



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/07280/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 9 August 2018

Decision and Reasons Promulgated
On: 18 September 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

SNOOR [S]

ANONYMITY DIRECTION NOT MADE

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr K Gayle, Elder Rahimi Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq, born on 1 January 1984. She appeals with permission against the decision of the First-tier Tribunal Judge Bart-Stewart, promulgated on 7 June 2017, dismissing her appeal against the respondent's decision dated 5 July 2016, to refuse her application for asylum and humanitarian protection.

2. Judge Bart-Stewart noted an earlier decision in which the Immigration Judge dismissed the appellant's appeal '...in respect to her family and private life' [15]. In her appeal before Judge Bart-Stewart, she claimed to be in fear of her brother who had threatened to kill her as she was not going to divorce her husband.
3. It was accepted that the appellant is a national of Iraq. She had originally applied for an entry clearance to travel from Syria to the UK after her marriage, which was refused. She then applied for a visa to the UK from Jordan on 15 August 2013 which was also refused. The applications were initially refused because the appellant submitted a forged English language certificate and it was considered undesirable to issue her with entry clearance or exercise discretion in her favour. The later application doubted that the marriage was genuine and subsisting or that she intended to live together permanently with her sponsor in the UK - [11]
4. Judge Bart-Stewart set out the background evidence relating to risk on the basis of gender based violence in Iraq from [33].
5. She considered that Devaseelan applied as to the credibility and plausibility '... of the account now put forward with the appellant leaving Iraq a year after her appeal was dismissed'. She stated that her account in her current appeal is brief considering that the claim is that she has suffered emotional abuse including threats to kill her over a period of 12 months. When asked a number of times during cross examination, she only recounted one actual conversation with her brother which she did not expand on. She was pressed to say what the conversation entailed and did not say that he threatened to kill her in that conversation, or when he beat her - [41].
6. She noted that in her witness statement and interview, she claimed that her brother began to beat her but made no specific reference to him threatening to kill her. It was evident in her witness statement that it was hearing him on the phone threatening to kill her which caused her to tell her mother and then to flee. This is the explanation she also gives in her interview. There is no reference to any direct threat, and had there been, it is implausible that her mother would not have been aware of the risk to the appellant's safety on the basis of the overheard conversation. Further, the family would know that it is the appellant's fault that entry clearance had not been issued. Her husband had paid for at least two applications and an appeal and paid agents substantial sums. She produced a false certificate and then failed the language test several times [42]
7. She found that the credibility of the overall account is undermined by the claim that throughout this period the appellant said nothing to her husband. She did not accept it as credible that for 12 months she was arguing with her brother, being beaten and issued with death threats, in a society where honour killings are a reality, and said nothing of it to her husband despite claiming to be in a genuine and subsisting relationship. On her account the whole reason for the beatings was that her husband had not been able to arrange entry clearance. She does not suggest that she said anything, even indirectly to her husband [43]
8. Nor did the Judge find the appellant's husband credible. He was at pains to say on nearly every occasion when questioned, whether relevant or not, that he did not know anything before the appellant joined him [44].

9. She found that if the appellant was having problems and did not tell him, this would support a conclusion that the relationship was not genuine and subsisting. However, she found it far more likely that the account of arguments and beatings is fabricated and that the appellant entered the UK illegally having made two unsuccessful applications for entry clearance. She was thus satisfied that the sole reason for her illegal entry and false asylum claim was to circumvent the requirements for entry clearance. The appellant did not have a well founded fear of persecution when she left Iraq and neither was she at risk of serious harm [44].
10. She nevertheless considered whether the appellant would be at risk of serious harm if removed from the UK [45]. She did not consider it plausible that the appellant was threatened or beaten by her brother. She is a married woman and she did not find plausible that she would have been required to be divorced by her husband to marry another man when the objective evidence suggests that this state of affairs would have more likely been considered to cause dishonour. The family are aware of what steps had been taken to get the appellant to the UK and she had regard to the findings of the previous immigration Judge as regards the motives behind the marriage. She therefore did not consider the appellant to be at serious risk of harm if she were to be removed from the UK [45].
11. She found that the decision outside the immigration rules to be proportionate in the circumstances [46].
12. On 11 June 2018, First-tier Tribunal Judge I D Boyes granted the appellant permission to appeal on the basis that the contention as to credibility 'is arguably ill explained by the Judge and the Article 8 assessment may not survive the challenge'.
13. Mr Gayle submitted that the analysis of the Judge is undermined by a failure to provide sufficient or sustainable reasons for the adverse credibility findings. He referred to paragraphs [41-42], and submitted that the Judge based adverse credibility findings on the fact that the appellant only made one specific reference to her brother threatening to kill her. Moreover, this threat was only overheard by the appellant while her brother was on the phone.
14. However, in her witness statement the appellant referred to numerous arguments. Mohammed became increasingly abusive. He began beating her: "My only respite was when my brother was off on the front line fighting ISIS." This meant he spent long periods away from home. Whenever he returned "the pressure on me to divorce Syamand would resume." She also referred to overhearing her brother speaking about her on the phone and stating that she was a disgrace who had brought dishonour on the family. He said he was going to kill her.
15. Mr Gayle submitted that in her cross-examination, the record of proceedings shows that after she said she was not going to separate from her husband, her brother beat her up and threatened to kill her. He told her directly to her face that he is going to kill her.
16. Mr Gayle referred to answers given by the appellant during her interview from Qs 43-48. There she stated that when she told the family that she still loved her husband

