

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/10633/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Liverpool** | **Decision & Reasons Promulgated** | |
| **On June 7, 2018** | **On June 12, 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MRS A K Q**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**the Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Mair, Counsel, instructed by Kalam Solicitors

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

**DECISION AND REASONS**

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.
2. The appellant is an Iraqi national who left Iraq on December 25, 2016 arriving in the United Kingdom on January 4, 2017. She claimed asylum on January 18, 2017 but her application was refused on October 5, 2017 by the respondent under paragraphs 336 and 339M/339F HC 395.
3. The appellant appealed that decision on October 20, 2017 and her appeal came before Judge of the First-tier Tribunal Cox on November 20, 2017 who in a decision promulgated on December 4, 2017 dismissed all her claims.
4. Grounds of appeal were lodged on December 18, 2017 and Judge of the First-tier Tribunal Martins granted permission to appeal on January 4, 2018 finding it was arguable that the Judge had erred by failing to factor into the decision whether it was reasonable for a British Citizen child to leave the United Kingdom in the event of an unsuccessful appeal by the appellant who is the child’s mother.
5. A Rule 24 statement dated February 14, 2018 conceded that there was an error in law and invited the Tribunal to decide the matter afresh.
6. When the matter appeared before me on the above date I was provided with an updated bundle of evidence which included two recent witness statements from the appellant and her husband. Both those statements outlined the role the appellant played in the upbringing of the aforementioned British child and the statement also notified the Tribunal that the appellant had given birth to a second British citizen child on May 8, 2018.
7. I invited Mr Diwnycz for his views on the appeal generally and he acknowledged that the fact there were now two British children, including a newborn child, the respondent was in difficulties in opposing the appeal in light of SF and others (Guidance, post 2014 Act) Albania [2017] UKUT 00120 (IAC). He agreed that the appellant came within the provisions of section 117B(6) of the Nationality, Immigration and Asylum Act 2002 and in light of the respondent’s own policy he had no further submissions to make on the issue.
8. Ms Mair then invited the appellant and her husband to adopt their newly prepared witness statements. There were no questions to either witness from either representative. She then relied on the skeleton argument that she submitted to the Tribunal on the morning of the hearing.
9. She reminded the Tribunal that the appellant was married to a British citizen and the eldest child, now aged 3 ½ years of age, was a qualifying child under section 117B(6) of the 2002 Act and there was ample evidence contained within the appellant’s bundles that the child suffered significant health problems which required her to attend hospital and remain under the care of a consultant. Those problems are described as including hypoxic ischemic encephalopathy, seizures, global developmental delay, a squint in the child’s left eye and DDH left hip. Although she had recently started nursery she received specialist support at the nursery and given the current country conditions in Iraq it was not reasonable to expect that the required medical or educational support would be available for the child in Iraq. The current FCO guidance advised against travel to large parts of Iraq and all but essential travel to other areas including the remainder of the Kurdistan region. Requiring the appellant to leave the country would automatically lead to a splintering of family and this would not be in their best interests. She invited me to allow the appeal.

**FINDINGS**

1. I am only concerned with the issue of whether it would be reasonable for the appellant to be returned to Iraq.
2. There was consensus between the advocates that the children fell within section 117B(6) of the 2002 Act and in considering the best interests of the children I have had regard to the Court of Appeal decision in MA (Pakistan) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705, EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874, PD and others (Article 8 8 -conjoined family claims) Sri Lanka [2016] UKUT 00108 and SF and others.
3. Mr Diwnycz had already conceded the appellant has a genuine and subsisting parental relationship with two qualifying children and taking into account the medical evidence in relation to the eldest child, the conditions the children would face in Iraq, the respondent’s own guidance when considering the reasonableness of requiring a British child to leave the United Kingdom and matters generally I conclude there are exceptional circumstances that merit the consideration of this appeal under article 8 ECHR. There are no countervailing circumstances that would count against the appellant in this case and I find that to remove the appellant would breach her rights under article 8 ECHR.

**DECISION**

1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
2. I have set aside the original decision only insofar as the article 8 ECHR decision is concerned and I have remade that aspect of the decision by allowing her appeal on article 8 ECHR grounds.
3. In all other respects I uphold the original decision.

Signed Date 07/06/2018



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**

**FEE AWARD**

I make no fee award as no fee was payable.

Signed Date 07/06/2018



Deputy Upper Tribunal Judge Alis