



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00644/2020

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Hearing
At Field House
On 20 October 2020**

Decision & Reasons Promulgated

On 26 October 2020

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**C B S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Dainty, promulgated on 19 March 2020, dismissing her appeal under the Nationality, Immigration and Asylum Act 2002 against a decision of the respondent made on 10 January 2020 to refuse her asylum and protection claim.
2. I have made an anonymity order in this case, given that it raises protection issues. The reasons given by the First-tier Tribunal Judge Dainty for not doing so at [2] of her decision are simply wrong and it is evident that she did apply the correct test. For the reasons set out below, Judge Dainty's decision involved the making of further errors of law and is to be set aside. Regrettably, those errors are such that none of judge

Dainty's findings are sustainable, and the decision must be remitted to be heard again by another First-tier Tribunal Judge.

3. The appellant is a citizen of Iraq of Kurdish ethnicity. Her case is that she is at risk on return of domestic violence at the hands of her husband and her family; and, at the hands of an officer with whose wife her husband had an affair.
4. The respondent did not accept the appellant's account, nor that she was credible.
5. At the hearing before Judge Dainty on 9 March 2020, the respondent was not represented. The appellant gave evidence and her representative made submissions.
6. Judge Dainty did not find the appellant to be a credible witness and rejected her account.
7. The appellant sought permission to appeal on the grounds that Judge Dainty's assessment of credibility was flawed as it relied significantly on concerns as to plausibility in particular at paragraphs 27 and 29 to 33; and, that it is also vitiated by an error of fact at [31]. It is also averred that the findings are inadequate in that they are not properly structured.
8. On 23 April 2020, FtTJ I Murray granted permission to appeal.
9. On 18 August 2020 Upper Tribunal Judge McWilliam gave directions which provided amongst other matters:
 1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
 2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

- (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.
 - (iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.
3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.
10. On 3 September 2020, the respondent replied, accepting that Judge Dainty had not adequately reasoned her credibility findings.
11. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Given that no objection to this course of action has been raised, and bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so.
12. It is only rarely that a First-tier Tribunal's credibility finding will be set aside. Nevertheless, Judge Dainty's conclusions as to credibility are, for the reasons set out below, so flawed that they are unsustainable as the respondent acknowledges.
13. Put simply, Judge Dainty has in effect judged an illiterate woman's actions out of context and on standards not applicable to her. There is no rational basis for how at [29] Judge Dainty could have found it not credible (in reality not plausible) that the appellant who is illiterate, unfamiliar with the United Kingdom and does not speak English, would not have consulted a lawyer or CAB about a divorce. Quite why Judge Dainty thought that because the appellant's 12-year-old son might be able to help is not at all clear, nor does it appear that Judge Dainty put that point to the appellant.
14. Similarly, there is no rational basis for drawing inferences adverse to the appellant from not knowing the progress of her estranged husband's asylum claim [30] and it is worrying that Judge Dainty refers to him as the "Appellant" at [30] and [31].
15. At [31] Judge Dainty judges the appellant's actions by what she thinks someone of the appellant's background who has been in an abusive marriage would do. That is not approaching the evidence with an open mind nor is the conclusion at [32] that she thought that the violence would

not have been irregular. Again, no evidence is relied upon by Judge Dainty for such conclusion and these conclusions are irrational.

16. Further, at [34] Judge Dainty took a point against the appellant which had not been expressly raised by the respondent, finding that the appellant's separation from her husband was not genuine.
17. Judge Dainty did not undertake an overall assessment of credibility in a structured way as she was required to do. On the contrary, the impression is given that Judge Dainty did not consider the evidence in the round as can be seen from the start of her analysis of the evidence in her decision at [26]. Relying on section 8 of the 2004 Act, Judge Dainty found that the appellant's failure to claim asylum in Italy was "consistent with a directed attempt to find a better life in the UK as opposed to a genuine situation of fleeing and claiming asylum". Judge Dainty therefore starts her evaluation with an express negative finding without apparently considering any explanation there may be for not claiming; and, failing also to apply section 8 in the round and in the context of the evidence as a whole. The description at [27] of the appellant's account of her account of separation as "bizarre" adds to the impression that Judge Dainty did not approach the evidence fairly or in a structured manner.
18. While Judge Dainty does, finally, consider the background evidence at [35], there is no indication that she considered the appellant's evidence against it, nor does her statement at [38] that she took into account the difficulties the appellant may have had indicate a proper, structured approach to credibility.
19. For these reasons, the decision involved the making of an error of law as claimed and I set it aside.
20. Judge Dainty's assessment of credibility is so undermined that none of the findings of fact can stand. It cannot in all the circumstances be said that the appellant received a fair hearing and accordingly, I conclude that the appeal must be remitted to the First-tier Tribunal for a fresh decision on all issues.
21. As the appellant has now relocated permanently to Glasgow, I consider it appropriate that the appeal be heard in the First-tier Tribunal in Glasgow.

Notice of Decision & Directions

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I remit the appeal to the First-tier Tribunal to be determined de novo. For the avoidance of doubt, none of the findings of Judge Dainty are preserved.

Signed

Date 20 October 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul