



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

Appeal Number: PA/10193/2019 (V)

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 2 July 2021**

**Decision & Reasons Promulgated
On the 2 July 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**SHJ
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant in person.

For the Respondent: Mr M. Diwncyz , Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") promulgated on the 7 February 2020 in which the appellant's appeal against the decision to refuse her protection and human rights claim was dismissed.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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 her family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The appellant claims to be a citizen of Iraq. She made an application to enter the United Kingdom as the spouse of a naturalised British citizen, originally from Iraq in an application made in 2010. It was stated that on 18 July 2010 she had married her husband in Syria and her intention was to travel with her husband to the UK. The application for a spousal visa was made the day after the wedding. In a decision dated 13 February 2011 the application for entry clearance as a spouse was refused. According to the interview which took place with the appellant, she stated that he returned to the UK and she returned to Iraq. Since that time the appellant states that she has seen him 2 or 3 times when he has returned to Kurdistan or in the alternative 3 or 4 times (see asylum amendments).
4. The appellant arrived illegally in the UK on 24 January 2019 and claimed asylum. The date that she left Iraq is not entirely clear, but it is recorded that her fingerprints were taken in Italy on 16 October 2018.
5. The basis of her protection claim is set out in the decision letter dated 14 October 2019 and in the FtTJ's decision. The appellant claims that she had lived in Duhok in the Kirkuk region of Iraq and spent time living in Deraluk. She is an ethnic Kurd and Sunni Muslim. She lived with her mother and sister.
6. In order about 2009 her husband made a marriage proposal which was accepted, and they married in Syria in 2010 following which she made an application to join him in the UK. After the application was refused, the appellant stayed living in Iraq with her husband visiting her. The basis of her claim as set out to the respondent in the 2 interviews that took place and the amendments to the interviews submitted by her former legal representatives was a victim or potential victim of an "honour crime" based on events concerning her family relatives and the local community in Iraq.
7. In a decision letter dated 14 October 2019 the respondent considered the factual basis of her claim. At paragraphs 24 - 36 the respondent considered her claimed nationality but concluded that she had not been able to demonstrate to a reasonable degree of likelihood that she was an Iraqi national for the reasons set out. However it was accepted that she was of Kurdish ethnicity. In so far as a claim to be in an ongoing marriage to her husband, a naturalised British citizen,

at paragraphs 41 – 50, it was not accepted that the claimed marriage was genuine and subsisting. As to the problems that she claimed occurred in Iraq at paragraphs 51 – 62, the respondent set out the inconsistencies in her account and that it was not accepted that she had demonstrated she would be at risk in Iraq on the basis claimed. The remainder of the decision letter considered return to Iraq in the light of the country guidance decisions and the country materials. Article 8 was also considered that as the decision earlier set out, as she was not in a genuine subsisting relationship, she could not meet the requirements under Appendix FM and for the reasons set out in paragraphs 134 – 141 she could not meet the requirements for private life under paragraph 276ADE . The decision letter also considered her medical circumstances in line with the material that she had provided which related to her mental health and other medical concerns.

8. The appellant appealed that decision, and the appeal came before the FtT on 24 January 2020.
9. It is recorded that at the hearing the appellant did not appear. The judge recorded that the appeal had previously been listed on 25 November 2019 when the appellant had attended but was adjourned as a result of interpreter difficulties. It is further recorded at paragraph 1 that enquiries were undertaken with Tribunal staff and that she had been informed of the date of the new hearing and that a letter had been sent at her last address. In the circumstances the judge proceeded to hear the appeal in her absence as she had failed to provide an explanation for her non-attendance.
10. The FtTJ dismissed her appeal on all grounds in a decision promulgated on 7 February 2020.
11. The appellant applied for permission to appeal that decision asserting that her removal would be in breach of article 8 of the ECHR and that the judge had failed to consider the circumstances in Iraq and the sensitivity of “honour killings”. The FtT refused permission on 24 June 2020. An application was made for permission to the Upper Tribunal which was granted by Upper Tribunal Judge Mandalia. In the grant of permission UTJ Mandalia sets out the appellant’s contention that she had “mentioned in my previous statement that I have not received any letter for the hearing to attend after the cancellation of 1st hearing due to issue with interpreter. They have not sent me any new date for the hearing.” The judge granted permission stating that if the appellant is correct,” it is at least arguable that the decision to proceed in the absence of the appellant amounts to an error of law. The question of the Upper Tribunal is not whether the FtT acted reasonably. Rather the test to be applied is that of fairness; Nwaige (adjournment: fairness) [2014] UKUT 00 418.”

