Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05611/2018

THE IMMIGRATION ACTS

Heard at: Bradford	**Decision and Reasons Promulgated**
On: 26th September 2018	**On: 16th November 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MM
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Ms S. Khan of Counsel instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1993. She appeals with permission the decision of the First-tier Tribunal (Judge Malik) to dismiss her protection and human rights appeal.

Anonymity Order

2. This case concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Matters in Issue

3. The basis of the Appellant's linked protection and human rights claims was that she faced a well-founded fear of persecution in Iraq for reasons of her membership of a particular social group, viz women. She claims to face a risk of forced marriage and/or 'honour' based violence at the hands of her father/brothers/other male relatives because they have discovered that she was embarking on a relationship with a boy that she met in a jewellery shop. It broad brush the account is that the Appellant met this young man when out shopping for gold with her cousins. He had kept looking at her and when she had returned to the shop some months later, had given her a mobile telephone. This enabled them to start speaking to each other and they subsequently met up. They had a relationship. It was discovered by the Appellant's stepmother, who reported the matter to her father. The Appellant was detained at the family home, subjected to days of beating and admonishment before being told that she was to be married to someone else. Fearing further violence and forced marriage the Appellant fled, sneaking out of the house in the middle of the night to meet her boyfriend.

4. The Respondent had refused her claim in a letter dated the 20th April 2018. The letter appears to accept [at 22] that women fearing 'honour' crimes can constitute a particular social group within the meaning of Article 1A(2) of the Refugee Convention, and that such crimes do occur in the Appellant's home region of Iraqi Kurdistan [at 27]. The Respondent was not however satisfied that the Appellant was telling the truth, and found there to be no current risk.

5. The First-tier Tribunal agreed with the Respondent and dismissed the appeal.

6. The onward grounds of appeal are as follows:

   i) The First-tier Tribunal erred in making unjustified criticisms of the Appellant's expert witness, and irrationally attached little weight to her opinion, which demonstrated that the claim was plausible and consistent with country background information;

ii) The First-tier Tribunal ultimately rejected the claim because it did not accept that the Appellant – a young Kurdish woman – would have behaved in the way that she claims to have done. It is submitted that this is irrational, and fails to take relevant evidence into account. Decision-makers should not base their assessments of plausibility on what they would have done in the same situation, or on what they think might be regarded as normal. The fact that young people in Iraqi Kurdistan are capable of disobeying their families' wishes is illustrated by the country background material on 'honour' violence.

Error of Law

7. The expert witness in this case was Ms Sheri Laizer, a journalist with a long-standing working knowledge of Kurdistan. She has been appearing before the Tribunal, and providing expert reports, for some 30 years. In this case she prepared a report which a) said that the Appellant's account was plausible in that it was consonant with Ms Laizer's knowledge of Kurdish society and b) that in her opinion the Appellant faced a well-founded fear of serious harm.

8. The First-tier Tribunal declined to place any weight on Ms Laizer's report. It gave several reasons for this, chief amongst these being Ms Laizer's failure to mention, on the face of her report, that her evidence had been subject to criticism by the Upper Tribunal in the country guidance case of SM and Ors (Kurds – Protection – Relocation) Iraq CG [2005] UKIAT 00111. The Tribunal found this failing to be inconsistent with the guidance given SD (expert evidence) Lebanon [2008] UKAIT 00078 that where experts cite approval by the higher courts they should also declare any disapprobation.

9. The grounds take issue with this analysis, pointing out that the duty on experts set down in SD only applies where the expert seeks to establish his or her credentials by reference to positive judicial comment on his or her work. In this case Ms Laizer made no such claims. She was not therefore under any obligation to mention a case in which she was instructed in 2005. The grounds further note that the case of SD had to be approached with some caution, since the expert instructed in that case, Dr Alan George, had on the basis of that decision successfully sued the Upper Tribunal for libel and had extracted a public apology.

