available to her. I find that she would struggle to find a shelter and to be able to find employment and support herself. She has previously not worked or

lived alone in Iraq. I find that it would be unduly harsh for her to relocate internally” (paragraph 29).

15. In such circumstances the Judge considered that it was not necessary to analyse the *“situation as to the practicalities and feasibilities of return to Iraq”* (paragraph 30). In this regard there was an issue as to the availability or otherwise of documentation, and the assistance that might be gleaned from family members - specifically the Appellant’s sister and brother-in-law - to ensure that proper documentation might be obtained such that the Appellant could reach the IKR.

16. The Secretary of State for the Home Department applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Grant-Hutchison on 11 January 2018. The grant of permission to appeal is in the following terms:

“It is an arguable error of law that the Judge has misdirected herself (a) in finding that the Appellant is from Kirkuk when she is from Chamchamal which is in the governate of Suleimanya which means she can internally relocate in the IKR and (b) by failing to deal specifically with the fact that the Appellant’s sister and brother-in-law were able to assist her to leave the IKR without considering the possibility that they would be able to assist in being re-documented or being pre-cleared for entry with the IKR authorities on return. As such this may have made a material difference to the outcome or to the fairness of the proceedings”.

17. The contended error in respect of the Appellant’s origins is identifiable at paragraph 5 of the Decision of the First-tier Tribunal. The Judge states *“The Appellant’s account is that she is Kurdish and from Chamchamal in Kirkuk”*. As indicated above, Chamchamal and Kirkuk are quite distinct places. The former is not ‘in’ the latter. There does indeed appear to be some confusion in the mind of the Judge in respect of the relationship between these two separate geographical locations.

18. It is suggested that this error is taken forward when the Judge refers at paragraph 26 - as quoted above - to the risk to the Appellant being in Kirkuk: i.e. *“I find that she cannot return to her husband or her father and step-mother in Kirkuk ...”*. It is submitted that by eliding Chamchamal and Kirkuk into one entity the Judge failed to have regard to Chamchamal in the IKR as a possible place of relocation; further, it is for this reason that the Respondent in challenging the Judge’s decision has also focused in on the absence of any findings in respect of obtaining documentation such as to enable the Appellant to return to the IKR. In the premises of the Respondent’s challenge is that the Appellant can relocate to the IKR - perhaps with the assistance of her sister and brother-in-law in the documentation process - and thereby avoid the risk of persecution seemingly identified to be in Kirkuk.

19. I am not persuaded that that Judge's confusion in respect of Kirkuk and Chamchamal constitutes a material error of law.
20. I entirely accept that the Judge does indeed seem to have confused matters geographically; but in my judgement this could not possibly have made any difference to the outcome in this appeal.
21. I note the following:
 - (i) The Judge appears to place the Appellant's father and stepmother in Kirkuk. However, it is not evident that the father and stepmother ever moved away from Chamchamal. They had lived in Chamchamal at the time of the Appellant's marriage to her husband, and it was the Appellant who relocated to Kirkuk upon marriage.
 - (ii) In any event it was plainly the case - and no issue has been taken in this regard - that it is possible to travel between Kirkuk and Chamchamal. Such a journey was undertaken by some of the various 'players' during the course of the relevant events.
 - (iii) Moreover, and perhaps most pertinently, it was also part of the Appellant's narrative account that when she had fled from her husband to her sister's house in Chamchamal, both her husband and her father turned up at her sister's house to enquire as to her whereabouts. See, for example, the Appellant's witness statement of 10 February 2017 at paragraph 13, and her response during her asylum interview at question 89.
22. It seems adequately clear, notwithstanding the possible geographical elision or confusion, that the First-tier Tribunal Judge in substance found that the Appellant was at risk where her father lived. Further, in accepting the narrative account that both her husband and father had been able to look for her at her sister's home the Judge in substance found she was not safe in Chamchamal. Accordingly the geographical confusion had no impact on the core finding that there was a risk of persecution.
23. Nor am I persuaded that the geographical confusion had any impact on the issue of relocation.
24. I have quoted the Judge's findings in respect of relocation above. It is to be noted that the factors relied upon, albeit measured against the background situation in Iraq, were essentially matters that were personal to the Appellant and therefore pertained irrespective of geography. Whilst there may be some vagueness in paragraph 29 in the Judge's reference to "*the place of relocation*", there being no such place expressly mentioned, I accept in substance the submission of Mr Sharif - if the Judge made a finding of risk of persecution in the areas in which the Appellant's family resided, then the Judge must reasonably be considered to have had in mind as the place of relocation anywhere else in Iraq.

25. There is no specific challenge to what is said about the Appellant's vulnerabilities, and in those circumstances it seems to me there is no particular challenge to the Judge's reasoning in respect of internal relocation, beyond the distinction between Kirkuk and Chamchamal, and that only one is in the IKR.
26. The substance of the Judge's findings are that the Appellant is at risk from her family members both in Kirkuk and Chamchamal; relocation to Chamchamal is not therefore appropriate; relocation elsewhere in Iraq is not a reasonable option because of the Appellant's specific vulnerabilities.
27. In those circumstances it does indeed seem to me to be immaterial that the Judge failed to consider whether or not the Appellant could reach the IKR by way of obtaining the proper documentation through family members. Given the Judge's findings that the Appellant was entitled to international surrogate protection, it was not necessary to consider the practicalities of return.

Notice of Decision

28. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.
29. The Respondent's challenge is dismissed.

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

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: **19 October 2018**

Deputy Upper Tribunal Judge I A Lewis