they reacted after that, and he was beating her and threatening her that if she did not marry "this guy" and separate from her husband, he would kill her.

17. He submitted that the phone call she overheard from her mother was the catalyst to her fleeing. There was clearly an escalation in the situation which she faced. Discussing an honour killing with a third party goes beyond a normal family argument. It is not implausible that her mother decided to act when she did.
18. He submitted that the Judge erred in relying on the assertion that as the appellant's family knew that she was ultimately responsible for her failed entry clearance applications, they would not blame her husband. That assertion, he submitted, assumes that the appellant's family would adopt a rational approach to the situation. It was wholly plausible that the appellant's family blamed her husband for failing to secure her entry clearance.
19. She also erred in finding that it was implausible that the appellant would not inform her husband of the arguments and beatings or the threats of honour killing. It is wholly plausible that as the appellant knew there was nothing her husband could do to resolve the situation, she chose not to tell him.
20. Furthermore, she erred in rejecting her husband's evidence. He confirmed that he did not know of the duress being placed on the appellant by her family. There is a lack of reasoning in that analysis.
21. The Judge's reasoning at [45] is confusing. She found it implausible that the appellant would be forced into divorcing her husband and marrying a man chosen by her brother. The background evidence made it clear, however, that women in Kurdish societies are treated like chattel by their families. Her account is plausible.
22. She made a wholly inadequate assessment of the appellant's claim under Article 8. It was accepted that the appellant is in a genuine and subsisting marriage with her husband who has indefinite leave to remain in the UK.
23. She erred in referring to the sponsor's visits to see the appellant following the marriage in Iraq from 9 November to 3 December 2012 and in Jordan from 14 August to 2 November 2013.
24. At [13] of the earlier decision of Judge Prior, he noted the relevant passage from the reasons for refusal. The ECO noted that the sponsor has not sought to visit her in Iraq or to meet her close to the area where they lived, which would be accessible to both of them. It did not appear that any travel has been made by her sponsor to visit her.
25. Mr Gayle referred to the appellant's interview at B1, Q4. She stated at Q8 that initially the family approved of the marriage. 'After Syria was refused' they decided to apply in Jordan in 2013. The application was refused and she had to return to Kurdistan and her husband returned to the UK to appeal. She had stated at Q4 that she married her husband in 2011. They then went to Syria and got married. They applied in Syria for a visa to "get me here" in November 2012. That was refused. On 12 November 2011 "we returned to Iraq."
26. He submitted that this was clarified with further questions from Q21 onwards. She said she made an application to join her husband in the UK from Syria on 2 October

2011. That was rejected on 2 November 2011. She remained in Damascus during that time. She then returned to Erbil on 12 November 2011 and said that her husband remained in Syria.

27. He submitted with regard to the Article 8 claim that the Judge provided a wholly inadequate analysis. She erred by stating that her husband has obtained asylum. However, no details were given of the basis upon which he obtained asylum, nor whether he would still be at risk there or that there would be insurmountable obstacles to family life being enjoyed in Iraq. The implication that they could enjoy life in Iraq was in the circumstances an error.
28. In response, Mr Tufan submitted that the appellant is from Kurdistan. The appellant stated in her witness statement that her husband came to Kurdistan after she had repeatedly failed the course. She eventually passed it in June 2013. He came to Kurdistan and they travelled to Jordan together to submit a further entry clearance application.
29. Further, in his short witness statement, her husband did not mention that he was granted refugee status. He confirmed the truth of the appellant's account of events claimed in her witness statement. In his statement he asserted that there is no part of Iraq where they would be safe.
30. Accordingly Mr Tufan submitted that the Judge 'was not ultimately incorrect'. She was referring to Iranian Kurdistan or Syrian Kurdistan.
31. In response, Mr Gayle submitted that the Judge made her assessment solely on the basis of the previous determination. She relied "too much" on the previous determination. She did not have proper regard to the facts as presented. It must have been Iranian Kurdistan to which the appellant referred.