10. I accept, for the reasons mentioned above, that Ms Laizer is not under an obligation to refer readers of her reports to the criticisms made in SM. To that extent the grounds are made out. The First-tier Tribunal was however entitled to have regard to the findings of the Upper Tribunal in that reported case, namely that Ms Laizer has a good deal of experience and first-hand knowledge of Kurdistan but in that instance her evidence lacked objectivity and betrayed a "partisan attitude". The HOPO before the First-tier Tribunal had specifically challenged Ms Laizer's objectivity

and to that extent the comments made in SM were plainly relevant to the Tribunal's evaluation of her evidence.

11. I struggle to see the relevance of any of this today, or why the Appellant's representatives considered an expert report necessary at all. That is because there was absolutely nothing in the factual background to this case that was in issue. It was accepted that young women in Kurdistan are subject to restrictive social norms rooted in a heavily patriarchal and tribal culture. These norms include forced marriage and domestic violence. It was accepted that 'honour' based violence is prevalent there, and that because of the aforementioned social norms, young women facing such violence will only face "limited" support from the authorities (paragraph 40 of the determination refers). These matters were accepted by the Respondent, and the First-tier Tribunal. As far as I can see the only information that Ms Laizer was able to add to that background picture was that the Appellant's tribe are powerful and well-known and have influence "throughout Kurdistan". As far as I can tell that objectively verifiable statement was not challenged by the Respondent; nor was it rejected by the Tribunal.

12. The real issue in this appeal is whether the First-tier Tribunal's credibility findings were sustainable. The First-tier Tribunal gives, at its paragraphs 41 (I)-(XII), a number of reasons why it rejects the Appellant's account. All are concerned with the plausibility of the account. The Tribunal found, in light of the Appellant's evidence about her strict family, it to be implausible that of the following would have occurred:

    i) That the Appellant would accept a mobile telephone from the boy if she had only seen him once before [at FTT reason I);

    ii) That she would have taken the risk of being in contact with this boy, nor he with she (II);

    iii) That the two of them would take the risk of meeting up on Fridays when the Appellant's family were at mosque (III);

    iv) That they would have done so in a public place (a local graveyard) when there was a risk that either or both of them would have been recognised if seen (IV);

    v) That they would have engaged in sexual relations, particularly since the Appellant can have had no legitimate expectation that they would be able to get married within a short time frame (V);

    vi) That the Appellant and the boy would risk being seen in a car together (VII);

    vii) Or that her stepmother would not have made her suspicions known to the Appellant's father as soon as they were raised (VII);

    viii) That having uncovered the affair her father and brothers would subject her to days of imprisonment and beating but not kill her, instead telling her that she would be married to someone else (VIII);

ix) That the appellant would have been able to keep the mobile telephone once the affair had been discovered (IX);

x) That the boy would not have immediately fled his home if he believed that the Appellant had been caught by her family (IX);

xi) That the Appellant was able to retrieve her passport and identity card and leave her family home undetected so as to meet with the boy (X);

xii) That the Appellant and her lover would have been separated in Turkey as claimed (she said that they had been placed in different lorries by the agents organising their journey) (XII).

13. In sum, the Tribunal rejects as implausible the evidence that the young couple would take the risk of contacting each other, meeting up, and having a relationship, that the stepmother might wish to collect more evidence before confronting the Appellant, or that she would be able to get away.

14. Before me Ms Khan accepted that decision-makers must take a common-sense approach to credibility, and that an important part of that assessment will be whether a claim is 'plausible'. She submitted however that plausibility is a matter to be assessed in light of the background evidence on the culture, or country in question. She submitted that since – it is accepted – the country reports on Iraq give various examples of young women being killed for perceived slights on their family's 'honour' in circumstances much the same as those narrated by the Appellant, it was wrong for the Tribunal to have found this element of the claim to be implausible. There was, she submitted, nothing implausible in two young people embarking on a forbidden relationship in the manner claimed, being caught and facing retribution.