12. I observe that with the grant of permission a direction was made for the parties to file further submissions. In particular the respondent was ordered to file within 21 days of 24 July 2020 a document setting out their position.
13. Following the grant of permission there has been no further correspondence from either party and there had been no compliance with the directions by the respondent.
14. The matter was therefore listed for a hearing for the parties to attend. The appellant attended along with her husband and the respondent was represented by Mr Diwnycz, senior presenting officer. He was aware of the direction made by the tribunal but stated that it had not been acted upon in error. As to the circumstances of the last hearing, he referred to the PO note which confirmed that set out at paragraph 1.
15. The appellant confirmed her position that she had not attended the hearing as she had not received the hearing notice but confirmed that she had remained living at the same address. I had the opportunity to consider the file and the history of the proceedings. The appellant was previously represented by solicitors who were able to provide assistance to the appellant by providing the amendments to the screening and substantive interviews. It is unclear when they came off record, but the file demonstrates that they were not on record in November 2019 when the case was set down for a pre-hearing review. The appellant provided some information in documentary form that she had been undertaking medical treatment which she referred to as depression (see reply to IAC notice October 2019 at paragraph 4 "new matters").
16. The appeal was listed for 25 November 2019. The appellant attended the hearing, but it is recorded that the appeal was adjourned because of interpretation problems and there was no Kurdish Badhini interpreter who could be available.
17. There is no hearing notice on the file providing the date of the next hearing or any record of it being sent to the appellant or to what address. That accords with the note of the PO. The judge noted that enquiries of Tribunal staff made it clear that the appellant had been informed then of the date of the new hearing. There is no note on the file to confirm this and given the difficulties with the interpreter and particular the reference made to interpretation difficulties with numbers, it is not clear how the appellant was informed of the next hearing date. It is right to observe also that the enquiries with the staff at the hearing on 24 January 2020 stated that a letter had also been sent out to her at the last known address but there is no notice of hearing on the file.

18. I have therefore considered the issue in the light of the above circumstances. It is plain in my judgement that the appellant had sought to proceed with her appeal as demonstrated by her attendance at the hearing in November 2019. The hearing was adjourned through no fault of the appellant. I can find no hearing notice on the file and given the difficulties at the adjourned hearing as I have stated it is unclear to me how the appellant had been informed on that day of the date of the new hearing. As Mr Diwnycz fairly stated, it is difficult to see how the appellant could prove a negative and that she had sought to proceed with her appeal as noted by her attendance at court previously and she had all to gain by attending.
19. As UTJ Mandalia set out in his grant of permission, the issue is one of fairness and given the factual circumstances outlined above, and in the light of the anxious scrutiny required for a protection claim, I cannot be satisfied that the appellant did in fact receive the hearing notice. The failure to attend is a complete contradiction to her earlier conduct in attending court and wishing to proceed with her appeal. Her claim also includes her relationship with her husband with whom she appeared at court with at this hearing which was a relevant consideration to the factual and legal assessment of the appeal.
20. As to the future conduct of this appeal I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal;
 - or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
21. In my judgement as this is a procedural error, I am satisfied that the decision falls within subparagraph (a) above. It also falls within subparagraph (b) as the judicial fact finding will be required on all issues, both protection and human rights claim. I therefore find that is consistent with the overriding objective to remit the case to the First-tier Tribunal for a fresh hearing with none of the findings to remain.
22. As stated at the hearing the appeal will be listed at a hearing centre that is near to the appellant's home. The appellant has been provided with the telephone number of the tribunal service so that there is a point of contact. The appellant has also been provided with the

address in writing of the presenting officers unit so that further documents that she seeks to rely upon can be provided in advance. The tribunal will provide further assistance to the appellant at any prehearing review held so that documents can be sent to the tribunal for her claim. The appellant may wish to obtain legal representation before the next hearing. I have also asked that the tribunal should be notified by the appellant by email or by letter to confirm she has received the decision and any hearing notice that will be sent.

23. For the reasons given above, I am satisfied that the decision of the FtT did make an error on a point of law and the decision of the FtT shall be set aside and remitted to the FtT for a hearing afresh.

Notice of Decision.

24. The decision of the FtT is set aside and remitted to the First-tier Tribunal for a fresh hearing.

Signed Upper Tribunal Judge Reeds

Dated 2 July 2021

I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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 and her family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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.