



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

Appeal Number: PA/01605/2019

THE IMMIGRATION ACTS

Heard at Field House

On 14th August 2019

**Decision & Reasons
Promulgated**

On 4th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR ARI MUSTAFA ABDULLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharif, Counsel

For the Respondent: Mr Avery, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a citizen of Iraq (born 29th March 1995) appeals with the permission of the Upper Tribunal against the decision of a First-tier Tribunal (Judge Caswell) in which it dismissed the Appellant's appeal under

the Refugee Convention but did allow the appeal on humanitarian protection/Article 3 grounds.

Background

2. The Appellant's claim to protection was set out by the FtTJ as follows:

"4. He was born in Raniya, near Suleimanya, in the IKR of Iraq. He is a Sunni Kurd. His father was and is a Brigadier in the peshmerga, and very influential. The Appellant had two brothers, Aso and Akar, and a sister. His mother was the first wife of his father, Mustafa Abdulla, but his father also had a second wife, and a child or children by her. The Appellant was educated to Grade 6, and then did some building work. When he was around 17 years old, his father gave him the job of peshmerga in the house, guarding him. This was largely to give him a wage.

5. One day in January 2016, early in the morning, an argument developed between the Appellant's two brothers and their father. This was over his treatment of their mother, failing to support her financially. He was favouring his second wife over her. The Appellant's father used to drink heavily and was prone to rages. The Appellant was not in the room at the time, but overheard the argument. He heard one of his brothers insulting the second wife. Then he heard shots. He ran into the room, and saw his father had shot his brothers dead. His sister, who was not in the room, was also injured in the shooting, but the Appellant ran away and escaped, when his father appeared to be coming after him to kill him as well."

3. The Appellant's claim is that he made his way to an uncle's home. With his uncle's assistance he left Iraq travelling through various countries including France where he remained for 3-4 months. He arrived in the UK clandestinely in July 2016 and made a prompt claim to asylum. The basis of his claim was that he feared that if returned to Iraq his father would kill him.

4. The Respondent refused the claim. The Respondent's case in summary has always been the following:

- the Appellant's account of the circumstances in which he says he was forced to flee Iraq were not credible; and
- in any event even if credible, his claim did not fall within the terms of the Refugee Convention

5. The Appellant appealed the Respondent's refusal to the First-tier Tribunal.

The First-tier Tribunal Hearing

6. The Appellant's case came to be considered by Judge Caswell. The Appellant attended and was represented by Counsel. In her decision, the judge set out the Appellant's case and noted the Respondent's case as above. She noted that the central issue before her was one of credibility.

The Appellant's case relied almost solely on his own account although the judge noted an untranslated copy document apparently showing a news article that the Appellant's father was being sought by the authorities for the murders of his two sons [31]. Having analysed the Appellant's account, over several lengthy paragraphs, the judge said at [34]:

"In summary the Appellant gave reasonable explanations for all the points made by the Respondent. I find that his account has in general terms been credible, coherent and consistent. I find that it is supported to some degree by the documents he has put forward. Applying the lower standard of proof, I find the Appellant to be a credible and reliable witness and I accept his account."

7. At [36] the judge said the following:

"I was not addressed on the issue of whether there is a Convention reason in this appeal. The refusal letter claims that none is disclosed on the facts of the Appellant's case, and I agree. In conclusion, the Appellant is not a refugee, but faces a real risk of serious harm under the Directive if returned to his country, and also of treatment breaching his Article 2 and 3 rights. I allow the appeal."

8. She then dismissed the appeal on asylum grounds but allowed it on humanitarian protection and human rights grounds.

Onward appeal

9. The Appellant sought permission to appeal to the Upper Tribunal. There was one ground only advanced when seeking permission. It was asserted that the FtTJ had made a material misdirection in her decision because she had failed to give adequate or proper reasons as to why the Refugee Convention was not engaged. It was contended in the grounds that the Appellant's fear was on account of his membership of a particular social group.

10. Permission was refused in the First-tier Tribunal. The Appellant renewed his application for permission to the Upper Tribunal on precisely the same grounds as those refused by the First-tier Tribunal. Permission was granted in the following terms:

"It is arguable that the family unit is a PSG. The Appellant's claim of fearing his death at the hands of his father, who had killed other siblings of the Appellant or threatened the Appellant may engage the Refugee Convention, notwithstanding the Respondent's view; RFRL 140 - 141.

The Judge's findings [D30, 35] on the Appellant's credibility may support the claimed risk the Appellant would face from '... his father or the authorities under his father's direction in the IKR ...' [D35].

It is arguable the Judge made a material error of law on the Convention reason [D36]."

11. The Respondent served a Rule 24 response opposing the application. Thus the matter comes before me to determine if the decision of the First-

tier Tribunal contains such error of law that it requires to be set aside and remade.

