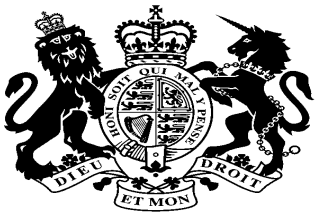


Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08236/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Determination & Reasons Promulgated**
On 4 December 2018	**On 15 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

BZ
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Alam, instructed by The Law Partnership Solicitors
For the Respondent: Mrs Abone, Senior Home Office Presenting Officer

DECISION AND REASONS

1 This is the appellant's appeal against the decision of Judge of the First tier Tribunal C Burns dated 28 September 2017 dismissing her appeal against the respondent's decision of 11 August 2017 refusing her protection claim.

2 The appellant is a national of Iraq, from Central and Southern Iraq, and is of Kurdish origin. She appears to have been born in Baghdad, but spent the majority of her life in Kifri, in the northern part of Diyala governorate. The appellant was said to have

left Iraq on 27 July 2016 and entered the UK on 12 December 2016, having transited through Turkey, Greece and travelling on a number of lorries to the UK.

3 The appellant's claim for protection was that her family in Iraq disapproved of her marriage to JMA, a British national of Iraqi origin, and that as a result, the appellant feared serious harm at her family's hands because her actions had offended against the family's honour. The appellant and JMA are said to have married in Iraq on 24 April 2012. It is relevant to note that JMA himself entered the UK on or around January 2005 and claimed asylum on the basis that he had formed a relationship with the appellant, but that her family disapproved, and had threatened him. JMA himself was from Baghdad, but had relatives in Kifri, where it is said that they had met. JMA's own application for asylum was refused, and an a decision of Immigration Judge Hall dated 24 May 2005, his account was disbelieved. JMA was eventually granted indefinite leave to remain in the UK through the legacy scheme, and subsequently obtained British citizenship through naturalisation.

4 In her own application asylum, the appellant had stated that her family continued to disapprove of her relationship with JMA, but that her oldest brother, who lived in the USA, had on an occasion whilst present in Iraq, consented to the marriage between the appellant and JMA. The marriage had thus taken place on 24 April 2012. However, it was the appellant's case that when that brother had departed for the USA again, the appellant's two other brothers remained disapproving of the appellant's relationship with JMA. It was apparent, however, that JMA had returned to Iraq to visit the appellant in Kifri on three occasions after their marriage.

5 In the decision of 11 August 2017 the respondent rejected the appellant's claim that she was in a relationship with JMA at all, and rejected her claim for protection.

6 On appeal before Judge Burns, the judge made the following findings, in summary:

(i) the appellant's claim as to her fear of honour killing ran counter to general (country) information [32];

(ii) some of her statements were not coherent or plausible [32]; the appellant's general credibility had not been established; there were many inconsistencies in her account and considering them cumulatively, her credibility was so damaged that the judge did not accept that she had proved her claim to the lower standard [34];

(iii) there was a lack of background evidence that a marriage agreeable to both families could give rise to an honour killing [35];

(iv) the appellant's family, had, in effect, consented to the marriage [36-38];

(v) the fact that neither the appellant nor JMA, on his visits to Kifri, had been physically harmed by her family, was not consistent with the appellant's fear of being subjected to honour crime [38];

(vi) there were inconsistencies in the appellant's account as to: when and where she had met JMA; the fact that she had married in 2012, whereas she had made an application for entry clearance for the purpose of marriage in 2015; the number of times that the appellant saw JMA again in Iraq after the marriage; her family not allowing her to go out, whereas she had stated that she had lived with her husband on the occasions when he returned to Iraq; her being locked in the house, whereas she had also stated that she worked in a sweet shop (all at [41]);

(vii) it was not plausible that the appellant feared being made to marry another man, whereas her family knew that she was married to JMA and she had refused to get a divorce [43];

(viii) although the appellant had stated that the family had been unable to take her to court to secure a divorce because she had run away in 2016, that did not explain what had happened in the four-year period between 2012 and 2016 [44];

(ix) notwithstanding the above findings, the judge accepted that the appellant and JMA were in a relationship and had been for some considerable time; the appellant had become pregnant by JMA in the United Kingdom, but which sadly resulted in the stillbirth [49];

