Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05908/2017

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons Promulgated**
On 5th October 2018	**On 30th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

KOCHAR [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Janjua (Counsel)
For the Respondent: Mr M Diwnycz (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Chapman, promulgated on 31st August 2017, following a hearing at Birmingham on 24th August 2017. In this determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a national of Iraq, is a female, and was born on 27th November 1991. She is of Kurdish ethnicity from the town of Raniya in the Iraq Kurdistan Region (IKR).

The Appellant's Claim

3. The essence of the Appellant's claim is that she fears that if she is returned to Iraq, she will be killed by members of her family, for bringing shame to them, as a result of having disobeyed them, by not marrying the person who had been chosen for her to marry. She also fears that if returned to Iraq, she will be subjected to ill-treatment, for having left the country without her family's permission, and for having had a child out of wedlock (see paragraph 19 of the determination).

The Judge's Determination

4. The judge set out the essential components of the Appellant's claim in considerable detail. He observed how the Appellant met with a man called Mr Hussani, when he was visiting from the United Kingdom in 2015, in Raniya, where the Appellant lived. Mr Hussani was staying with his uncle, and the Appellant met him when Mr Hussani was visiting his cousin, who happened to be the husband of the Appellant's cousin. They met, they talked, and began a relationship. After Mr Hussani returned back to the UK on 15th May 2016, the relationship continued by telephone and other means. They discussed getting married. Mr Hussani returned to Iraq to see the Appellant again, and he proposed marriage to her family, and the two proposals were discussed by family members, but they were rejected because they did not know enough about Mr Hussani, as he lived in the United Kingdom. However, Mr Hussani continued to see the Appellant, and this was known to the Appellant's cousin, and on 29th May 2016, their relationship became sexual, and the Appellant lost her virginity. A further twist to the relationship then took place. In August 2016 the Appellant's family decided that she should marry one of her older cousins, who had previously been married, and fearing that he would discover the loss of her virginity, the Appellant confided in her mother. The mother confiscated the Appellant's mobile phone, and contacted the Appellant's maternal uncle, who arranged for an agent, so that the Appellant could leave the country.

5. The judge observed how the Respondent accepted the existence of honour-based violence as being widespread and common in Iraq. However, the Respondent did not accept that the Appellant had a physical relationship with Mr Hussani in Iraq, or that a marriage was arranged with her cousin, causing her to disclose that she had lost her virginity. There were inconsistencies in the Appellant's account and it lacked credibility. The Respondent was of the view that the documents submitted for a Schengen visa showed that she was already married, making it less

credible for her to have had a relationship with Mr Hussani outside her marriage (see paragraphs 21 to 23).

6. Against this background, the judge considered the documentary evidence (paragraphs 27 to 29). He heard oral evidence (paragraphs 30 to 36) both from the Appellant and from Mr Hussani.

7. In his conclusions, the judge fully accepted that "the objective evidence suggests that the IKR is one of the areas in the world where honour killings are still prevalent" (paragraph 54). He observed that "there is no guaranteed state protection" (paragraph 54). The judge even made allowance for the fact that false information was given, to the effect that the Appellant was already married to a man in Iraq, in order for her to get a Schengen visa. His view was that, "I accept the Appellant's evidence that she had not been married before" (paragraph 57). The judge also accepted "the evidence of both the Appellant and Mr Hussani that they met and formed a relationship when he was visiting Iraq to visit his family" (paragraph 58).

8. However, the appeal was dismissed, thereafter, for a number of reasons. First, the judge did not accept why the Appellant's cousin, knowing full well the risk to the Appellant in the IKR of honour killings, would have permitted the relationship between Mr Hussani and the Appellant to develop "under their roof, when they belonged to a family which would be prepared to kill the Appellant for marrying against the wishes of her family" (paragraph 59(1)).

9. Second, the accounts of both the Appellant and Mr Hussani "are vague and lacking in detail about how the relationship developed" (paragraph 59(2)), and the judge gives an example of this.

10. Third, the judge did not find it credible that the Appellant and Mr Hussani would take the risk of being seen together given that her family were aware that he was there (paragraph 59(3)).

11. Fourth, the Appellant's evidence that she was restricted from going out was also inconsistent with her answer at interview that they first had sex when they were out together (paragraph 59(4)). The judge also gave detailed other reasons.

12. However, ultimately, what mattered was that the judge did not find it credible that, in a family which the Appellant said would kill her for her indiscretion, she immediately told her mother that she had lost her virginity, after learning of the marriage proposal from an elder cousin (paragraph 59(9)). In conclusion, the judge held that, whilst he accepted that a relationship developed between Mr Hussani and the Appellant in Iraq, he did not accept that she received a proposal of marriage from an elder cousin, and was then forced to tell her mother about the loss of her virginity (paragraph 60).

13. On the contrary, the judge's view was that it was,

> "Much more likely that the Appellant and Mr Hussani, and probably the Appellant's and Mr Hussani's families, have collaborated in planning for the Appellant to come to the United Kingdom to join Mr Hussani, and that the Appellant and Mr Hussani have fabricated their accounts to make this happen, and get round the entry clearance requirements for the United Kingdom, which they would not have satisfied …" (paragraph 61).

14. Thereafter, the judge went on to consider the best interests of the child (paragraph 70). The child was a British citizen child, but "this is a very young child, aged 8 weeks, whose life revolves around his mother", and that "the child is still at an age when the presence of his father is not so significant or crucial as he becomes older" (paragraph 71). There is nothing preventing Mr Hussani from visiting his wife in Iraq (paragraph 72). There were no significant obstacles to the Appellant's integration into a country where she had grown up and there were no insurmountable obstacles to family life continuing there (paragraph 73).

