



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

Appeal Number: PA/01876/2017

THE IMMIGRATION ACTS

Heard at Manchester

**Decision & Reasons
Promulgated**

On 10 January 2018

On 12 January 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**SA
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Counsel

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

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant has appealed against a decision of First-tier Tribunal Judge Devlin dated 18 May 2017, in which he dismissed her appeal against a decision dated 8 February 2017 to refuse her protection claim.

Summary of claim

2. The appellant, a citizen of Iraq from the Kurdish Autonomous Area ('KAA'), fears that she will be targeted for 'honour-based' violence from her family for reasons relating to a previous relationship and refusing to accede to their choice of a marital partner, together with her pregnancy out of wedlock in the UK.
3. The appellant also submits that she should be permitted to remain on the basis of Article 8 of the ECHR in light of her relationship with a British citizen partner in the UK. At the date of the First-tier Tribunal hearing she was pregnant. Since then she has given birth to a British citizen child.

First-tier Tribunal decision

3. The First-tier Tribunal decision is very detailed and lengthy. It comprises 371 paragraphs over 50 pages and is carefully drafted. Judge Devlin did not accept the credibility of the appellant's account as to what happened to her in the KAA or her journey to the UK. He also considered that as a single, pregnant women, she would not be at real risk of serious harm in the KAA and dismissed her appeal on protection and human rights grounds.

Grounds of appeal

4. In wide ranging grounds of appeal, it is submitted on behalf of the appellant that the First-tier Tribunal's findings: are pendantic and overly critical of peripheral matters; place emphasis upon inconsistencies that are more apparent than real and not well-founded; are unsupported by the country background evidence as to the prevalence of 'honour-based' violence in the KAA.
5. When granting permission to appeal First-tier Tribunal Judge Black described the First-tier Tribunal decision as "*inordinately lengthy*". The claim is a relatively straightforward one and the decision is undoubtedly very lengthy indeed. However, the question for me is whether it contains a material error of law.
6. At the hearing before me Mr Gayle relied upon his grounds of appeal and Mr McVeety relied upon a rule 24 notice. After hearing from both representatives, I reserved my decision, which I now provide with reasons.

Error of law discussion

7. I now turn to consider the grounds of appeal argued before me.

Approach to answers provided at interview

8. The grounds criticising the credibility findings are largely based upon discrepancies identified between what the appellant said at the screening interview and what she said after this.

9. Whilst the name and procedure for the screening interview has changed over time and it is now more formally described as 'initial contact and asylum registration form', asylum applicants continue to take part in a screening interview at the time or shortly after the asylum claim is made. In YL (SEF) China [2004] UKIAT 00145, the Upper Tribunal set out a number of observations regarding screening interviews (which remain apt), and said this at [19]:

"When a person seeks asylum in the United Kingdom he is usually made the subject of a 'screening interview' (called, perhaps rather confusingly a "Statement of Evidence Form – SEF Screening–). The purpose of that is to establish the general nature of the claimant's case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated."

10. Such an approach is consistent with the UNHCR Handbook on the Procedures and Criteria in Determining Refugee Status which includes the following:

"190. It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs.

...

199. While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of

refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

200. An examination in depth of the different methods of fact-finding is outside the scope of the present Handbook. It may be mentioned, however, that basic information is frequently given, in the first instance, by completing a standard questionnaire. Such basic information will normally not be sufficient to enable the examiner to reach a decision, and one or more personal interviews will be required. It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings. In creating such a climate of confidence it is, of course, of the utmost importance that the applicant's statements will be treated as confidential and that he be so informed."

11. The initial interview referenced at para 199 of the Handbook would be akin to the detailed asylum interview ('AI') that generally takes place at a later date and well after the screening interview or 'initial contact and asylum registration form', more akin to the standard questionnaire at para 200 of the Handbook.
12. In KD (Sri Lanka) v SSHD [2007] EWCA Civ 1384, Moses LJ observed at [8]:

"No authority is needed for the proposition that one seeking refugee status is not expected, when first arriving, fully to set out his claim to asylum, although asylum seekers are expected to tell the truth and discrepancies can legitimately be deployed in the assessment of credibility (see *YL (China)* [2004] UKIAT 00145 at paragraph 19). But in the instant appeal the Immigration Judge was entitled to place weight upon the absence of any reference to detention and ill-treatment but one month before the appellant left Sri Lanka and the absence of any reference to the trigger for the series of events which were said to give rise to a well-founded fear of persecution in the future, namely, the discovery of weapons in a truck he had rented out."

