Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10821/2018**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 29 May 2019	**On 06 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

S A Q
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Appellant in person
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity direction deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judges Chambers & Lang promulgated on 27 November 2018, which dismissed the Appellant's appeal.

3. The Appellant was born on 1 July 1978 and is a national of Iraq. The appellant arrived in the UK on 3 March 2018. On 26 August 2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judges Chambers & Lang ("the Judges") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 26 March 2019 Judge Loke granted permission to appeal stating *inter alia*

> "It is arguable that the Judges were mistaken in their findings at [14] where they stated that the appellant's mother and uncle met Ali. I can see no reference in the asylum interview or the record of proceedings to support this. This fact was relied upon in their conclusions at [18], and therefore it appears to have been material."

The Hearing

5. The appellant was present but was unrepresented. She spoke with the assistance of a court interpreter. I remain satisfied that there is no difficulty with linguistic interpretation or comprehension. The appellant moved the grounds of appeal. She confirmed that her hometown is Erbil, and that prior to coming to the UK she had lived all her life in IKR. The appellant told me that she does not have a CSID, and has no Iraqi identity documents. She told me that the decision is wrong in fact and law. She rehearsed her reasons for claiming asylum and told me that since coming to the UK she has married. Her family found out about her marriage and do not approve. She told me that she cannot return to IKR and cannot relocate as a lone woman with no family support.

6. For the respondent Mr McVeety told me that the lack of documentation has not previously been argued. He told me that the Judges' decision does not contain an error of law. He told me that the Judges rejected the appellant's account, and that their decision turns on credibility. As the appellant's account of fear of her own family is rejected, then she has family to return to in Erbil, which is not in a contested area. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The Judges' findings lies between [9] and [18] of the decision. The Judges' findings of fact are intermingled with an analysis of the evidence. At [12] and [13] the Judges find that the appellant does not face forced marriage at the insistance of her brother; the Judges find that the marriage has been suggested but the appellant's refusal to consent was

supported by her mother, by her uncle & by the local Imam. At [14] the Judges consider the appellant's relationship with a man of her choice. The Judges summarise what the appellant says in her asylum interview.

8. The problem is that at [14] the Judges' summary of the contents of the asylum interview is inadequate, and inaccurate. The Judges record that the appellant's mother and uncle met her boyfriend. That is not what the appellant said. The appellant said that her family only met her boyfriend when her boyfriend asked for their permission to marry the appellant.

9. The appellant participated in asylum interview on 23 July 2018. In that interview the appellant goes into detail about the relationship she had with her boyfriend, and says she lost her virginity to her boyfriend. At [15] the Judges record the appellant's evidence of losing contact with her boyfriend. The appellant produces evidence of attempts to trace her boyfriend through the Red Cross family tracing service, but the Judges draw no findings from that evidence.

10. Although [9] to [18] of the decision is prefaced by the heading "Findings" - there are no real findings of fact in the decision. If [9], [10] and [11] of the decision are findings of fact, then the appellant would have succeeded. It is the opening sentence of [12] the decision which tells the reader that [9], [10] & [11] are rehearsal of the appellant's evidence. [14] of the decision implies that the appellant's claim falls into two separate parts. It does not. The appellant's claim is that while her profoundly religious brother has spent years trying to arrange a marriage, she has pursued a relationship with a man she loved. Those two elements to the one account should not be separated.

11. At [16] the Judges are correct to note that corroboration is not necessary, but then throughout [16] to [18] the Judges embark on a search for corroboration.

12. The result is that the Judges' findings are inadequately reasoned. The conclusion that the Judges reach is influenced by misinterpretation of what is said in the asylum interview.

13. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

14. The decision is therefore tainted by material error of law . I set it aside. There is sufficient material before me to enable me to substitute my own decision.

ASYLUM

15. The appellant is unrepresented. Her evidence comes from the screening interview, the transcript of asylum interview and her witness statement dated 3 October 2018. The respondent refused the appellant's application because the respondent says that the appellant gives an internally and externally inconsistent account. The respondent accepts that the appellant is an Iraqi Kurd from Erbil, but rejects the rest of the appellant's account.

16. The appellant participated in a screening interview on 3 March 2018. When the appellant was asked to summarise her reason for claiming asylum, she immediately says that she had a relationship with a man for one year, when her brother found out he threatened to kill her. She clearly says that the crisis point was reached just a few days before she arrived in the UK

17. The appellant participated in a substantive interview on 23 July 2018. In that interview the appellant gives a full account of defensively avoiding an arranged marriage and pursuing a relationship, which culminated in the loss of her virginity. The appellant gives details of times and places that she met her boyfriend. When asked to, she specifies dates. She gives a clear account of the help that she had from her mother to avoid of vengeful brother and leave Iraq.

