Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number UI-2021-001585
PA/02719/2020

THE IMMIGRATION ACTS

Heard at Birmingham
On 22nd September 2022

Decision and Reasons Promulgated
On 14th November 2022

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

B I Y
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr F Ahmad (Counsel, instructed by Hanson Law Ltd)
For the Respondent: Mr C Williams (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant, B I Y, is a citizen of Iraq whose date of birth is the 15th of May 1980 who entered the UK on the 9th of June 2016 and claimed asylum on the 9th of February 2016. Her application was refused for the reasons given in the Refusal Letter of the 26th of February 2020. The basis of her claim and the refusal are considered below. The Appellant's appeal against the decision of the Respondent was heard by First-tier Tribunal Judge French at Birmingham on the 22nd of March 2021, she dismissed the appeal in her decision promulgated on the 31st of March 2021.

2. In summary the Appellant's case is that after marrying her husband she had a continuing, clandestine, relationship with her current partner ('MH') who she had known before getting married in May 2009. The Appellant maintains that she had to leave Iraq after her husband found out he could not have fathered their children. The Appellant, her children, and MH left Iraq shortly afterwards on their own passports flying to Turkey and travelling on to the UK.

3. The Appellant's case is that her family were unaware of her relationship with MH, which had been conducted in the matrimonial home over a number of years. Her husband was in Turkey when he received medical advice that he was unable to father children and had phoned her to ask her about this. Her family had not known about her relationship and she had only been threatened by her husband.

4. The grounds of application for permission to appeal to the Upper Tribunal start at page 29 of the Upper Tribunal bundle. The submissions from the representatives reflected their respective positions and were brief, largely relying on the written submissions in the grounds. In assessing this appeal we have taken account of the oral submissions and the grounds.

5. The first ground is that the Respondent has been named as the Entry Clearance Officer (ECO) and not the Secretary of State of the Home Department. The second ground is that the Judge did not mention the law, standard of proof and documents.

6. So far as the first ground is concerned while it is not correct that an ECO was the Respondent, this is not remotely material to the decision and has no bearing on the contents of the decision.

7. So far as the second ground is concerned it is not an error to fail to set out the law, it would be a failure to apply the relevant law and the decision has to be read as a whole to see if the Judge has failed to apply any relevant principle or guidance.

8. We bear in mind the guidance in AA (Nigeria) v SSHD [2020] EWCA Civ 1296 at paragraph 9: "Nor will it be necessary for first instance judges to cite extensively from these or other authorities, provided that they identify that they are seeking to apply the relevant principles. I would associate myself with what Coulson LJ said at paragraph [37] of *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095, that it is an impediment to the efficient working of the tribunal system in this area for judges to have numerous cases cited to them or to feel the need to set out extensive quotation from them, rather than focussing primarily on their application to the factual circumstances of the particular case before them. Judges who are experienced in these specialised courts should be assumed by any appellate court or tribunal to be well familiar with the principles, and to be applying them, without the need for extensive citation, unless it is clear from what they say that they have not done so."

9. The final sentence makes it clear that the decision has to be read fairly and it is only if it is clear from the decision that the Judge has failed to apply the relevant law or guidance that a finding of an error may be justified. The grounds complain about the absence of references to the law and documentation but the grounds do not show where it is said that the Judge has erred in the approach taken or point to any part of the reasoning undermined by a failure to apply the proper approach. Bearing in mind the guidance we have read the decision carefully, there is nothing in the decision to suggest that the Judge did not have the burden or standard of proof in mind or that they were applied inappropriately.

10. Ground 3 asserts he Judge erred in stating that no one in the family had health problems when in section C of the Appellant's bundle there are the Appellant's medical records. It is not suggested that the Appellant's medical records show that her circumstances are such that she should be permitted to remain on medical grounds. The reference to the final line in paragraph 3 of the decision is actually the Appellant's oral evidence which shows that there were no medical issues relevant to the decision to be made.

11. Ground 4 is to the effect that the Judge did not properly consider the employment identity card of MH, the Appellant's partner, supporting the credibility of the Appellant's account. The point is that the Appellant's partner and brother may have worked for the same company, paragraph 21 of the Appellant's Skeleton. In paragraph 6 of the decision the Judge expressly referred to the Appellant's brother and MH working for the same company and given that that was not questioned the point adds nothing to the Appellant's case. The Judge did not say state that MH “has not explained its significance.” She actually stated “…it is not explained why this is felt to be particularly significant.” That observations comes after a lengthy discussion of the cards and the Appellant's brother working in the same company, but not necessarily on the same shifts.

12. Ground 5 raises an objection that the Judge found in paragraph 7 that the DNA evidence, whilst showing that MH is the father of the children, does not provide concrete evidence of the appellant being married to her alleged husband, referring to the difficulties that individuals may have in obtaining supporting documents and that the Appellant would not have thought to have brought her marriage certificate with her.

13. The sentence complained of actually appears towards the end of paragraph 9, not paragraph 7. Following a lengthy discussion of matters relating to the credibility assessment which have passed without comment the Judge actually stated “In those circumstances the DNA reports showing that Mr Hassan is the biological father of the children do not provide (sic) “concrete evidence” of anything other than his paternity.” Misquoting sentences out of context is not a proper way to present an argument and whoever drafted the grounds of application in this case committed this mistake at several points.

14. Ground 6 asserts that the Judge's finding that the Appellant's alleged husband should have returned to Iraq on learning of his infertility involves the Judge placing herself in the shoes of someone from the UK as opposed to an Iraqi. The same is said of her finding that the Appellant's family would have been contacted and whether the Appellant alleged husband, being influential, would have blocked her flight out. It is complained that an inconsistency over when she had contact with her family should have been put to the Appellant.

