



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

Appeal Number: PA/10394/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 25th June, 2019
Given extempore**

Decision & Reasons Promulgated

On 3rd July 2019

Before

Upper Tribunal Judge Chalkley

Between

**HYL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes of Counsel, instructed by Knightsbridge Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

Anonymity

*An anonymity order was made by the First-tier Tribunal.
I see no reason at all to discharge it.*

1. The appellant, HYL, was born on 15 October, 2015 and is a citizen of Iraq. She is an accompanied asylum seeking child. It is claimed that she entered the United Kingdom at Manchester Airport illegally on 22nd/23rd September, 2017.
2. She attended the Asylum Intake Unit with her mother on 30th November, 2017 and claimed asylum. The appellant's mother applied for spousal visa in Oman using her Iraqi passport. A visa was issued and valid from 6th October, 2016 to 6th July, 2019. The appellant's mother moved to join her British citizen husband in the United Kingdom, Mr YL, entering the United Kingdom on 16th October, 2016 and subsequently returning to Iraq on 6th December, 2016 with re-entry to the United Kingdom on 21st January, 2017. The appellant's mother was living with her husband in the United Kingdom during this time.
3. The appellant's mother was interviewed on 8th January, 2018 and confirmed her relationship with the appellant and also her British citizen husband. She confirmed her address where she was living with her husband, a bus driver. The appellant's mother said that the appellant arrived in the United Kingdom on 22nd/23rd September, 2017 some eight months after her arrival. It is apparent that the appellant was brought into the United Kingdom illegally by agents. This seemingly was because the appellant's mother had applied for a British passport for her daughter, but it had been refused last year. The appellant's mother claimed that she was the child's mother and gave details of the appellant's father. Social Services visited the child in January, 2018. The appellant's mother claims that she had a DNA test in the United Kingdom for the appellant which showed that her current husband is not the father of the child. She expressed a fear of return due to an unlawful relationship she had before she was married to her present husband. She explained that her cultural and religious beliefs did not accept this kind of relationship.
4. The respondent refused the claim and the appellant appealed to the First-tier Tribunal. Her appeal was heard by First-tier Tribunal Judge O R Williams in Manchester on 6th March, 2018. The appellant's current solicitors were instructed previously by or on behalf of the appellant in a letter dated 20th February, 2019. Knightsbridge Solicitors wrote to the Tribunal referring to the appellant saying:

“We have received instruction [sic] this morning at 11.20 from our client that she wishes to withdraw the matter.

We kindly ask if you could withdraw the matter.

Should you have any queries in regards to the contents of this letter please do not hesitate to contact us”.

That letter was followed by a second dated 4th March, 2019 which again referred to the appellant and her date of birth and said:

“We write in respond [sic] to your Notice of Hearing dated 27th January, 2017.

Please note we have requested in our previous correspondence dated 20th February, 2019 for withdrawal of the matter [sic].

We kindly request if you could proceed the hearing as withdrawal.

Please find our previous letter and the latest Notice of Hearing.

Should you have any further enquiries regarding the matter please do not hesitate to contact us”.

5. The judge recorded in his determination that as a preliminary matter he had to decide whether to proceed with the hearing as neither the appellant’s solicitors nor the appellant were in attendance. He concluded that he was unsure if Knightsbridge Solicitors were withdrawing representation or if it were the case that they had instructions for the appeal itself to be withdrawn. He was not satisfied that the appeal had been properly and correctly withdrawn and did not therefore treat the appeal as withdrawn.
6. The matter was slightly confused because on the day of the hearing no-one was present at 10 a.m. and so the judge put the matter back until 12 noon. The Presenting Officer was present as appears from the Record of Proceedings. At 12 noon the judge decided whether or not he should proceed with the case. It appears from his Record of Proceedings that he decided that he would proceed because no reasons had been given for withdrawal of the appeal. He does not appear to have made any request for submissions from the Home Office Presenting Officer. The judge allowed the asylum appeal which was challenged by the respondent.
7. This morning Mr Holmes sought to persuade me that there was nothing in the determination to show that the Presenting Officer had in any way been taken surprise and it was open to him to submit whatever evidence the Secretary of State relied upon. The grounds suggest that in allowing the appeal the judge had given inadequate reasons for setting credibility issues in the appellant’s favour. The credibility of the claim was expressly disputed in the refusal letter and the issues raised warranted it is suggested full consideration by the judge. Mr McVeety reminded me that the respondent was under the impression that this appeal had been withdrawn, and it does appear from the Record of Proceedings that there was certainly confusion not only in the mind of the judge but also in the mind of the Presenting Officer as to whether or not the appeal itself was being withdrawn or whether representation was being withdrawn. Mr McVeety told me that there was a Presenting Officer but it had been anticipated that the appeal itself was being withdrawn so no evidence was submitted and no submissions were made.
8. In his determination the judge fails to identify where the claimed risk was from. The judge does deal with the question of honour killing and quotes from the Home Office Country Policy and Information paper of August, 2017 at paragraph 23 of the determination. The appellant’s mother is now

married to someone who is not the child's biological father, so it is not clear now who will instigate any risk to the appellant's mother. She is now living with her husband who is not the father of the child and the lack of reasoning in the determination means that it needs to be corrected. The judge did not deal with the fact that the mother did not appear when applying for the visa.

9. It was also suggested in the grounds that the way in which the judge proceeded was procedurally unfair. He proceeded with the hearing of the appeal on the basis that there had been no reasons given for the withdrawal of the appeal by the appellant's solicitors as required by Rule 17, if indeed it was the appeal that was being withdrawn and it suggested that the judge failed to consider his discretion under Rule 5(2). There is no merit in that challenge and I did not seek Mr Holmes to address me on it. It would have been entirely incorrect for the judge to have assumed that the appellant's solicitors had given advice on the effect of withdrawal in the absence of anything from them to that effect.
10. It is clear to me that at the hearing the judge understandably was confused as to whether or not it was the appeal that had been withdrawn or whether it was the representation that had been withdrawn, nevertheless he correctly concluded that he should proceed with the hearing of the appeal but in doing so appears not to have invited any submissions from the Presenting Officer.
11. I concluded that the judge did materially err in law in failing to have regard properly to the Secretary of State's reasons for refusal and the credibility challenges stated therein and in failing to identify where the risk would be from now that the appellant's mother has remarried and is married to somebody other than the appellant's child's father. I set the determination aside. The matter will be heard afresh by the First-tier Tribunal. A Kurdish Sorani dialect interpreter will be required. Three hours will be required for the hearing of the appeal.

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.

Richard Chalkley

Upper Tribunal Judge Chalkley

Directions

Knightsbridge are within seven days of this decision being sent to them to notify the First-tier Tribunal and the Home Office Presenting Officers' Unit at P O Box 666, Salford, M5 0LZ that they are acting on behalf of the appellant and put themselves on the record with the Tribunal.

Richard Chalkley

Upper Tribunal Judge Chalkley