13. In the appellant's case, the screening interview took place on 8 September 2016 at 4pm, after she brought herself to the attention of the authorities that morning having arrived in the UK illegally by lorry that day. Whilst it is correct that the applicant is told at the beginning of the screening interview that questions must be answered "*fully and truthfully*", this follows a very long passage of five paragraphs explaining the process in formulaic terms. Questions are then asked relating to personal details and identity, health/special needs, travel and third country, basis of asylum claim, criminality and security. At 4.1 under 'basis of asylum claim' the question reads as follows (emphasis reproduced as set out in the document):

“Please BRIEFLY explain ALL of the reasons why you cannot return to your home country?

Where applicable ask:

What do you fear will happen to you on return to your home country?

Who do you fear?

Why do you fear them?

When did this happen?”

14. At [194] the First-tier Tribunal concluded that “*due weight*” should be given to matters the appellant said or omitted from the screening interview. In so doing the First-tier Tribunal failed to place the screening interview in its proper context and erroneously treated it as a definitive document in relation to which complete accuracy was to be expected. No real consideration was given to the fact that the appellant had been travelling by lorry for many days at the behest of an agent and as a fatigued and bewildered woman in the UK for the first time may not have done herself justice within the narrow confines of the screening interview.
15. The First-tier Tribunal found that the appellant failed to mention a core aspect of her claim in response to the question at 4.1 of the screening interview. Her full response is as follows:

“I have a family problem in Iraq. I was in love with someone my family did not like but they told me they would kill me that’s why I left. If I return they will kill me”.
16. At Q132 AI, that took place on 25 September 2016, the appellant clarified that her family would not allow her to marry the man of her choice and expected her to marry a different man much older than her. At [99] and [100], the First-tier Tribunal concluded that the appellant might reasonably have been expected to have mentioned the forced marriage fear from the outset, at the screening interview, because this was a significant event leading to her departure from the KAA.
17. The appellant explained within the AI and her witness statement that she did not mention the forced marriage at the screening interview because she was told that she should not go into detail and she had explained why she left in brief terms, as instructed, as “*family problems*”. It is important to note that the forced marriage issue only arose in the context of the family disapproving of her relationship with another man i.e. she wished to marry one man and in response her family wanted her to marry a considerably older man, and the two matters were clearly linked and accurately summarised as “*family problems*”. Given the context of the screening interview, the First-tier Tribunal erred in law in considering it “*implausible*” at [115] that the

appellant omitted the forced marriage issue from the screening interview response because she was asked to only briefly set out her claim, and erred in law in concluding at [119] that this was sufficient to render the appellant's credibility "*suspect*".

18. At [109] the First-tier Tribunal acknowledged that the response to 3.3, an outline of the journey to the UK, may have been longer than the response to 4.1 because a number of follow-up questions appearing in italics may have been asked. The First-tier Tribunal failed to take into account that it is entirely unclear what, if any, follow-up questions were asked in relation to 4.1. The appellant clearly was not asked "*when did this happen*". The position in KD (Sri Lanka) (supra) can be distinguished. In that case the appellant wholly failed to make any reference to the trigger for the series of events which were said to give rise to his fears. By contrast, this appellant made clear reference to the trigger for her fears: family problems caused by her family's disapproval of the relationship she wished to have.
19. Adverse inferences were also drawn regarding the appellant's account of her journey between Iraq and the UK, because of inconsistencies between at 3.3 of the screening interview and what was later said at the AI. It is of significance that this journey was made illegally overland by lorry. It would be very difficult for the dates for the time spent in various countries en route to be precise. Indeed, the potential for mistakes with dates is demonstrated by the answer to Q153: this records the date she left Iraq to be 28 September 2016 when she was in the UK from 8 September 2016. The First-tier Tribunal also made a mistake of its own at [144] by recording the date of the appellant's statement incorrectly (2013 provided instead of 2017).
20. Further for reasons set out at [135] to [176], the First-tier Tribunal rejected the appellant's claim that she was misunderstood on peripheral matters (time spent in Turkey en route, who paid the agent for the journey, time spent in France en route) entirely unrelated to the substance of her claim, at the screening interview without considering that the interview was not read back to her and she was not given an opportunity to correct mistakes.
21. The conclusion that the First-tier Tribunal erred in its general approach to the screening interview is supported by the First-tier Tribunal's surprising findings in relation to a CID note apparently drafted earlier in the day of the screening interview. This states that the appellant was "*booked*" in and the interview started at 8.25 and finished at 8.30 on 8 September 2016. This note states that "*the subject has come to the UK as she loved a boy but her father and brothers refused him and threatened to kill her*". The First-tier Tribunal drew adverse inferences from this because the appellant later said that her father had died. The appellant's explanation that she did not and would not have referred to her father is rejected by

the First-tier Tribunal for a number of reasons that are difficult to follow. Contrary to what is said at [50] the appellant did set out in her statement what she said when she was booked in. The CID note simply records what is believed to have been said prior to the commencement of the formal process and given the absence of any evidence as to its accuracy, little weight should have been attached to it. The First-tier Tribunal considered it justified to attach weight to the contents of the CID note notwithstanding the weaknesses identified at [51] on the basis that the appellant said her father died in 2003 in the AI, and 2013 in the statement. Yet, no consideration has been given to whether the appellant should be given the benefit of the doubt that this was simply a typo or mistranslation.