15. The Judge clearly looked at this case with the nature of honour crimes and the danger to those perceived, even without foundation, of having transgressed local codes of family honour and female behaviour. She referred to living under the "microscope" and in paragraph 9 specifically self-directed on the importance of being conscious of the cultural differences between different societies. A full reading of paragraph 9 makes it clear that the findings were rooted squarely in the evidence relating to the cultural norms of Iraqi Kurdish society.

16. The inconsistency of when she had contact with her family was also discussed in the context of the issue not being pursued by the Home Office, equally there was no effort to address this by the Appellant's representatives and they can be taken to know what is in the documentation and to be making decisions about what points to raise. Besides the Judge's observation was that the fact of her making contact with her family some months after leaving the country, and it is not suggested that this was not correct, was inconsistent with her being in fear of them.

17. A second ground 6 takes issue with the sentence "I am **convinced** that if [ ] exists, do not accept that he was ever married to the Appellant." The grounds ignore the lengthy paragraph that precedes the impugned sentence which reads in full "In the circumstances I do not believe that the Appellant is in any fear of death of physical harm from her family and I am convinced that if [ ] exists, do not accept that he was ever married to the Appellant." The failure of the grounds to place the sentence, properly quoted, in the context of the discussion that it concluded is unfair to the Judge and misleading. There being no sustainable objection to the reasoning on which the findings are based this ground is without any merit.

18. The point in paragraph 15 of the grounds about the ability of the couple to conduct an affair in the matrimonial home relies again on the Judge making a cultural evaluation. It ignores the very strong evidence of codes of honour and behaviour that prevail in the Kurdish regions and that the Judge had referred to relevant evidence relating to issue and not to adopt what might termed UK standards in the evaluation.

19. Paragraph 16 and the Judge's observation about the arranging of flights at short notice did not need further elaboration. That took place in the context of, it was claimed, an influential and humiliated husband (our paraphrase) and, if they knew, an equally irate family. That it could be done

and with the Appellant remaining in the family home safely for 2 days undermined the claims made.

20. Paragraph 17 and the unlikelihood of the Appellant's partner befriending her brother is a trivial point and adds nothing to the arguments raised. Paragraph 18 is a repeat of the complaint about the Judge's findings in relation to the cultural differences. The suggestion that an affair of that length could be conducted in the circumstances described in such a traditional society where honour is so viciously protected was properly considered as set out above.

21. Ground 7 asserts the Judge erred in fact and law by not making a finding. The complaint is that the Judge overlooked evidence that the Appellant was under the control of the agent on her journey to the UK and that conditions in Hungary are dire, and it is not a requirement for an asylum seeker to claim in the first available country.

22. Section 8 of the Nationality, Immigration and Asylum Act 2002 require a Judge to consider this issue as part of the decision making process. However, the complaint is that the Judge did not make a finding which overlooks the fact that the Judge did not hold this against the Appellant, which is the best that the Appellant could have hoped for from the issue. The Judge *could* have found against the Appellant but did not do so and accordingly there is no error.

23. In ground 8 it is argued that the Judge did not apply the country guidance case of SMO although the grounds are simply a bald assertion without explaining in what way SMO had not been applied. Allied to this is ground 9 in which it is argued that the Judge did not make findings on internal relocation, sufficiency of protection and the CSID card, any reference in paragraph 10 being inadequate.

24. As the Judge clearly found in paragraph 10 the Appellant was not estranged from her family and there is no danger from them or anyone else. Those findings have not been challenged and based on them it would follow that the Appellant would have the support of her family on return as the Judge found. Accordingly it follows that the questions of internal relocation and sufficiency of protection did not arise. The Judge found that the Appellant could obtain either her original CSID or a replacement which would not engage SMO.

25. The final ground is that the Judge did not consider article 8 or section 55 of the Borders, Citizenship and Immigration Act 2009 and there was no finding on why the Judge found the relationship was not entrenched. Presumably that is meant to read that there is no explanation for the finding. We return to the point made at the start of this decision which is that the question is not whether a legal principle was mentioned but is whether it was applied and is shown to be so by the contents of the decision in question.

26. The Judge did refer to section 55 and article 8 in addition to articles 2 and 3. The Judge addressed the private and family life that the Appellant had established and that the private life was relatively short lived, the grounds do not point to any evidence that was not considered showing entrenched relationships. It was the view of the Judge that family life could be continued in Iraq and that it would be in the best interests of the children to return there as a family unit with their parents. The grounds do not point to any circumstances that could be said to be compelling that would have justified a grant of leave.

27. The decision has to be read as a whole, something the grounds fail to do. Also the decision has to be read fairly, without taking individual parts out of context and especially without misquoting sentences. Bald assertions of an error without an explanation do not assist in the assessment sought.

28. When read fairly and fully there is no basis for suggesting that the Judge erred in the approach taken to the evidence, the findings made or the conclusions drawn. There is nothing in the decision that shows that the Judge applied the wrong burden or standard of proof. Accordingly the decision of Judge French stands as the disposal of the Appellant's appeal and the related cases of the partner and children.

29. While finding that there is no error of law in the decision we add that the decision is not beyond practical criticism. There are only 10 substantive paragraphs which might sound concise except that they are spread over 9 pages. Some of the paragraphs are over a page in length and cover a number of different strands of the Appellant's case. As a result the main body of the decision is not easy to read. The decision would have benefitted from shorter more focussed paragraphs and could also benefit from headings to separate out the different sections.

Decision

30. There is no material error of law in the First-tier Judge’s decision. The determination shall stand.

Anonymity.

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

> We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed 
Deputy Upper Tribunal Judge Parkes

Dated 4th October 2022