(x) the appellant's family may not always have approved of JMA, and there may well have been some concerns as to his absence in the United Kingdom and the appellant's inability to obtain entry clearance to join him; however, this was 'very far removed' from the appellant's claims that her family threatened to kill her [50];

(xi) the appellant will be returned to Baghdad [53]; this was feasible because the appellant has a passport [54];

(xii) Kifri, in Diyala, was a place where there was a risk to the appellant under Article 15(c) of the Qualification Directive [55-57];

(xiii) the appellant had a passport, a marriage certificate and her brother's ID card which would help her verify her identity [59];

(xiv) the appellant would be able to obtain a replacement CSID card, but there may well be a delay [59];

(xv) the appellant spoke Arabic [60];

(xvi) the appellant was is likely to have family members in Baghdad; in her oral evidence she confirmed that she would visit Baghdad with her husband to visit his family; she said that she did not know whether he still had family there, but her evidence had been generally unreliable; it was likely that her husband still has some family in Baghdad [61];

(xvii) it was unlikely that the appellant would be a lone female in Baghdad; there was her husband's family; her husband could return to Baghdad with her if he chose to do so; the appellant has a maternal uncle who helped her escape from Iraq; the judge did not accept that the appellant was estranged from her own family; her husband's family would be able to accommodate her, or her wider family could sponsor her to find accommodation [62];

(xviii) the appellant would expect to be offered support from her family and her in-laws; should would be able to seek employment; she has worked previously in a sweet shop [63];

(xix) it would not be unduly harsh for the appellant to relocate to Baghdad; there will be a delay in her obtaining a replacement CSID card but the judge expected that the appellant would have both the support of her family and her in-laws and possibly financial assistance from the respondent in the interim [64];

(xx) in relation to Article 8 ECHR, the judge noted that the appellant had been married to JMA since April 2012; he had been living in the UK but visited her in Iraq on three occasions; they had been together in the UK since December 2016, which was a very short period (prior to the hearing in September 2017) [68];

(xxi) there were no very significant obstacles to her integrating into Iraq [69];

(xxii) any interference with the appellant's private family life was proportionate [74-78].

The appeal was thus dismissed.

7 The appellant applied for permission to appeal, which was initially refused on 22 November 2017. The renewed grounds of appeal argue, in summary, as follows:

(i) the judge was 'wrong' to make the finding at paragraph 47 (that the appellant had not given a credible account of threats from her family to harm her or JMA, or to marry her to an unknown third party against her will), as 'clearly this is common in cases such as this' (Grounds, para 5);

(ii) the judge's finding in respect of the appellant's return to Iraq is 'wrong'; the judge had misdirected herself in respect of current country guidance on Iraq; the appellant is a female, who if returned would be vulnerable and there was no assurance that she would be able to do the things as described at paragraph 59 decision (in summary, that she would be able to obtain a replacement CSID card) (Grounds, para 6);

(iii) there were exceptional circumstances in the appellant's case; a reference was made to paragraph 77 of the determination (in which the judge considered the appellant having suffered the loss of her child, who was stillborn); it was said

that the appellant was still in contact with the hospital and had been invited for an appointment, representing evidence regarding her mental health and general health after the loss of her child.

8 Permission to appeal was granted by Upper Tribunal Judge Plimmer is in a decision dated 29 January 2018 on the following basis:

> "1. It is arguable that the First-tier Tribunal's finding that the country background evidence is inconsistent with the appellant's claim that she fears an honour killing because she married against her family wishes, is unsupported by the evidence and/or irrational.
>
> 2. It is arguable that the First tier Tribunal has speculated that the appellant would not be a lone female without a CSID in Baghdad, and those findings are arguably unsupported by any evidence."

9 The respondent provided a Rule 24 response dated 8 March 2018 resisting the appellant's appeal.

10 I heard submissions from Mr Alam for the appellant, and Mrs Abone for the Respondent.

Discussion

11 Mr Alam pointed out is that the judge made various references to the Home Office's CPIN 'Iraq: Kurdish 'honour' crimes' at [27]-[28]. The judge had then remarked: "In general the Kurdish authorities are able but unwilling to provide effective protection (3.1.3). However, this appellant is not from the IKR but from Kefre in Diyala." Mr Alam argued that the judge had thus erroneously held that the country information referred to was not applicable to the appellant's case at all.

