IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004051
First-tier Tribunal No:
HU/54905/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE LOUGHRAN

Between

DALIA RAMADAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No Appearance
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 13 August 2024

DECISION AND REASONS

1. The appellant is a citizen of Syria born on 11 January 1999. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance to the UK.

2. The appellant applied on 18 November 2021 for entry clearance to the UK under the family reunion provisions in the immigration rules, to join her husband, the sponsor. The appellant and sponsor, who are cousins, were engaged in 2019 and married by proxy in Syria in an arranged marriage on 1 June 2020 when the appellant was living in Syria and the sponsor, also a Syrian national, was living in Iraq as a refugee registered with UNHCR, having fled Syria in 2014. The appellant left Syria in late 2020 to join the sponsor in Iraq and they celebrated their marriage in Iraq on 5 December 2020 and lived together until 11 May 2021 when the sponsor was resettled by UNHCR to live in the UK. The appellant was denied resettlement with the sponsor

as she had not been named in his and his family's original UNHCR resettlement registration form since they were not married at the time. The sponsor was granted refugee status in the UK on his arrival in the UK on 11 May 2021.

3. The appellant's application was refused on 14 July 2022 on the grounds that she could not meet the requirements of paragraph 352A of the immigration rules since her marriage to the sponsor and her relationship with him had begun after his departure from Syria and was accordingly a post-flight marriage. The respondent considered that their relationship prior to their proxy marriage was as family members (cousins) and not as unmarried partners. The respondent did not consider there to be any exceptional circumstances or compassionate factors justifying a grant of leave outside the immigration rules on wider Article 8 grounds, noting that there was no evidence to show that the appellant was dependent upon the sponsor in any way and concluding that the relationship could continue by way of visits by the sponsor to the appellant.

4. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Lester on 17 March 2023. The appellant was legally represented at the hearing and the sponsor attended to give oral evidence in support of the appeal. The sponsor explained that the appellant had moved to live with his family in Iraq after he left. It was argued on behalf of the appellant that Iraq had become the country of the sponsor's habitual residence as he had integrated in that country, was renting a house there and had studied there and that, since the marriage took place before he left Iraq, the requirements of paragraph 352A had therefore been met. The respondent, however, argued that the sponsor's country of habitual residence was Syria and that Iraq could not be considered as such because he had made a claim for asylum from there.

5. The judge found there to be a conflict in the evidence on when the relationship between the appellant and sponsor commenced and found that the appellant had not proved that the relationship commenced before the marriage date and that the relationship had accordingly commenced after the sponsor left Syria. The judge found that the sponsor was living in Iraq as a displaced person and that his status there was precarious and temporary. He concluded that Iraq was not the country of habitual residence of the sponsor at the time the marriage took place by proxy and he found that the appellant could not, therefore, meet the requirements of paragraph 352A of the immigration rules. As for the appellant's claim on Article 8 grounds, the judge noted that the sponsor had made assertions about the appellant's living circumstances and about her being unable to return to her parents, but that no evidence had been provided in support of those assertions. He found, further, that there was no relevant documentary evidence of the sponsor's financial incomings and outgoings or of the financial circumstances of the appellant, her family or the sponsor's family. There was no medical or other evidence to support claims made by the sponsor that the appellant had mental health issues. The judge noted that the sponsor had been able to visit the appellant and his family for periods of a month at a time in 2021, 2022 and 2023 and that they were in daily contact, and he considered there to be no reasons given as to why those current arrangements could not continue. The judge concluded that the appellant had failed to show that there were any exceptional circumstances for the purposes of Article 8 and, in a decision promulgated on 4 May 2023, he dismissed the appeal.

6. The appellant, through her legal representatives, sought permission to appeal against Judge Lester's decision on two grounds: firstly, that the judge had provided inadequate reasons for finding that Iraq was not the sponsor's former country of habitual residence; and secondly, that the judge had provided inadequate reasons for dismissing the appeal on the Article 8 claim.

7. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on a renewed application. The respondent did not produce a rule 24 response.

