Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/19075/2019**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	Decision & Reasons Promulgated
On 18 November 2021	On 25 November 2021

Before

UT JUDGE MACLEMAN

Between

Z

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Jones Whyte, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Debra H Clapham dismissed the appellant's appeal by a decision promulgated on 13 April 2021.

2. By an application dated 23 April 2021, the appellant sought permission to appeal to the UT.

3. The grounds advanced in the application are, in summary, as follows: …

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2. The Judge erred in law because she does not make it clear whether she believes the evidence … that the appellant might commit suicide and had previously tried to do so. This error is plain from two parts of the discussion …

2.1 Medical report … no weight should have been placed on this … at all.

2.2 Victim of domestic violence … there was more than enough *prima facie* evidence for the judge to have made clear findings … She erred in law in not so doing.

3. The Judge also erred in law in querying why the appellant did not plan if her application succeeded to bring her daughter to the UK. The sponsor had already given a reason why this would not happen.

4. The Judge also erred in leaving out of account … the issue of emotional dependency … [and] restricting consideration … to financial dependency.

4. FtT Judge Nightingale granted permission to the following extent: …

3. With regard to the medical report, the Judge does not give weight to the report save to conclude that a doctor had been visited in Erbil in contradiction to the claim that the appellant was not allowed to visit a doctor there. There is no arguable merit in this ground.

4. With regard to the remaining grounds … It is arguable that the Judge failed to make clear findings …

5. Permission is granted but limited … as indicated above.

5. On 2 July 2021 the respondent responded to the grant of permission:

It was accepted that the appellant did not meet the requirements of the rules … the issue correctly identified by the Judge was if the decision was a breach of the positive obligation on the Secretary of State with respect to family life. The burden is on the appellant … and it is clear … there were significant issues with the evidence as identified by the Judge. The conclusion of the Judge that they were not being given a full picture of the appellant’s circumstances in Iraq and … could not be satisfied there was a breach of the appellant’s human rights … was sound.

6. Mr Forrest’s skeleton argument makes these principal points:

… the FtT failed to make findings in fact about critical matters (i) the existence of family life and (ii) whether interference was proportionate.

… as a result of not approaching its task correctly, the FtT has not made any / adequate findings about whether the appellant might commit suicide, whether she has been subject to domestic violence and whether there was any element of dependency.

… existence of family life is a question of fact …

Three critical aspects of the evidence:

Suicide risk – see [41]. The FtT assumes that the sponsor was aware of the threat but that was not so *[reference is made to the relevant statements]*

Domestic violence – no / inadequate findings – at [42] the FtT does explore one alleged incident, which it is to be assumed was not found credible, but nothing is said about evidence from the sponsor and other witnesses about domestic violence.

Emotional dependency – the family members are all adults so it was crucial to explore what tied them together … above the normal emotional ties … the substantial evidence of communications … is not discussed in any detail – or if the FtT considers it not credible or relevant, it does not say why.

Proportionality: because the FtT erred in assessing whether family life exists in the first place, any decision on proportionality cannot stand …

Conclusion: the appellant seeks a remit so that the crucial evidence … can be properly considered.

7. Mr Forrest referred to *Mobeen* [2021] EWCA Civ 886:

45. Whether or not family life exists is a fact-sensitive enquiry which requires a careful assessment of all the relevant facts in the round. Thus it is important not to be overly prescriptive as to what is required and comparison with the outcomes on the facts in different cases is unlikely to be of any material assistance.

46. However, the case law establishes clearly that love and affection between family members are not of themselves sufficient. There has to be something more. Normal emotional ties will not usually be enough; further elements of emotional and/or financial dependency are necessary, albeit that there is no requirement to prove exceptional dependency. The formal relationship(s) between the relevant parties will be relevant, although ultimately it is the substance and not the form of the relationship(s) that matters. The existence of effective, real or committed support is an indicator of family life. Co-habitation is generally a strong pointer towards the existence of family life. The extent and nature of any support from other family members will be relevant, as will the existence of any relevant cultural or social traditions. Indeed, in a case where the focus is on the parent, the issue is the extent of the dependency of the older relative on the younger ones in the UK and whether or not that dependency creates something more than the normal emotional ties.