18. The appellant did not produce background materials, but I know that In 2008, the United Nations Assistance Mission for Iraq (UNAMI) stated that honour killings are a serious concern in Iraq, particularly well documented in Iraqi Kurdistan. The Free Women's Organization of Kurdistan (FWOK) released a statement on International Women's Day 2015 noting that "6,082 women were killed or forced to commit suicide during the past year in Iraqi Kurdistan, which is almost equal to the number of the Peshmerga martyred fighting Islamic State (IS)," and that a large number of women were victims of honour killings or enforced suicide – mostly self-immolation or hanging. Background materials also record that about 500 honour killings per year are reported in hospitals in Iraqi Kurdistan, although real numbers are likely much higher. It is speculated that alone in Erbil there is one honour killing per day. It is claimed that many deaths are reported as "female suicides" in order to conceal honour-related crimes. Honour killings and other forms of violence against women have increased since the creation of Iraqi Kurdistan, and "both the KDP and PUK claimed that women's oppression, including 'honour killings', are part of Kurdish 'tribal and Islamic culture'".

19. All of the evidence provides support for the appellant's account. The appellant's history of travel supports the appellant's account. The

background materials tell me that honour crimes are a fact of life in Iraq & the IKR. The appellant comes from Erbil, where honour killings happen daily. The background materials also tell me that honour crimes occur throughout Iraq.

20. The only reasons that the respondent gives for rejecting the appellant's claim is that the appellant has been vague and inconsistent in her account. When I consider each strand of the appellant's evidence and place that evidence against readily available background materials, I find that the appellant's account is neither vague nor inconsistent. The appellant gives a detailed account which is consistent with the background materials. The appellant's recollection of dates and places is clear. In reality the appellant gives an account in which the core aspects are clear and consistent. The areas in which the appellant fails to give a perfectly crisp account lend credence to the account & demonstrate that this is not a story that has been carefully rehearsed. The appellant gives an account which is redolent of her lifetime experience.

21. I therefore find that the appellant faces the threat of honour killing by her brothers. I find that she is a member of a particular social group.

22. I must consider whether the appellant can find safety elsewhere in Iraq. There is no evidence to suggest that the appellant has any form of documentation. The weight of evidence indicates that the appellant is undocumented, and does not have access to her original ID card. The weight of reliable evidence indicates that the appellant has never lived in Baghdad. There is no evidence to suggest that the appellant has family members or friends in Baghdad. The appellant is therefore a Kurd who is a Sunni Muslim, and does not have an ID card or a passport. The appellant does not know anybody in Baghdad.

23. Paragraph 6 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 says that no Iraqi national will be returnable to Baghdad if not in possession of either a current or expired Iraqi passport or a laissez passer. Country guidance tells me that the appellant is not returnable to Baghdad. Paragraphs 9 to 11 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 deals with the importance of, and availability of, a CSID. As the appellant cannot provide details of the CSID card she left in Erbil, and as I find that the appellant fears her male relatives, she cannot make a successful application to the central archive in Baghdad. It is argued that the appellant could petition the national status court in Baghdad, but AA (Iraq) CG [2017] EWCA Civ 944 tells me that the operation of the court is unclear. If the appellant was to petition the court she would have to do so with only her personal details, and no details of the registration number of his previous CSID card. Petitioning the national status court is not a realistic option for the appellant.

24. Paragraph 9 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 tells me that the appellant faces a real risk of destitution amounting to serious

harm because she does not have family members or other support in Baghdad and because she has no realistic chance of obtaining a CSID reasonably soon after arrival in Iraq. Paragraphs 14 to 16 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 deal with the viability of internal relocation to Baghdad city or the southern governorates of Iraq. The appellant is a Kurd. She speaks Kurdish Sorani. The background materials indicate that there are so many internally displaced persons in Iraq that UNHCR refers to the plight of internally displaced people there as a humanitarian crisis. The simple question that I have to answer is whether or not it is reasonable to make the appellant a displaced person anywhere in Iraq.

