

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number:** **PA/04903/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On January 8, 2019** | **On February 1, 2019** |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**m b k**

(ANONYMITY DIRECTION made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Jalal of Counsel instructed by J M Wilson

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is an Iraqi national who left Iraq on November 4, 2016 to join her partner, K A, and to escape a marriage that her family wished to arrange. Having entered the United Kingdom on November 14, 2016 she was served with paperwork as an illegal entrant and claimed asylum the following day. The respondent refused that claim on May 10, 2017.
2. The appellant appealed that decision on May 24, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and her appeal came before Judge of the First-tier Tribunal Fowell on February 20, 2018 and in the decision promulgated on March 1, 2018 the Judge dismissed her protection claim and dismissed her human rights claims both under Articles 3 and 8 ECHR.
3. Grounds of appeal were submitted to the Tribunal on March 15, 2018 under Article 8 ECHR only. Permission to appeal was granted by Judge of the First-tier Tribunal Pullig on April 5, 2018 on the basis it was arguable the Judge had failed to properly consider the best interests of the child under Section 55 of the Borders, Citizenship and Immigration Act 2009 and had failed to take into account the child’s bests interests when considering the fact the child’s father was an Iranian national who had previously been granted limited leave to remain as a refugee.

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

1. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**Preliminary Issues**

1. The appellant’s partner’s status remains precarious in the sense that he had lodged his application for further leave to remain in time but as he used the wrong form this had been refused. He then lodged a further application, out of time, and the application is still pending. The appellant’s partner’s position therefore remains that he does not have settled status.

**The Submissions**

1. Mr Jalal adopted the grounds of appeal and the grant of permission and submitted that the Judge had erred firstly by failing to consider the best interests of a child under Section 55 of the Borders, Citizenship and Immigration Act 2009. The child had not been born when the decision letter had been issued but by the time of the hearing the child had been born and more weight should therefore have been given to the fact that the child’s father had limited leave to remain.
2. Mr Mills, in response, indicated that the appellant’s husband had previously been granted refugee status in 2009 but his application for further leave or indefinite leave was out of time and was still pending. Turning to the Judge’s decision he submitted that the Judge was conscious of the husband’s situation and he was also aware of the background to the matter. In particular, he referred to paragraph 20(a) of the Judge’s decision referring to the fact that the partner’s mother now lived in the IKR without any difficulties having gone there from Iran. There was also a reference to the appellant’s partner having visited the IKR on several occasions and most recently in April 2016 and this was where the appellant and he had met. In considering insurmountable obstacles this was, in his submission, a relevant and crucial issue. The Judge considered at paragraph 45 the issue of them leaving the United Kingdom and pointed out that there was no requirement for him to leave at this stage as he obviously had a pending application but if he wished to leave he would be returning to an area which was known to him.
3. Mr Mills pointed out that different Judges may have reached a different conclusion but argued the decision was open to the Judge. Dealing specifically with the Section 55 issue he referred to paragraph 42 of the decision and submitted that the Judge was aware of the best interests of the child and noted that if it was felt the child should live with both parents then they could of course live together in the IKR.

**Findings**

1. This is an application which challenged the Judge’s approach to Article 8 ECHR. The background to this matter was that the appellant had claimed asylum but that application had been rejected. That finding is important as it fed into the Article 8 assessment which was subsequently undertaken by the Judge. The other issue which was relevant in the proceedings was that the appellant’s partner who, by the time of the hearing, was now married to the appellant was an Iranian national who had been recognised as a refugee in 2009 but had not been granted the normal five years’ leave to remain due to a conviction but had been granted three years. There was an issue over the extension of his leave, but I am satisfied any issues relating to his extension did not affect this particular decision. The Judge had to deal with the appeal on the facts before him at that time the appellant’s partner only had limited leave to remain.
2. The Judge was clearly aware of the respective immigration histories as the decision sets those histories out in some detail. The Judge was also aware of responsibilities under Section 55 of the 2009 Act. It is not necessary for the Judge to go into detail if the Judge recognises a responsibility to have regard to the best interests of that child. The Judge was dealing with a young child when the appeal came before him and he was not dealing with a situation where that child would have built up numerous friendships or been educated or spent a lengthy period in this country. It followed therefore that the child’s best interests would always be to reside with the parents, the only real issue was whether their residence would be in the United Kingdom or in the IKR.
3. Mr Mills quite properly referred in his oral submissions to the fact that the appellant’s partner was no stranger to the IKR and this was not a case he was being asked to go to a country he had no connections to. The Judge considered these issues at paragraph 45 and as Mr Mills conceded a different Judge may have reached an alternative decision. The purpose of the Upper Tribunal is not to remake decisions but to consider whether or not a decision reached was one that was open to the Judge.
4. Based on the evidence that was before the Judge I am satisfied that the outcome was something that was open to him. There was a full consideration of Article 8 issues from paragraph 47 onwards and these had to be read alongside the earlier findings that preceded that paragraph.
5. In the circumstances, I do not find there has been an error of law. I am satisfied the Judge had regard both to the best interests of the child and to the status of the appellant’s father and the decision was one that was open to him.

**Notice of Decision**

I uphold the decision and I dismiss the appeal.



Signed Date 16/01/2019

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.



Signed Date 16/01/2019

Deputy Upper Tribunal Judge Alis