15. The appeal was dismissed.

Grounds of Application

16. The grounds of application stated that the judge erred in the assessment of credibility; erred in misdirecting himself on the law; erred in taking into account immaterial matters; and erred in his proportionality assessment.

17. On 3rd January 2018, permission to appeal was granted by the Upper Tribunal. This was on two specific grounds. First, the judge accepted that there was evidence to show that having a child out of marriage may lead to honour-based violence, but concluded that the evidence did not "inevitably" show that it would give rise to such a risk, and in so stating it was arguable that too high a standard of proof had been applied (see paragraph 3 of the grant of permission). Second, although the judge gave weight to the fact that the Appellant's child was a British citizen, it was at least arguable that the judge failed to give due regard to the Respondent's own policy, as outlined in the Court of Appeal judgment in **MA (Pakistan) [2016] EWCA Civ 705**, without giving weight to the rights of a British child, to be balanced against the public policy considerations.

18. On 29th January 2018, a Rule 24 response was entered to the effect that the judge had directed himself appropriately and that he had given full consideration to the best interests of the child at paragraphs 70 to 73.

Submissions

19. At the hearing before me on 5th October 2018, the Appellant was represented by Mr Janjua of Counsel, who made it quite clear that, on the basis of the grounds of application, the age of a child was irrelevant, so long as there was in existence a British citizen child, and so long as it was

the case that there was no criminality involved on the part of the parents, in which case the balance of considerations would fall in favour of the Appellant. The judge's failure to heed this drew him into error. In this, Mr Janjua relied on paragraph 6 of his grounds of application. Second, insofar as the judge recognised that objective evidence suggested that the IKR is one of the areas where honour killings are still prevalent without any guarantee of state protection (see paragraphs 53 to 57) it was wrong for the judge to have decided that the Appellant, as a single woman with a child, would be able to return back to Iraq, without her husband, who was based in the United Kingdom, and settled here.

20. For his part, Mr Diwnycz relied upon the Rule 24 response. He submitted that the Secretary of State expressly recognised the existence of honour killings in the IKR, and so did the judge, and so there was nothing in this point. The fact was that the judge had comprehensively disbelieved the Appellant's claim that she was promised in marriage to an older cousin, who was already married, and had escaped that arrangement, in order to come and live with Mr Hussani in the UK. His finding was that she and Mr Hussani were already in a relationship, with the consent of their family members, and that Mr Hussani had sponsored the Appellant's entry to the UK, outside the entry clearance system, because she would not be able to meet the requirements of entry lawfully. As for the Court of Appeal decision in **MA (Pakistan)**, even the grant of permission makes it clear (at paragraph 4) that the existence of a British citizen child in itself is not enough, as this has to be balanced out against the public policy considerations, including whether or not it is "reasonable" to expect the child to leave the UK, or to be separated from his mother.

No Error of Law

21. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.

22. First, it is not the case that, in recognising the objective evidence of honour killings in the IKR and the absence of state protection, the judge countenanced the return of the Appellant with a child (who was at the time 8 weeks old) alone to Iraq, because he had held that the Appellant had a family in Iraq who had, together with Mr Hussani's family, collaborated in planning for the Appellant to come to the UK to join Mr Hussani, and that the two of them had fabricated their accounts to make this happen (paragraph 61). The Appellant, therefore, would be returning back to her family.

23. Second, insofar as the application of the decision in **MA (Pakistan)** is concerned, the court concluded that it was inherent in the reasonableness test in Section 117B(6) that the court should have regard to wider public interest considerations and in particular the need for effective immigration control. This is a case where the judge has expressly found that Mr

Hussani and the Appellant, in collaboration with their families, set out to circumvent the requirements of the Immigration Rules, by not applying for entry clearance, as they would not be able to succeed on this basis. The court felt in that case that it was obliged to follow another decision of the Court of Appeal in **MM (Uganda) [2016] EWCA 617**. That was a case concerning foreign criminals which engaged Section 117C rather than Section 117B, and in particular to the need in Section 117C(5) to show that it would be "unduly harsh" rather than simply not unreasonable, to require the qualifying child to leave the UK.

24. However, the court in **MA (Pakistan)** considered that the structure of the relevant provisions was sufficiently similar to require a common approach. Nevertheless, the court also held that Section 117B(6) was a self-contained provision in the sense that where the conditions specified in the subSection are satisfied, the public interest will not justify removal. The wider public interest considerations can only come into play via the concept of reasonableness in Section 117B(6) itself. In this case, the judge has found that "the child is still at an age when the presence of his father is not so significant or crucial as he becomes older" (paragraph 71). The judge has then gone on to consider three discrete options that are available to Mr Hussani, were he to remain in the UK, whilst the Appellant returns back to Iraq, and the third of these options was that "the Appellant can go alone and apply for entry clearance to join Mr Hussani in due course".

25. This was an entirely reasonable prospect because "the waiting time for most entry clearance decisions is 60 days. There is little to suggest that any of these possibilities will impact adversely on the Appellant's child given his young age" (paragraph 72).

26. These findings were entirely open to the judge, and they demonstrate that it was not unreasonable to expect the Appellant and her child to return to Iraq, bearing in mind the public interest considerations in favour of immigration control, which are a matter of statutory importance and effect.

Notice of Decision

27. There is no material error of law in the original judge's decision. The determination shall stand.

28. No anonymity direction is made.

29. This appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 22nd October 2018