15. I would have to agree. I accept that in its evaluation of whether it was 'plausible' that these events occurred the Tribunal does not appear to have given due consideration to relevant background material. In the Respondent's own Country Policy and Information Note *Iraq: Kurdish 'honour' crimes* (Version 1.0 August 2017) the sources cited uniformly identify illicit relationships as a trigger for 'honour' based violence:

> 7.2.3 A post dated May 2014 in Pass Blue, a blog which styles itself as 'Independent coverage of the UN' and is a project of the Ralph Bunche Institute, CUNY [City University of New York] Graduate Center, reflected the views of an anonymous man in Kurdistan, who previously worked for a women's empowerment centre:
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> '**Deviations from societal expectations regarding a girl's sexuality — like falling in love with a boy or a man** — are so unacceptable that the only way to redeem a family's honor is to kill the girl... '**Should she step out of line or do anything that makes her husband suspicious that she is being unfaithful, like talking with another man in the street**, it is his right to kill her.'

> 7.2.4 The source added: 'In our first interviews with the heads of several women's empowerment groups in this city...we were told that a woman **could be killed by her own family just because she fell in love** or she wanted to go to school.'
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> 7.2.7 A joint report between Minority Rights Group International and Ceasefire Centre for Civilian Rights, dated November 2015, stated: '''Honour' crimes are grounded in the cultural belief that women's bodies are the site of honour and that their sexuality and movement must be strictly controlled in order to avoid bringing dishonour upon the entire family... '**'Honour' crimes are most often perpetrated after a woman has committed or is suspected of committing any of the following: engaging in friendships or pre-marital relationships with a member of the opposite sex; refusing to marry a man chosen by the family**; marrying against the family's wishes; committing adultery; or being a victim of rape or kidnapping...
>
> 7.3.4 In a post dated May 2014, Pass Blue noted that 'honour' killings and 'honour' suicides are 'continuing in Kurdistan if not on the rise, some people say'. It continued: 'In Kurdistan, the UN estimates that the number of honor killings might be as high as 50 each month, and that most of the deaths go unreported. One reason that they continue to be a leading cause of death for women may be the increasingly oppressed position of women in Iraqi society.'

16. The fact that these crimes are committed with such frequency would tend to indicate that some women (and young people generally) do take the very risk regarded by the First-tier Tribunal as implausible. I am therefore satisfied that the First-tier Tribunal erred in failing to take relevant country background material into account in assessing whether this claim was, at its core, plausible.

17. Before me Mr Diwnycz accepted that the Tribunal had not made its assessment against the background material. He agreed that there was nothing inherently incredible, or implausible, in the Appellant's account. There was for instance, nothing particularly startling in the Appellant's evidence that she had been able to secrete the mobile telephone in her room.

18. The error identified going to the central findings on risk, I must set the decision of the First-tier Tribunal aside.

The Re-Made Decision

19. I have taken all of the Appellant's evidence into account. I have re-read her interviews, her witness statement and the record of proceedings.

20. The Appellant failed to claim asylum in safe third countries that she passed through, including France. I note her evidence that she did have contact with the police in France, who gave her a paper stating that she was to leave the country within seven days, but she does not state in

terms that she attempted to claim asylum there. She states that it was her belief, based on what she was told, that the French authorities do not like Iraqi asylum seekers. That she failed to claim asylum there is a matter that must weigh against her claim to have a subjective fear of persecution: section 8 of the Asylum, Immigration (Treatment of Claimants etc) Act 2004.

21. I find the Appellant's evidence about events in Iraq to be straightforward and coherent. The only internal discrepancy identified by the Respondent is in respect of the dates when the Appellant left Iraq and arrived in Calais for onward travel to the United Kingdom. Whilst he did not resile from the refusal letter, Mr Diwnycz accepted that on a long journey by land and sea, undertaken over several weeks, it is possible that people would become confused as to how much time had passed. The refusal letter also takes issue with the Appellant's evidence that she was able to go shopping whilst her family attended mosque on Fridays, and it was during these trips that she was able to see her boyfriend. I cannot see where the difficulty lies with this evidence. The Appellant's father was an Imam and as such it was important that all the male members of the family attend Friday prayer with him. It is the Appellant's evidence was that as a young unmarried woman it was not considered appropriate for her to attend mosque, even though ideally her father would have liked it if she were able to come with him. I can find no contradiction in that statement. That the Appellant's evidence is internally consistent – when told over two asylum interviews, witness statement and live evidence - is a matter that weighs in her favour.

