



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005416
First-tier Tribunal No:
PA/54381/2021
IA/13098/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 March 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

JKO
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Gayle, on behalf of Elder Rahami

For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

Heard at Field House on 7 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, JKO and any member of his family are granted anonymity.

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 and any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant is a national of Iraq, born on 10 July 1973. She appeals against the decision of First-tier Tribunal Judge Housego (hereafter “the Judge”) who dismissed the Appellant’s international protection and human rights appeals by way of a judgment dated 30 July 2022.

The decision of the Judge

2. In brief, the Judge summarised the Appellant’s basis of claim in the following way: that the Appellant claims that her father was an extremist Muslim of influence and that she had not been allowed to marry. She had wanted to marry a man called KMA but her father had refused and demanded that she marry a very much older Imam. This led to KMA’s proposal of marriage being rejected on 10 January 2019 and the Appellant’s father threatening to kill her on 2 February 2019. The Appellant also claimed to have been physically abused by her father and made to wear a hijab. Having come to the UK via Turkey, she now lived with KMA to whom she’d had an informal Islamic marriage. The Appellant claimed that she feared being subject to mistreatment or death at the hands of her father and brother if she was returned to Iraq.
3. Ultimately the Judge concluded that the Appellant’s account was not credible for a number of reasons at [30] and, in respect of Article 8 ECHR, found that the decision did not have unduly harsh impact on the child of KMA (DK) with whom the Appellant is living in the UK and there was no overall breach of the Article.
4. Permission was granted to appeal to the tribunal by First-tier Tribunal Judge Mills on 16 October 2022. Judge Mills indicated that Ground 3 was ultimately the strongest ground but did not refuse permission on the other two.

The error of law hearing

5. The error of law hearing was held at Field House. The Tribunal heard submissions from both representatives of which we have kept our own note and at the end of the hearing we indicated our decision which we explain in more detail below.

Findings and reasons

Ground 1 & Ground 2 (paragraphs 10 & 11)

6. In our view, Ground 1 (and paragraphs 10 & 11 of Ground 2 which are on a similar theme) can be disposed of relatively briefly: the Appellant asserts that the Judge materially mischaracterised the Appellant’s evidence at

[20.1] of the judgment by summarising the Appellant's evidence in the following way. That the Appellant was in a jewellery shop with her brother-in-law (who was a friend of the shop owner); that the man (who is now the Appellant's partner in the UK) came in to the shop and also knew the shop owner. He told the shop owner that he had come back to Iraq to look for a wife and said that he would like to marry the Appellant.

7. The Judge goes on to record that the evidence was that this occurred on the first meeting between the Appellant and KMA and that her brother had known her partner (to be) before this.
8. The Appellant submits that this is a material mischaracterisation because the Judge ultimately relied upon this discrepancy in the adverse credibility findings made at paragraph 30.4.
9. The Appellant contends (paragraph 6 of the grounds of appeal document) that this is simply not correct; for instance, the Appellant was not in the jewellery shop with her brother-in-law but with her sister. The Appellant also lists a number of other disagreements with the Judge's description of that part of the Appellant's evidence.
10. In our view the difficulty with the Appellant's error of law argument, as Mr Gayle fairly acknowledged during discussion, is that paragraph 20 of the Judge's decision is a record of the oral evidence given by the Appellant during the hearing. The Appellant has not sought to produce any form of record taken during the hearing and indeed has not made a request to obtain the recording of hearing.
11. On that basis, we conclude that the Appellant simply has not established that her oral evidence, as summarised by the Judge at paragraph 20, is unlawful for constituting a material error of fact.

Ground 2 (paragraphs 8 & 9)

12. In respect of Ground 2, the Appellant criticises the Judge's conclusion at paragraph 30.3 in which the Judge found, adversely to the Appellant's credibility, that if she had genuinely fled persecution in Iraq and had entered Turkey legally, it was not credible that the Appellant would not have sought to make an entry clearance application to the UK from Turkey.
13. Mr Gayle submitted that the Appellant could not have made a spouse application because she was not married to her partner in the UK at that time and that if she had made a visit visa application, the Appellant would have been misleading the Entry Clearance Officer.
14. With respect, we see no particular merit in this ground: as Mr Clarke pointed out, the Appellant could have sought to make an application outside of the Rules under Article 8 ECHR from Turkey and whilst, as he fairly acknowledged, the chances of success for that application would have been relatively small such an application would not have required her to lie as asserted by Mr Gayle.

15. In any event, we consider that this particular adverse point was, in the context of the other much more significant adverse credibility points (as properly accepted by Mr Gayle), peripheral to the Judge's core conclusions about the reliability of the Appellant's international protection claim.
16. At [30(1)] the Judge concludes that the parties gave materially discrepant evidence about the claimed proposal of marriage in Iraq which has not been challenged by the Appellant. We therefore consider that even if this particular finding was in error, that it was not material.

Ground 3

17. In respect of Ground 3, we are grateful to Mr Clarke for his fair concession that the Judge had materially erred in his approach to the proposed evidence of the Appellant's stepson DK (who was 12 years old at that time).
18. By way of background, DK is the son of the Appellant's British citizen partner (KMA) and his mother, it is said, has passed away (see [13] of the judgment).
19. At [18] the Judge records that he declined to hear evidence from DK. We should say at this point that the Judge provides no explanation at all in the judgment for taking this course of action.
20. At [30(6)] the Judge concluded that no weight should be given to the witness statements of two of the Appellant's partner's children who did not attend the hearing and noted that the child who did give evidence (K) did not know very much about his father's life albeit the Judge concluded that this was not an adverse credibility issue.
21. At the end of this paragraph the Judge goes on to say: "*[t]he 12-year-old [DK] will not have written the statement proffered in his name*".
22. We agree with Mr Clarke that the Judge's approach to the evidence of DK is unlawful for being procedurally unfair.
23. It is clear that the Judge's approach is contrary to the guidance given by the UT in ST (Child asylum seekers) Sri Lanka [2013] UKUT 292(IAC) at [36 - 38].
24. The law and indeed the Practice Direction: 'First tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses' guidance, required the Judge to explore whether or not the evidence of DK could be facilitated in a way which would not adversely affect his best interests as a minor child. Mr Gayle has indicated in his Grounds of Appeal that the intention was for DK to give evidence and that he was being supported during the remote hearing by his father and the Appellant.
25. We conclude that it was imperative for the Judge to consider what facilities could be put in place in order to support the child in giving his evidence

especially in a case in which the Judge appears to have concluded that the witness statement did not genuinely portray the words and thoughts of DK.

26. As a consequence of this clear procedural fairness, we also decided that the remaking of the decision Article 8 ECHR should be done at the First-tier Tribunal. In this case, the Appellant simply has yet to have a fair opportunity to make her Article 8 appeal to the Tribunal, applying Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC).

Notice of Decision

27. We therefore dismiss the Appellant's challenge to the Judge's conclusions on the international protection issues including the Article 3 appeal but allow the Appellant's appeal in respect of his challenge to the Judge's Article 8 ECHR conclusions.
28. This means that on rehearing, the Tribunal will be considering the Article 8 ECHR appeal only.

IP JARVIS

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 March 2023