Hearing and Submissions

8. The matter came before us for a hearing on 13 August 2024. The appeal was listed to be heard remotely by CVP and both representatives had been provided with the link to join the hearing. Ms McKenzie attended (remotely) for the respondent. However there was no appearance on behalf of the appellant. We noted that on 9 August 2024 the appellant's former solicitors had written to the Tribunal to advise that they were no longer instructed by her. We considered whether we should proceed with the appeal in the absence of the sponsor. We were satisfied that the appellant had been directly served with a notice of hearing on 26 June 2024, at the sponsor's address, and that they both would therefore have been well aware of the hearing. Efforts were made to contact the sponsor by telephone and email in the morning prior to the hearing, and the CVP link was sent to him directly. However the sponsor did not respond and he did not attend the hearing or offer any explanation for his absence, and neither was there any indication that he intended to attend. There was no application for the appeal to be adjourned to another day. Ms McKenzie asked us to proceed with the appeal in the sponsor's absence and, in the circumstances, we did not consider there to be any unfairness in so doing.

9. Ms McKenzie made brief submissions, opposing both grounds of appeal and submitting that the grounds were nothing more than a disagreement with the judge's decision. She submitted that the judge had given full and proper consideration to the question of the sponsor's former country of habitual residence and had properly addressed Article 8 with full reasons being given for the decision reached.

Analysis

10. We agree with Ms McKenzie that the grounds are essentially a disagreement with the judge's decision, both in relation to the issue of habitual residence under the immigration rules and with respect to the Article 8 claim. Although permission was granted on both grounds, it is relevant to note from the decision of Upper Tribunal Judge Canavan that the grant was made primarily on the first ground, and that that was only on the basis that a more detailed consideration of the question of the country of former habitual residence would be helpful.

11. We therefore turn to that first ground and to the issue of 'former habitual residence' and we note that no further clarification of the matter has been provided by or on behalf of the appellant in that regard in the grounds or in further submissions. The grounds simply criticise the judge for deciding as he did. In our view the judge was entitled to reach the decision that he did, having given the matter full and proper consideration. The judge considered the sponsor's circumstances in Iraq in some detail, at [45] to [47] of his decision. As the judge observed, he was not referred to any legal authorities or guidance in relation to an assessment of habitual residence in circumstances such as those arising in this case. The only authority to which the judge was referred was the case of M (Children : Habitual Residence : 1980 Hague Child Abduction Convention) [2020] EWCA Civ 1105 which involved different circumstance and a different jurisdiction. In so far as the case provides any guidance on the issue, we note the emphasis on the assessment of habitual residence being fact specific and involving a factual enquiry, which is precisely what Judge Lester undertook. Likewise, the judgment cites earlier authorities which, in considering the issue of habitual residence, refer to the need for some degree of integration and stability in the

country, rather than temporary or intermittent presence which, again, were matters considered by the judge. The judge, when considering the sponsor's circumstances when he was living in Iraq, had regard to the extent of any integration but ultimately concluded that, as an asylum claimant and an applicant for resettlement in the UK, his status in that country was precarious and temporary and did not amount to habitual residence. We do not consider, as the grounds suggest, that the sponsor's lack of entitlement to apply for Iraqi citizenship detracted in any way from the judge's conclusions or that the judge wrongly based his findings on the sponsor's immigration status in Iraq. These were clearly matters which the judge took into account. Accordingly we find no error of law in the judge's decision in that regard. He gave full and proper reasons for concluding as he did and he was entitled to reach the conclusion that he did.

12.Likewise, the judge's conclusion on Article 8 was reached following a full assessment of the appellant's and sponsor's circumstances on the basis of the evidence available. He observed that that evidence was limited. The judge had full regard to the sponsor's account of the appellant's living circumstances in Iraq and the difficulties they faced in maintaining their relationship. He set out the evidence in considerable detail at [4] and at [15] to [28], making specific references to the sponsor's witness statement. The judge noted that the evidence consisted of broad assertions by the sponsor which were not supported by any specific details or documentary evidence. It was on that basis that he considered that the weight he was able to accord the sponsor's evidence was limited. It was a matter for the judge to decide the weight to be given to the evidence and, having given full and cogent reasons for his conclusion in that regard, he was perfectly was entitled to reach the decision that he did. There is therefore no merit in the second ground and no error of law arises from the judge's Article 8 assessment.

13. For all these reasons we find no error of law in the judge's decision and we uphold the decision.

Notice of Decision

14.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 14 August 2024