



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

Appeal Number: PA/03879/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 December 2017**

**Determination
Promulgated
On 15 January 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**AR
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hodson

For the Respondent: Mr Jarvis

DECISION AND REASONS

1. The appellant is a citizen of Iraq born in 1986. She appeals against a decision of the respondent made on 6 April 2017 to refuse her claim to asylum and on human rights grounds.
2. The basis of her claim is that she fears a man who will either kill her British citizen husband who she married in Iraq in 2010, or kidnap her son

born in 2012, because he had been threatening her and had said that he had wanted to marry her.

3. Her claim to have been threatened was not believed by the respondent.
4. She appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 19 May 2017, Judge of the First-tier Hosie dismissed the appeal on asylum grounds. In essence, she did not find the evidence of the appellant and her husband to be credible.
6. In considering Article 8 ECHR the judge having found that the appellant's husband has been a British citizen since 2007 (at para 91) then found that the son is '*not currently a British citizen*'. She noted that the husband had lived most of his life in Iraq as had their young son. They have property there and both she and her husband had worked there. She concluded that it was reasonable for the whole family to return to Iraq and for the appellant and her son to seek entry clearance.
7. The appellant sought permission to appeal. On 23 October 2017 permission was refused on the grounds submitting that there had been an error of law in the consideration of the asylum claim. However, permission was granted in respect of Article 8, namely, that the judge had erred in her finding as to the child's nationality.

Error of law hearing

8. At the error of law hearing before me Mr Jarvis agreed with the submission that the judge had erred in finding that the child was not a British citizen. He was automatically a British citizen by descent at the time of birth. I also agreed.
9. Mr Jarvis said it was conceded it would not be reasonable for the British citizen child to leave the UK. As a consequence leave would be granted to the appellant.

Notice of Decision

The making of the decision of the First-tier Tribunal on asylum grounds shows no error of law and that decision dismissing the appeal stands.

The making of the decision on human rights grounds shows error of law.

That decision is set aside to be remade as follows:-

The appeal is allowed on human rights grounds (Article 8).

Anonymity

Unless or until a court or tribunal directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant or any member of her family. This order applies to the appellant and to the respondent. Failure to comply with this order may lead to contempt of court proceedings.

Signed Upper Tribunal Judge Conway
12.01.2018

Date