Error of Law Hearing

12. Before me Mr Sharif appeared for the Appellant, Mr Avery for the Respondent. At the outset of the proceedings I asked Mr Sharif to address me on [36] of the judge's decision where, as set out above, she states that she was not addressed on the issue of whether there is a Convention reason in this appeal. I asked if he had any information such as Counsel's note to help explain this. He was unable to assist on this point other than to say that the judge had not made an explicit finding that this point had been conceded by the Appellant. In any event, permission had been granted in response to the grounds put forward.
13. Mr Sharif's submissions in essence relied upon the grounds. He said that a family unit is capable of being a particular social group and referred me to [30]. Drawing on the grounds, he submitted that the judge had accepted that there was a real risk of the Appellant suffering serious harm at the hands of his father and had made a finding that that it was not implausible that the Appellant's father might want to kill him to keep him from avenging his brothers' deaths. This, he said, would bring the Appellant into the Refugee Convention as a member of a PSG.
14. Mr Avery on behalf of the Respondent referred to the Rule 24 response. The Respondent's case had always been that the Refugee Convention was not made out. The judge gave adequate reasons for allowing the appeal on humanitarian protection grounds, the Appellant's case being that he fears his father and, as the judge found, his lack of documentation would place him at risk on return to Iraq. The FtTJ has made no material error in agreeing with the Respondent's position that there was no Convention reason, as set out in the reasons for refusal letter. The decision should stand.
15. At the end of submissions I reserved my decision which I now give with reasons.

Consideration

16. I start my consideration from an examination of the grounds which were put forward seeking permission. The main criticism made of the judge's decision centres on saying that she has in some way sidelined the Appellant's claim under the Refugee Convention because she failed to give reasons why the Appellant did not benefit from that Convention. The grounds contend that the Refugee Convention was pleaded in the original Grounds of Appeal and the skeleton argument put before the FtTJ at the hearing. In fact as the First-tier Tribunal refusing permission pointed out

neither of these documents identified the particular social group of which it was said the Appellant was a member. In other words at that stage the claim of membership of PSG was a generalised one only.

17. The concept that the Appellant's claim is one which arises as a result of an honour killing/blood feud seems to have come about by a remark made by the judge at [30]. This reads as follows:

“It is correct that the Appellant cannot explain how he came to escape from his father, but his account is that he ran out straight away, and that there were neighbours gathering round, having heard the shots. It is not implausible that his father would have less opportunity to shoot him than he had to shoot his brothers. Mr Hunt-Jackson [HOPO] has argued that the Appellant has not shown why his father would want to kill him, since he was not a party to the argument. The Appellant explained that his father was a heavy drinker, and that he had rages when drunk. Further, as Mr Hussain [Counsel for the Appellant] has pointed out, there is a culture of blood feud and honour crimes in the IKR. Given this, it is not implausible that the Appellant's father might want to kill the Appellant, to keep him from avenging his brothers' murders.”

18. It appears to me that, only once the grounds seeking permission were drafted, did it emerge that what is now being detailed and argued on the Appellant's behalf is that the Appellant is a potential victim of an honour killing/blood feud. A number of points arise from this.
19. As I read the relevant part of [30] it appears that somewhere in his submissions, Mr Hussain has introduced the concept that there is a culture of blood feud and honour crimes in the IKR. There then follows the next sentence which says, “Given this, it is not implausible that the Appellant's father might want to kill the Appellant, to keep him from avenging his brothers' murders.” I find it unclear from that text whether the judge was simply recording a further statement made by Mr Hussain, which she was willing to accept, or if she was expressing an opinion of her own. In any event, the statement is highly speculative, being based on supposition and not on any identifiable piece of evidence. As such I find that it cannot be taken to constitute a clear judicial finding.
20. The evidence does not show that the Appellant had, up to the point of the FtT hearing, advanced a claim that he was the victim of a blood feud or an honour crime. Moreover as far as I can see, the Appellant has never expressed a claim that he thought his father might want to kill him in order to prevent him avenging his brothers' deaths.
21. The circumstances of this case bear none of the hallmarks of a blood feud or honour crime. The evidence contained in the Appellant's claim surrounding the deaths of his two brothers signifies a loss of control on the part of his father during a family argument. Horrific as the events are, they arise from an intra-family argument which enraged a man capable of killing his own sons. It has always been the Appellant's claim that he feared his father for the same reason.

22. Even if evidence were to be adduced to show that the Appellant's father feared that the Appellant wanted to avenge his brothers' murders, this would still not demonstrate a blood feud or honour crime. If he wanted to kill the Appellant as a result, his motivation would be that of self-preservation rather than as a result of a blood feud.
23. Mr Sharif submitted that the Appellant could be brought into the Refugee Convention as a member of a PSG, as a result of being a member of his family unit. However the evidence in this case is that any conflict that exists lies between two individuals (the Appellant and his father) as a result of exceptional circumstances (the Appellant's witnessing his brothers' murders). I find that this cannot amount to membership of a PSG.
24. It follows therefore that I am satisfied that the FtTJ was correct in her conclusion that the Appellant did not fall within the terms of the Refugee Convention. That is the only matter which was in issue before me. The Respondent accepts that the FtTJ's decision gave adequate reasons for her findings leading to her decision to allow the appeal on Humanitarian Protection grounds. It follows that for the above reasons the Appellant's appeal is dismissed. The decision of the FtTJ stands.

Notice of Decision

This appeal is dismissed. The decision of the First-tier Tribunal promulgated on 28th March 2019 stands.

No anonymity direction is made. I was not asked to make one.

Signed
September 2019

C E Roberts

Date 01

Deputy Upper Tribunal Judge Roberts