Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03713/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 April 2019	**On 29 April 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

SAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmad
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1993 and is a female citizen of Iraq. By a decision dated 25 February 2018, the Secretary of State refused her application for international protection. She appealed to the First-tier Tribunal which, in a decision promulgated on 18 December 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing before the Upper Tribunal, Mr Diwnycz, who appeared for the Secretary of State, told me that the respondent accepted that the judge had erred in law for the reason stated in the grounds of appeal and

that the Upper Tribunal should remake the decision. In the circumstances, I shall be brief in giving reasons for setting aside the judge's decision.

3. The First-tier Tribunal's decision is problematic in a number of ways. First, there is a clear error of fact in the analysis. At [51], the judge found that the husband of the appellant (who is a British citizen and also Kurdish) had 'spent significant time in the IKR and has friends and family there.' Mr Diwnycz accepted that that statement was not accurate; the only evidence on the husband's connections with the IKR showed that he had been a visitor there for a maximum period of three weeks and that he had no family or friends living in the region. I acknowledge that the judge has found the appellant and her husband not to be credible witnesses but I do not consider that finding to be a proper basis for the findings at [51]. Secondly, although the judge later stresses that in determining whether it would be reasonable for the child of the appellant husband to live in Iraq, he has discounted the conduct of the appellant, the judge has reached findings at [57] which, by any standard, cannot not supported by his reading of the evidence. The judge writes that, 'the appellant has *a very poor immigration history, having repeatedly* and deliberately breached the immigration rules…' [my emphasis]. The only evidence which exists as to the appellant's immigration history reveals that the appellant has made a single claim for asylum which the respondent and the judge have rejected; it is unclear how that application can accurately be described as a 'very poor immigration history' still less 'repeated' breaches of the immigration rules.

4. The judge states several times in his decision that he finds it would be reasonable to expect the British child of the appellant had her husband to live in Iraq (more particularly, the IKR) with his parents. However, there is little reasoning to support that finding. At [56], the judge writes, 'whilst no decision I make compels the appellant's husband or child to go to Iraq with the appellant, on taking all of the above factors into account, I am satisfied that if the appellant's appeal was to be refused she would be able to return to Iraq and would be joined by her family.' I do not consider that to be an assessment of the reasonableness of the child returning to Iraq with his parents; rather, the judge has avoided assessing reasonableness by simply observing that the husband and child would, in any event and whether reasonable or not, accompany the appellant to live in Iraq. The judge's finding is, therefore, not supported in this instance by adequate reasoning.

5. It is also the case that the judge has not sought to consider the respondent's published instructions (IDI) in the context of this family's circumstances. The instructions provide that, 'where the child is a British citizen, it will not be reasonable to expect them to leave the UK with the applicant parent or primary carer facing removal.' Accordingly, the judge's analysis is insufficient.

6. I set aside the decision of the judge and have remade the decision. I have had regard to the recent decision of the Upper Tribunal in *JG (s 117B(6):*

"reasonable to leave" UK) Turkey [2019] UKUT 72 (IAC). The headnote reads:

> Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 requires a court or tribunal to hypothesise that the child in question would leave the United Kingdom, even if this is not likely to be the case, and ask whether it would be reasonable to expect the child to do so.

Mr Diwnycz did not seek to persuade me that, in the light of current country guidance, the appellant can safely live in Baghdad. In the light of the appellant's husband's lack of connections with the IKR, it seems unlikely that he would readily find employment and accommodation in that region. There must be significant doubt that the appellant, who would be returned to Baghdad, would safely be able to access the IKR at all. On the evidence, I do not accept that it would be reasonable for the child to live in any part of Iraq. Likewise, as the child is still very young (there is reference to breastfeeding in the grounds of appeal) it would be wholly unreasonable to expect him to leave the United Kingdom with his mother for such time as would be required for her to make an out of country application for entry clearance. In consequence, the public interest does not require the appellant to be returned to Iraq because it is not reasonable to expect the child to leave the jurisdiction of the United Kingdom.

7. I have not been asked to revisit the judge's findings in respect of the appellant's appeal on asylum grounds. Those findings shall stand. However, I allow the appellant's appeal against the decision of the Secretary of State on human rights grounds (Article 8 ECHR).

Notice of Decision

The decision of the First-tier Tribunal is set aside. I remade the decision. The appellant's appeal against the decision of the Secretary of State dated 25 every 2018 is dismissed on asylum and humanitarian protection grounds. The appeal is allowed on human rights grounds (Article 8 ECHR).

Signed Date 22 April 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly

identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.