22. Similarly, the First-tier Tribunal's disinclination to give the appellant the benefit of the doubt on even the most minor of matters, is demonstrated in the approach to a correction the appellant made during the course of the AI. At Q60 she was asked whether her mobile phone was 'contract' or 'pay as you go' and she responded that *"in Kurdistan they are all contracted"*. At Q61 she was asked *"so if it was a contract phone was there any mail sent to your address about this phone?"*. Her response was *"No I bought it and every time I need credit I would buy this. Sorry it is the other way around there is no such thing as contract in Kurdistan"*. Judge Devlin concluded at [67] that: *"clearly, the appellant's answer to Q60 of the asylum interview, cannot stand consistently with her answer at Q61"*. This finding is factually incorrect and perverse. When the responses are read together they are consistent. The appellant has made a simple mistake by the time she is being asked a question for the 60th time and immediately corrects that mistake when a follow-up question is asked. Given the immediate clarification, it was perverse to regard this as an inconsistent answer, in relation to which her simple explanation that she made a mistake was rejected at [70] to [75], and in relation to which the First-tier Tribunal was not prepared to give the appellant the benefit of the doubt ([192]-[193]).

Credibility findings generally

23. I acknowledge that the First-tier Tribunal provided other reasons for rejecting the appellant's account – see for example the summary at [195]. However, when reaching his conclusions on credibility from [188], he took into account and at [194] gave *"due weight"* to matters that did not necessarily reflect adversely upon the appellant's credibility for the reasons I have set out above. It is difficult to separate the findings infected by an error of law from other findings.
24. In addition, the First-tier Tribunal acted procedurally unfairly when considering the failure to provide corroborative evidence. The First-tier Tribunal directed itself to the absence of any requirement for corroboration of asylum claims but found that an absence of documentary evidence which might reasonably be expected, may

impact upon the weight to be attached to the oral evidence at [198]. The conclusion that the appellant might reasonably have expected to have produced a document from her cousin confirming her account of events [200] was not based upon any submission on the part of the SSHD. Indeed, both representatives checked and confirmed that at no stage during her interviews or at the hearing was the appellant invited to provide an explanation for her failure to obtain evidence from her cousin. The appellant was therefore not put on notice that such corroborating evidence would be important or was expected. She was given no opportunity to obtain it or explain why she could not obtain it. In these circumstances, it was procedurally unfair of the First-tier Tribunal to draw adverse inferences from the failure to provide this evidence at [202].

Country background evidence

25. My findings that the credibility assessment is flawed for the reasons outlined above is sufficient for the decision to be set aside and remade de novo. For this reason, I address the First-tier Tribunal's assessment of the country background evidence in brief terms. The First-tier Tribunal concluded at [281] that there are insufficiently strong grounds to depart from the country guidance in RG (Sufficiency of Protection-Honour Killings-KAA) Iraq CG [2002] UKIAT 05788 to the effect that honour killings are taken very seriously in the KAA, and the PUK /KDP are able and willing to protect those in fear of reprisals. In so doing, the First-tier Tribunal failed to take into account relevant evidence.
26. Although the First-tier Tribunal considered a Minority Rights Group International (UK) Ceasefire Centre for Civilian Rights report 'Lost Women of Iraq: Family based violence during the armed conflict' dated November 2015 at [240] to [257] and therefore in considerable detail, it failed to consider the large estimate on the part of the UN for the number of women said to be the victims of 'honour-based' violence at pg 22: 50 each month. This is said to be an underestimate as cases are not properly recorded and self-immolation is not necessarily included. The First-tier Tribunal has not reconciled its conclusion that the authorities are willing and able to offer protection with the number of victims being so high.
27. In addition, the First-tier Tribunal's analysis of the evidence relevant to shelters in the KAA at [255] to [256] is difficult to follow. The point made in the Minority Rights report and the US Country Report for 2016 is that the shelters emphasise family reconciliation and this plays an important role in women returning to dangerous situations and for that reason there are serious flaws in the shelter system. These serious flaws remain even absent evidence that women are directly coerced into returning to the families or are excluded from shelters.

Conclusion

28. For the reasons set out above, the First-tier Tribunal decision contains material errors of law.
29. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, I have decided that this is an appropriate case to remit to the First-tier Tribunal. This is because completely fresh findings of fact in relation to evidence from the appellant is necessary.

Decision

30. The decision of the First-tier Tribunal involved the making of a material error of law and I set it aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
11 January 2018