



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

Appeal Number: PA/03278/2017

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 20th July 2018 & 18th December 2018**

**Decision & Reasons Promulgated
On 9th January 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**SECRETARY OF STATE FOR THE HOME DEPARTMENT / SM
(anonymity order made)**

Appellant/respondent

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Appellant

Representation:

For SM:

Mr Sadiq, Adam Solicitors

For the SSHD:

Mr Tan on 20th July 2018, Mr C Bates on 18th December 2018,
Senior Home Office Presenting Officers

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the person in this determination identified as SM. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. For the reasons set out in my decision promulgated on 10th August 2018, I set aside the decision of the First-tier Tribunal which had allowed the appeal of SM against a decision to refuse her protection claim. The resumed hearing listed for 10th September 2018 was adjourned with directions, *inter alia*, that the SSHD use his best endeavours to take a decision on the outstanding application for indefinite leave to remain made by SM's partner.
2. Although the SSHD had not taken a decision on the outstanding indefinite leave to remain application, following discussion, the parties agreed to the hearing of the instant appeal proceeding on 18th December.
3. SM was born in Chamchamal in the Sulaymaniyah Governate, IKR on 1st August 1995. She arrived in the UK on 19th September 2017 and made a protection claim. Her protection claim was refused by the SSHD and her appeal to the First-tier Tribunal allowed. The Secretary of State sought and was granted permission to appeal. I found a material error of law by the First-tier Tribunal judge who failed to make a properly reasoned finding on the impact upon SM returning to Iraq as a lone woman with a child, whether it would be unduly harsh for her to relocate, whether her family have influence in the IKR, relied upon evidence whose provenance he did not identify and he failed to consider Article 8.
4. The findings made by the First-tier Tribunal were preserved:
 - (a) SM had, prior to coming to the UK resided in Kirkuk;
 - (b) Her family resided in Kirkuk;
 - (c) She had been abused by her father and a brother;
 - (d) She and her partner (an Iraqi national with an outstanding application for indefinite leave to remain in the UK having had 6 years discretionary leave to remain) have a long standing genuine and subsisting relationship and have been living together since she arrived in the UK;
 - (e) SM's parents were authoritarian and strict and were planning a marriage for her to which she did not consent;
 - (f) At the date of the hearing the couple were expecting their first child (now born).
5. Mr Bates accepted that SM does not have a CSID and would have difficulty obtaining one. He accepted that, on the basis of the evidence as it stands at present, without a CSID she could not return to Iraq. He confirmed that he had considered the SSHD's recent policy documents and the letters from the Iraqi authorities in connection with CSID but had concluded that even if she were to be issued with a *laissez passer* or similar document to enable her to travel to Iraq, she would still need a CSID in order to gain access to services and be able to travel to and regularise her stay in the IKR. He acknowledged that she would have to obtain a CSID from Kirkuk, where her family now live, and she would then have to register in the place where she was going to live in the IKR. He acknowledged that SM had been found credible and that although the First-tier Tribunal judge had not made findings on her evidence that she had an uncle in

the security services in Erbil and another uncle in the security services in Sulaymaniyah, he could not seriously dispute that evidence.

6. Mr Bates raised the possibility that her partner could travel with her to the IKR and provide her with any required support. He noted that the partner had been refused asylum several years ago and been granted discretionary leave to remain but noted that time had moved on; in any event there was nothing in the papers that indicated that the partner had or had previously had any necessary identity documents (including a CSID) and there was no evidence to support a submission that he remained in contact with his family who could assist him. He said he could not point to anything in the papers that could suggest that he was not credible. He said he could not argue that SM's partner either had or would be able to obtain a CSID and thus be able to return to Iraq with SM to provide her with support.
7. If SM could get to Kirkuk to obtain her CSID to enable her to register in the IKR, it would, Mr Bates submitted, be speculative to conclude that whilst she was in Kirkuk she would be found and identified by her parents as being there and thus to be at risk. Whilst I agree that there is a degree of speculation in connection with that, the fact remains that even if she were able to obtain her CSID to enable her to register in the IKR, that registration process, indeed her entry into the IKR, would require security checks. I am satisfied that with two uncles at relatively senior levels in the security service (one a major and the other a lieutenant) in Erbil and Sulaymaniyah, she would be placed at real risk of her whereabouts becoming known and thus to be at serious risk of being persecuted. She would be a lone woman in Iraq/IKR with no means of accessing support. As accepted by Mr Bates this would place her at Article 3 risk of serious harm and therefore entitled to humanitarian protection on that basis. I am satisfied that even if she could obtain a CSID, that her partner could obtain a CSID and return with her to Iraq and that they were able to relocate to IKR, she would, as a woman who has been found to dishonour her family as set out in the findings of the First-tier Tribunal, be at serious risk of being found in any event and persecuted.
8. Mr Sadiq reiterated the risks on entry to the IKR, the serious risk of her whereabouts becoming known, and that she will be at serious risk of 'honour killing'. He drew attention to the need for security checks at the border with the IKR before entry and residence was permitted.
9. Taking these matters overall, I am satisfied that if SM were to be removed to Iraq, she would be at serious risk of being persecuted for a Convention reason. She would be unable to relocate to the IKR without her whereabouts being discovered by her family, thus reinstating the persecutory risk. There was no evidence that there was sufficiency of protection for her and Mr Bates did not seek to argue this.
10. Accordingly, as I said at the hearing, I allow the appeal on international protection grounds; the appellant has a well-founded fear of persecution on Refugee Convention grounds.

11. SM is in a genuine and subsisting relationship with a man who has resided in the UK for the past six years and they have a child. The man is awaiting a decision on an application for indefinite leave to remain. It follows that her appeal is successful on Article 3 grounds. Although I have allowed the appeal on refugee grounds and heard no specific submissions on Article 8, I am satisfied that on the basis of the evidence before me, SM's appeal under Article 8 succeeds. There is nothing significant in the papers before me that could lead to a conclusion that the couple should not remain together.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing SM's appeal on international protection (refugee) and human rights grounds.

Anonymity

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

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

Date 18th December 2018



Upper Tribunal Judge Coker