



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/11534/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 3 May 2018**

**Decision & Reasons Promulgated  
On 14 June 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**A M A**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr Brown instructed by Bolton Citizens Advice Bureau

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. An anonymity direction was made previously and shall continue.
2. To avoid confusion the parties are referred to as they were in the First-tier Tribunal.

3. This is an appeal by both the Appellant and Respondent against the decision of First-tier Tribunal Judge Bannerman promulgated on 9 October 2017, which allowed the Appellant's appeal against the refusal of a protection claim and human rights claim on human rights grounds only.

#### Background

4. The Appellant was born on 12 October 1992 and is a national of Iraq. The Appellant is married to N H a British National and they have a child born on 1 July 2017. The Appellant fears that her family do not approve of her marriage and would kill her if she returned.
5. On 2 December 2015 the Appellant applied for asylum also arguing that removal would be a breach of her human rights given her marriage to a UK citizen.
6. On 11 August 2016 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons. It was not accepted that the Appellant was married to N H; even if it were accepted she was married there were inconsistencies in her account of how she came to leave Iraq; the Appellant produced counterfeit ID documents.

#### The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bannerman ("the Judge") found that the Appellant and N H were not credible witnesses as to the events that caused the Appellant to leave Iraq; however there was now a child and 'the interests of the child are of paramount consideration' (paragraph 97); he found that the baby should not be required to return to the IKR with the Appellant and it would not be proportionate to stay in the UK with its father.
8. On 22 November 2017 First-tier Tribunal Judge Saffer granted permission to the Respondent to appeal the decision on the basis that it was arguable that his finding that the best interests of the child were a paramount consideration rather than primary consideration was an error that infected the whole of the consideration under s 117B 6.
9. On 1 May 2018 Upper Tribunal Judge Perkins gave permission to the Appellant to appeal that decision on the basis that it was arguable the reasons given for dismissing the decision on Article 15(c) and Article 3 grounds did not adequately reflect the country guidance and was inadequately reasoned.

10. At the hearing both parties relied on their arguments previously submitted and did not wish to make any further submissions.

## **The Law**

11. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him.

## **Finding on Material Error**

13. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
14. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

*“The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills’ Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant’s appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or*

*tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."*

15. I deal firstly with the challenges raised by the Appellant to the decision which suggest that the Judge did not adequately deal with AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) in so far as it relates to Article 15(c). This was a case where the Judge had found that the Appellant originated from the IKR but did not believe the reasons she gave for leaving the country. He had heard evidence (paragraph 65) that she had a CSID card and therefore on the basis of those findings he was entitled to find that returning her to the IKR would not put her at risk under Article 15(c).
16. In relation to the challenge raised by the Respondent Mr Diwnycz frankly accepted that had the Judge not used the word 'paramount' in relation to the best interests of the British citizen child, the Respondent would have had no basis on which to challenge his conclusion that by reference to s 117B 6 it was not reasonable to require the Appellants child to be removed.
17. That the Judge erred in setting out the law in relation to the best interests of children was not disputed by either party. In making the assessment of the best interests of the children he made reference at paragraph 68 to ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2011] UKSC 4 where Lady Hale noted Article 3(1) of the UNCRC which states that "*in all actions concerning children, whether undertaken by ... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a **primary** consideration.*" (my bold)
18. Article 3 is now reflected in section 55 of the Borders, Citizenship and Immigration Act 2009 which provides that, in relation, among other things, to immigration, asylum or nationality, the Secretary of State must make arrangements for ensuring that those functions "*are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom*". Lady Hale stated that "*any decision which is taken without having regard to the need to safeguard and promote the welfare of any children involved will not be "in accordance with the law" for the purpose of article 8(2)*". Although she noted that national authorities were expected to treat the best interests of a child as "*a primary consideration*", she added "**Of course, despite the**

***looseness with which these terms are sometimes used, "a primary consideration" is not the same as "the primary consideration", still less as "the paramount consideration".*** (my bold)

17. Thus the best interests of the child are a primary consideration not, as the Judge asserted at paragraph 97, a paramount consideration. However I must go on to consider whether this error made a material difference to the outcome. I must determine whether the Judge has made it tolerably clear that he has considered all of the relevant factors whether he has specifically identified them or not and reached a conclusion that is sustainable. I have come to the conclusion that on balance while the decision could have been written in a more structured way, identifying the best interests of the child before moving onto s 117B6 the Judge at paragraph 97-100 has considered all of the relevant factors, While not explicitly identifying the best interests of the child in his findings it is possible to discern that the Judges places great weight on the age of the child and its need therefore for her mother, the Appellant, to be part of her upbringing. He places considerable weight on the benefits of British citizenship. Indeed these were all matters that he was addressed on by both advocates. While the Judge makes no reference to the Respondents own policies Mr Diwnycz frankly acknowledged that the Respondents own policy guidance was that it was never reasonable to require a British citizen child to be removed other than in cases involving criminality or a poor immigration history which did not apply here. Therefore it was open to the Judge to conclude that it was not reasonable to require the child to be removed and the error in setting out the law in relation to the best interests of the child made no material difference to the outcome of the case.

18. I therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable.

## **CONCLUSION**

**19. I therefore found that no errors of law have been established by either the Respondent or the Appellant and that the Judge's determination should stand.**

**DECISION**

**20. The appeals are dismissed.**

Signed

Date 8.5.2018

Deputy Upper Tribunal Judge Birrell