12 I find no merit in that argument. The CPIN referred to deals with the phenomenon of honour crimes amongst the Kurdish population in Iraq generally, not only in the IKR. The judge was clearly aware of where the appellant came from; there was nothing inappropriate in the judge observing that the appellant was not in fact from the IKR. Insofar as the appellant argues that the judge proceeded under a misunderstanding that honour crimes did not occur within the Kurdish population in Diyala province, such an argument is not made out.

13 Where the judge finds at [35] that there was a lack of background evidence that a marriage *agreeable* to both families could give rise to honour killing, the point being made by the judge was that honour crime tended to arise where a woman had entered into a marriage without her family's consent. However, on the judge's findings made at [36]-[38], the family had in fact consented to the marriage, and that this was simply not a case where the issue of honour crime arose. The judge was entitled, I find, to observe that when JMA had visited the appellant in Kifri on a number of occasions after the marriage 2012, he had not come to any harm. It is not argued in the grounds, or in oral submissions before me, that the judge failed to take

into account relevant evidence as to any harm experienced by the appellant or JMA between 2012 - 2016.

14 Therefore, with respect to the terms in which permission to appeal was granted, I find that the judge did not misdirect herself as to the nature of honour crimes in Iraq; rather, the judge held that consent had in fact been given by the appellant's family to the marriage, and even if there was some disapproval of JMA [50], the judge did not err in law in finding that the appellant's family had not threatened to kill her.

15 As regards the appellant's second Ground, which is, in summary, that there was no 'assurance' that the appellant will be able to obtain a CSID card on returned to Iraq, or, as per the grant of permission to appeal, that the judge's finding that the appellant would not be a lone female without a CSID card in Baghdad was arguably unsupported by any evidence, I find no material error of law in the judge's approach.

16 The burden was on the appellant to establish her case. The appellant was already in possession of a significant item of documentary evidence, being a passport. The judge considered the various means by which the appellant may obtain assistance on return to Iraq in order to obtain a CSID card. The judge was entitled to find that the appellant had previously visited members of JMA's family in Baghdad. Although the appellant had stated that she was not aware if such persons were present in Baghdad any longer, given the adverse credibility findings of the judge on the appellant's evidence generally, the judge was entitled at [61] to place little weight on such assertions, and to find that it was likely that JMA still had some family there. The judge also found that the appellant was not estranged from her own family. There is no successful challenge against those findings. The judge also referred to the appellant's language abilities. It seems to me that the judge took into account relevant considerations as to whether internal relocation to Baghdad would be unreasonable or unduly harsh, as per para 15 of the head note in AA Iraq v SSHD [2017] EWCA Civ 944, and I find no error in the judge's approach.

17 In relation to the appellant's ground of appeal relating to Article 8 ECHR, the grounds of appeal refer to a letter at page 11 of the appellant's bundle. This is a letter addressed to both the appellant and JMA, dated 12 April 2017, providing them with the details of the availability of drop-in, informal support, once a month in the Faith Centre of the hospital where the appellant gave birth to her child. I should also mention, although Mr Alam did not bring my attention to it, the document on page 12 of the bundle, being a letter dated 22 August 2017, offering the appellant an appointment with a consultant obstetrician and gynaecologist. However, the appellant did not state in her witness evidence that she was receiving any particular medical or counselling treatment in the United Kingdom. The judge referred to the fact that the appellant's experience must have been difficult for her, but I find that there is nothing in the document referred to in the grounds of appeal which was relevant in any material way to the assessment of whether the appellant's removal from the United Kingdom would be in breach of any Article of the EC HR, in particular whether removal would amount to a disproportionate interference with her private life.

18 I find that there was no material error of law within the judge's decision.

Decision

The decision did not involve the making of any material error of law.

I do not set aside the judge's decision.

I dismiss the appellant's appeal.

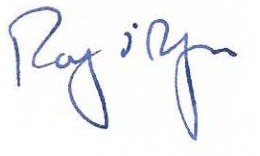
Signed: Date: 12.2.19

Deputy Upper Tribunal Judge O'Ryan

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

This appeal concerns a protection claim. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Date: 12.2.19



Deputy Upper Tribunal Judge O'Ryan