47. The ultimate question has been described as being whether or not this is a case of "effective, real or committed support" … or whether there is "the real existence in practice of close personal ties" …

8. Mr Forrest in his oral submissions said that the most significant error by the FtT was on whether there was a suicide risk. He argued that there was no such discrepancy as the Judge thought, and she failed to say why she found the evidence not credible or reliable.

9. In response to my observation, Mr Forrest acknowledged that the appellant lives in family with her husband and their daughter, aged 3 at the time of the FtT hearing. This is the primary unit which would usually be protected by article 8, but she asserts a right on family life grounds to leave them both, because her life with her husband is so oppressive that she seeks to escape, even at the cost of severing her relationship with her child. He accepted that was an unusual set of circumstances, but submitted that it is not beyond the scope of article 8 protection.

10. Mr M Diwyncz submitted, along the lines of the rule 24 response, that the FtT adequately explained why the evidence was unsatisfactory and fell short of establishing family life for article 8 purposes among the appellant, her mother and her adult siblings in the UK, their bonds being no more than normal among a mother and her adult children.

11. Mr Forrest had nothing further to add.

12. I reserved my decision.

13. The decision of the FtT is to be read as a whole, leading up to the reasons stated in its final paragraphs:

> [40] – inconsistency of evidence the appellant's husband would not allow her medical help, but production of a psychiatric report, showing she had at least been referred to a specialist and prescribed medication; evidence from the family "raising more questions than it answers";
>
> [41] – evidence from siblings seemed to suggest mother not aware of suicide risk, but her statement did mention the matter; "I venture … that there is a degree of exaggeration by the witnesses as to the appellant's intentions";
>
> [42] evidence about appellant's uncle visiting appellant and renting an apartment for her and her daughter; points the Judge was "at a loss to understand"; the appellant's uncle and husband both appeared to have accompanied her to the Embassy: why, having rented her an apartment, allow her to return to an abusive husband; why no evidence of the rental or "most striking of all … not a shred of evidence from this uncle"?
>
> [43] why leave her daughter behind when she is said also to be at physical and mental risk?
>
> [44] diary entries and email correspondence but no evidence of contact "with appellant's husband's family" *[which is the same extended family]*; "extremely selective";
>
> [45] claimed financial support for some time, but no written evidence, which would have been easy to produce, and oral evidence vague;
>
> [46] diary entries prolific but over a relatively short time, and "in passing", these disclose friends in Iraq prepared to lend support ;
>
> [47] witnesses say they are unable to visit appellant to assess her situation, but no evidence to support that claimed inability;
>
> [48], the Judge had "simply … not been given a full picture of the appellant's circumstances in Iraq".

14. The principal criticism by the appellant is that the written statements show no such inconsistency among the witnesses as identified at [41]. I find that challenge rather obscure. The siblings said in their statements that the appellant had made attempts on her life, but on reference, their understanding appears to be second- or even third-hand. Her mother said only that she feared such an attempt if the appellant was not allowed into the UK. The Judge's perception is based also on having heard the oral evidence. The ground says that the judge had "more than enough evidence to make clear findings of credibility on such a crucial issue"; but the Judge went no further than to perceive a degree of exaggeration, an observation plainly within her scope, having heard the evidence.

15. In effect the grounds insist that the Judge should have found it established that the appellant presents a risk of suicide, but the grounds show no error in holding that the evidence fell short in that respect.

16. A clear finding of suicide risk, based on such evidence as there was, might have been hard to justify.

17. The appellant insists that she had explained why she would not be taking her daughter with her to the UK, but to say that the sponsor “had given a reason” is no more than insistence and disagreement on the facts. The Judge was not bound to accept the explanation tendered through the appellant’s mother. There was no error in querying the evidence. The Judge was entitled to find that no credible explanation had been advanced for such a drastic step.

18. Obviously, some of the Judge’s reasons are stronger than others, and some would be insignificant on their own; but most of them have not been criticised at all.

19. Any absence of “clear findings” is because the Judge found that the evidence was generally weak and unsatisfactory to justify the specific findings the appellant sought. The appellant has not shown that process to have involved the making of any error on a point of law.

20. In a broader context, I accept that the case the appellant sought to make is not beyond the jurisprudential limits of article 8; but it is not surprising that the FtT found the evidence as a whole to fall short of making out such a case.

21. The decision of the First-tier Tribunal shall stand.

22. 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.

18 November 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies,

as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.