25. I take the following guidance from AA (Iraq) CG [2017] EWCA Civ 944

> *"D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)*
>
> *14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*
>
> *15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*
>
> *(a) whether P has a CSID or will be able to obtain one (see Part C above);*
>
> *(b) whether P can speak Arabic (those who cannot are less likely to find employment);*
>
> *(c) whether P has family members or friends in Baghdad able to accommodate him;*
>
> *(d) whether P is a lone female (women face greater difficulties than men in finding employment);*
>
> *(e) whether P can find a sponsor to access a hotel room or rent accommodation;*
>
> *(f) whether P is from a minority community;*
>
> *(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*
>
> *16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*

26. On the facts I find them to be, the appellant will stand out as a lone Kurdish female with no protection or support. and so will be viewed as a member of a minority community. The appellant no longer has a CSID; she does not have family members or friends in Baghdad able to accommodate her; there is no suggestion that the appellant can find a sponsor to access a hotel room or rent accommodation; She has no network of support in Iraq. The seven factors set out in paragraph 15 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 count against her. On the facts as I find them to be, and placing reliance on the guidance given in

AA (Iraq) CG [2017] EWCA Civ 944, I find that the appellant's profile indicates that it cannot be reasonable to return the appellant to Iraq. Internal relocation is unduly harsh.

27. If returned to Iraq the appellant would be treated as a lone female Kurd. It is most likely that she will not have access to accommodation and employment within Iraq. She therefore faces the prospect of destitution if returned to Iraq. Internal relocation is unduly harsh.

28. In AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 section C of the guidance given in AA [2017] is supplemented with guidance about the factors to consider when considering whether it is possible for the returnee to obtain a CSID or obtain it within a reasonable time frame. Section E of the country guidance is replaced – the new guidance explaining that all returns are currently to Baghdad but a returnee of Kurdish origin in possession of a valid CSID or passport can journey by land or air practically and affordably without real risk and without relocation being unduly harsh. Domestic flights to the IKR cannot be boarded without either a CSID or a valid passport but if the returnee has neither, there is a real risk of his being detained at a checkpoint if he travels by land (other ways of verifying identity at checkpoints such as calling upon "connections" were discussed). Because I find that the appellant has a well-founded fear of persecution in Erbil, she cannot return there.

29. Given these conclusions, I find that the Appellant has discharged the burden of proof to establish that she is a refugee. I come to the conclusion that the Appellant's removal would cause the United Kingdom to be in breach of its obligations under the 2006 Regulations.

Humanitarian protection

30. As I have found the appellant is a refugee, I cannot consider whether she qualifies for humanitarian protection. Therefore, I find the appellant is not eligible for humanitarian protection.

Human rights

31. As I have found the appellant has established a well-founded fear of persecution, by analogy I find her claim engages article 3 of the Human Rights Convention because she would face a real risk of torture, inhuman or degrading treatment if she were returned to her country of origin.

Article 8 ECHR

32. The appellant cannot meet the requirements of appendix FM of the immigration rules. Because of a combination of her age and the length of time the appellant has been in the UK the appellant cannot meet the requirements of paragraph 276 ADE(1)(i) to (v). To meet the requirements

of paragraph 276ADE(1)(vi), the appellant has to establish that there are very significant obstacles to re-integration into Iraqi society.

33. I have found that the appellant cannot return to Iraq because she establishes a well-founded fear of persecution for a convention reason. I have found that removal from the UK and return to Iraq will breach the appellant's rights on article 3 ECHR grounds. For the same reasons, I find that there are very significant obstacles to the appellant's reintegration into Iraqi society. The appellant therefore meets the requirements of paragraph 276 ADE(1)(vi) of the rules.

34. In Hesham Ali (Iraq) v SSHD [2016] UKSC 60 it was made clear that (even in a deport case) the Rules are not a complete code. Lord Reed at paragraphs 47 to 50 endorsed the structured approach to proportionality (to be found in Razgar) and said "what has now become the established method of analysis can therefore continue to be followed…"

35. Section 117B of the 2002 Act tells me that immigration control is in the public interest. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC) it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

36. The appellant has no family members in the UK. After considering all of the evidence I still know little of the appellant's home, her habits and activities of daily living, her significant friendships, any integration into UK society, or any contribution to their local community. There is no reliable evidence of the component parts of private life within the meaning of article 8 of the 1950 convention before me. The appellant fails to establish that she has created article 8 private life within the UK.

37. I therefore find that this appeal succeeds on article 3 and article 8 (private life) ECHR grounds.

Decision

The decision of the First-tier Tribunal promulgated on 27 November 2018 is tainted by material errors of law. I set it aside. I substitute my own decision.

The appeal is allowed on asylum grounds.

The appellant is not entitled to Humanitarian Protection.

The appeal is allowed on article 3 & 8 ECHR grounds.

Signed Date 3 June 2019
Deputy Upper Tribunal Judge Doyle