22. As set out above, I find that the Appellant's evidence is plausible, in the sense that it is an account that resonates with the country background material. Young people in Kurdistan operate under restrictive social norms, and yet they do on occasion manage to circumvent those restrictions and form relationships outside of their family environment. That the Appellant's account is consistent with the available country background material is a matter that weighs in her favour.

23. I have considered whether it is plausible that *this* young woman would have behaved in the way that she claims to have done. The First-tier Tribunal placed particular emphasis on the fact that she was a daughter of a religious and tribal family, and considered that she would, in those circumstances, be unlikely to disobey her family. I have weighed that in the balance, but again this logic does not appear to accord with the background evidence on human rights abuses against women: it can be assumed that those families who feature in the statistics on 'honour' based violence are not liberals. I further place weight on the fact that the Appellant is here at all: that this young woman has undertaken the perilous journey from Iraq to the United Kingdom, including a stay in the Calais camps, speaks to a certain degree of recklessness. That her claimed behaviour in Iraq is consistent with her personality is a matter that weighs in her favour.

24. I find the Appellant's evidence to be cogent and to contain a level of detail indicative of recollection rather than invention. For instance at her asylum interview she explained to the officer why the impending marriage to the man chosen by her father compelled her to leave. She explains that she knew this man because their families were friends – he was the son of another Imam. He had been married previously but his wife had died. The Appellant was afraid and did not want to marry him because she had heard rumours from neighbours that this man had in fact killed his first wife, murdering her by setting her on fire. That the account is detailed is a matter that weighs in the Appellant's favour.

25. Having weighed all of those matters in the balance I am satisfied, on the lower standard of proof, that the events described by the Appellant did take place.

26. There is no dispute that violence against women who are perceived to have tainted the 'honour' of their family continues to be a significant problem in Iraq, and in the Kurdish region in particular. Evidence relied upon by both parties indicates that 'honour' killings are taking place in the IKR at the rate of 50 per month (see UN estimates cited at 7.3.4 of the CPIN). The Appellant has already faced serious violence and threats from her family. I accept that her actions in leaving, and on the face of it eloping with her boyfriend, will have significantly increased the risk to her person. Her family had hoped to deal with her behaviour by having her married to a man of their choosing. Now that she has rejected that marriage I find that the risk of her being killed by her family has substantially increased. I am satisfied that the Appellant cannot return to her home area Sulaymaniyah because she continues to face a well-founded fear of serious harm there.

27. I am satisfied that such harm would constitute persecution for reasons of her 'membership of a particular social group'. That group could, in the context of Iraqi Kurdish society, be defined as 'women' but for the purpose of this decision I adopt the Respondent's definition at 2.2.1 of the 2017 CPIN: "victims or potential victims of 'honour' crimes".

28. Mr Diwnycz did not seek to persuade me that there would be a sufficiency of protection for the Appellant. The Respondent's position is that although the government in Erbil recognises gender-based violence to be a problem, and has implemented some measures to tackle it, at present it remains unwilling to address the issue by providing effective protection: see 2.4.2 CPIN. This conclusion accords with the view expressed by human rights organisations and other governments. The US State Department, for instance, do not regard the since government-operated shelter in the IKR as providing protection, since the goal of staff is to facilitate 'reconciliation' and return women to their families.

29. Nor did Mr Diwnycz submit that internal flight would be a reasonable option for the Appellant. The Respondent accepts that a lone woman without family support would not be able to lead a 'relatively normal life'

elsewhere in Iraq: see for instance paragraphs 49, 56, 65 and 129 (a) of AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212.

30. It follows that the appeal must be allowed on protection and human rights grounds.

Decisions

31. The determination of the First-tier Tribunal is set aside for error of law.

32. I re-make the decision in the appeal by allowing the appeal on all grounds.

33. There is an order for anonymity.

Upper Tribunal Judge Bruce
dated 28th September 2018