



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07544/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 16th November 2018

Decision & Reasons Promulgated
On 17 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MRS. NMM
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Brown, Counsel, instructed by Citizens Advice Bureau
(Bolton)

For the respondent: Mr C. Bates, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has been given permission to appeal the decision of First-tier Tribunal Judge Garratt who, in a decision promulgated on 1 August 2018, dismissed her appeal against the respondent's decision to refuse to grant protection.

2. Her claim was that she was born in July 1957 and lived all her life in a village in the Makhmur District in Iraq. She is Kurdish and follows the Sunni branch of Islam. The claim was that she has limited education and married when she was young and her experiences were restricted to events in the village where she lived.
3. She said that in 2015 her husband and their son were taken by Daesh and she subsequently learnt they were killed. Fearful of her own situation she then decided to leave Iraq. She left, along with her brother-in-law and his family but they were separated in Turkey and have had no contact.
4. The respondent was not satisfied she was Iraqi. If she was, she could reasonably live in the IKR and obtained the necessary documentation.

The First tier Tribunal

5. First-tier Tribunal Judge Garratt did not find the appellant to be credible. The judge did not accept that she was uneducated and illiterate as she claimed. The judge referred to her inability to give details about the area where she claimed she was from. The judge also found her account about her husband and son vague.
6. At paragraph 30 the judge states:

“... as the appellant has not established, to the lower standard of proof, that she is from Iraq as claimed her claim for international protection arising from fear of persecution in that country must fail.”
7. The judge then concluded that the appellant was most likely from the IKR and could safely return there.

The Upper Tribunal

8. Permission to appeal was granted on the basis that the judge arguably made inconsistent findings in stating that she is not from Iraq but from the IKR. It was also arguable that the judge gave insufficient reasons for concluding she could obtain documentation.
9. Mr Brown, who appeared below, advised me that the presenting officer's stance in cross-examination was that the appellant was not from Iraq at all. Mr Bates pointed out that the respondent did not accept she was Iraqi but did not offer an alternative, stating it was for the appellant to establish her claim. He did make the point that Kurdish Sorani is spoken not only in Iraq but also Iran and other countries.
10. Mr Bates accepted the judge's decision as to the appellant's nationality was confusing. For instance, paragraph 1 contains a statement that the appellant is a citizen of Iraq. Then, at paragraph 30 the judge states it has not been established that she is from Iraq. Had the judge stopped there he felt the decision was probably sustainable. However, the judge then went on to state that as she spoke Kurdish Sorani this suggested

she was from the north of Iraq. Specifically, the judge found she was from the Kurdish Zone of Iraq, Arbul (sic Erbil).

11. Mr Bates has very fairly acknowledged that the judge's decision reads as perverse and irrational and in his view is not sustainable. The judge had accepted she was not from the area she claimed to be from and found he was not Iraqi. However, the judge appears to have believed the IKR was a separate nation and then speculates she is from there. This is purely on the basis that she speaks Kurdish Sorani which, as stated is used in both Iraq and Iran as well as other 3rd countries.
12. I agree that the judge's findings as to the appellant nationality are unsustainable. If the appellant is from Iraq then her precise place of origin will impact upon the documentation and the means of return. Consequently, this cannot be determined until the former is resolved.

Decision

The decision of First-tier Tribunal Judge Garratt materially errs in law and is set aside. The matter is remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly

Deputy Upper Tribunal Judge

Directions.

1. Relist for a de novo hearing in the First-tier Tribunal at Manchester excluding First-tier Tribunal Judge Garratt.
2. A Kurdish Sorani interpreter is required.
3. The appellant's representative, Mr Brown has indicated the appellant's representatives may seek a report from a nationality expert (as opposed to a linguistic expert).
4. Up-to-date bundle should be prepared for the hearing and exchanged no later than 2 weeks before the hearing.
5. The hearing is expected to last around 2 hours.

Francis J Farrelly

Deputy Upper Tribunal Judge
Date: 17 December 2018