Assessment

32. The Judge has properly considered the background evidence relating to the risk of gender based violence in Iraq. She referred to the documentation produced by the appellant from paragraphs [33-35] of the determination.
33. She also had proper regard to the Devaseelan principles [41]. The appellant left Iraq a year after her appeal was dismissed. She claimed to have suffered abuse including threats to kill her for a period of twelve months.
34. However, the Judge noted that during her cross examination she only recounted one actual conversation with her brother on which she did not expand. She was given several opportunities. She did not say in that conversation that he threatened to kill her.
35. It is evident that the Judge noted that in her witness statement the appellant claimed that her brother became abusive and beat her. He wanted her to marry a cousin. Their arguments became worse.
36. She stated at paragraph 13 that on 27 September 2015 she overheard her brother speaking about her on the phone, in which she heard him say that he was going to kill her. The Judge noted in her decision at [24] that the appellant stated during her cross examination that he had made a threat to kill her to her face. The appellant

stated that she had not mentioned before as she had not been asked. The Judge noted at [42] that in the witness statement and at interview she claimed that he began to beat her but made no specific reference to kill her. It was evident in her witness statement that it was hearing him on the phone threatening to kill her which caused her to tell her mother and then to flee.

37. She found, having regard to the appellant's overall account that it was not credible that throughout the period when she claimed that her brother was arguing and beating her and issuing death threats, she said nothing to her husband but claimed to be in a genuine and subsisting relationship [43].
38. Nor did she find her husband credible. He sought to answer nearly every question, whether relevant or not, by claiming that he did not know anything before the appellant joined him. She found that if this was indeed the case it would support the conclusion that the relationship was not genuine and subsisting. However, she found it likely that the account of arguments and beatings was fabricated and was made in order to facilitate the appellant's illegal entry into the UK having made two unsuccessful applications for entry clearance.
39. Mr Gayle has sought to contend that the failure to discuss this with her husband was plausible. There was nothing he could do to resolve the situation. I do not find that the Judge has been guilty as asserted of basing her findings merely on her own assumptions. She has given sustainable reasons for those findings.
40. With regard to the claim under Article 8, it was accepted by the Judge that the appellant is in a genuine and subsisting marriage with her husband who has indefinite leave to remain in the UK.
41. She had regard to the fact that the appellant did not meet the suitability requirements under the Immigration Rules having regard to her conduct in her prior entry clearance applications. She maintained the deception with regard to the English language certificate in the appeal itself.
42. It is asserted by Mr Gayle that the Judge erred in finding that her husband has been back to Iraq.
43. In that respect the appellant stated in her witness statement that he came to Kurdistan after she passed the exam in June 2013 and they travelled together to Jordan to make the application. It was on that basis that the Judge found that the appellant's husband has asylum, however he has been back to Iraq [46].
44. Mr Gayle asserted that the appellant must have meant that he came to Iranian Kurdistan to submit a further application. However, no such assertion was ever made in that respect. Nor had the appellant ever claimed that she travelled to Iranian Kurdistan in order to join up with her husband prior to travelling to Jordan together. Moreover, the Judge noted that there were no details given as to the basis on which her husband obtained asylum and whether he would still be at risk or whether there would be insurmountable obstacles to family life being enjoyed in Iraq. At the time they were married they would have been aware that there was no guarantee that the appellant would obtain entry clearance. That was all the more so when the appeal

was dismissed and the appellant decided nevertheless to make her way to the UK [46]

45. Although the Judge has given a short decision relating to the Article 8 claim, she has set out the full context in which that application was made. She has given sustainable reasons for concluding that the appellant's asylum and Article 8 claims should be dismissed. There is no suggestion that the findings are in any way perverse or irrational.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction continued.

Signed: Deputy Upper Tribunal Judge Mailer

Dated: 12 September 2018