



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

Appeal Number: PA/11868/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 14 May 2019**

**Decision & Reasons Promulgated
On 04 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR. R O R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Brakaj, Counsel.

For the Respondent: Mrs R Petterson, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who made an application for international protection. It was refused and following a hearing, and in a decision promulgated on 20 December 2018, his appeal was dismissed on all grounds by Judge of the First-tier Tribunal Buchanan. The Judge found that the Appellant had given discrepant evidence. He concluded at paragraph 29 of his decision that the Appellant was not a credible witness and that he had not been truthful about the circumstances which led to him leaving Iraq. Everything pointed to the Appellant being an economic migrant from that country whose departure from Iraq on 20 October 2015 was planned in advance and was not related to the matters alleged by the Appellant.

The Appellant had not established, even to the lower standard of proof, to which he is subject that he would be at risk if returned to Iraq by reason of the threat of honour killing or by reason of threat from ISIS. The Judge acknowledged that that was not the end of the matter though and went on to consider the issue of internal relocation and sufficiency of protection. He concluded that the Appellant came from the area of Iraq from which he departed namely the KRI itself and also, in case he was wrong on that finding, he assessed the matter as if the Appellant had established that he comes from Kirkuk which lies in the Governate of Kirkuk.

2. The Appellant sought permission to appeal against that decision. It was granted by Judge of the First-tier Tribunal E M Simpson in a decision dated 5 February 2019. Her reasons for so granting permission were: -

“1. The appellant born on 01/08/1991, a national of Iraq, applied for permission to appeal, in time, concerning the decision of First-tier Judge AM Buchanan promulgated on 20/12/ 2018 (the Decision) dismissing the appeal on all grounds, asylum, humanitarian protection and human rights, Arts 2, 3, 8.

2. *Permission to appeal is granted because:*

(i) credibility was at large in the appellant’s asylum appeal in which he claimed to be a Kurdish Muslim originating from Kirkuk who had fled Iraq following marrying A, a Christian, who was subsequently killed by her family, and if returned he feared A’s family & his family, because he was at risk of honour killing, and also feared ISIS who had attempted to recruit him;

(ii) there was asserted in the permission grounds that on 09/03/2017 the Respondent had withdrawn the asylum decision in the appellant’s original appeal to investigate the appellant’s time in France, but upon the respondent issuing a subsequent decision on 26/09/2018 that that decision had been similar to the previous decision, and furthermore made no mention of HO investigations concerning the appellant’s time in France;

(iii) upon commencing judicial findings on credibility, there was cited at the outset that the evidence of the appellant giving a false name in France showed him to be capable of lying and that this was “not the action of a genuine asylum seeker” (26.1). Having read the Decision carefully there was not discerned that this matter of which the appellant had disclosed to the UK authorities, at the outset, in his screening interview (Al .3) was in contention either in the respondent’s decision, or in cross examination at the hearing or by way of clarification by the Judge during the hearing. If a matter of an order of material concern arguably fairly there would have been incumbent upon the judicial decision maker to have raised this at the hearing with the

representatives for either of them to raise in examination of the appellant or on the part of the Judge themselves by way of clarification to ensure the appellant was afforded fair opportunity to provide his explanation;

(iv) equally of arguable materiality there appeared that judicial assessment of the plausibility / credibility of the appellant's accounts of the number of proposals that he and his family made to A's family, their subsequent secret marriage having been known to some members of the family but not the rest, and A's family not suspecting risks of elopement of their daughter, together appeared bound by assumptions arguably devoid of a working understanding of differing cultures, more particularly, those in which honour of the family looms large (26.2-26.4) as equally arguable could be observed for materially differing reasons concerning assumptions concerning actions of an appellant who described having fled when faced by a large crowd on returning to their home and learning that his pregnant wife had been killed by her family who in his asylum interview described having "chickened out" (AIR, 122) (26.6);

(v) remaining permission grounds concerning matters of credibility findings appeared equally arguable;

*(vi) there appeared that the appellant had consistently claimed that he came from Kirkuk, a contested area outside IKR, and that he had spent time in Mosul and Erbil, however in the first instance there was determined in the Decision that he had come from the area in which he had departed, the KRI, but arguably without reasoning. Furthermore, though appearing to have regard to country guidance, including more recent, **AAH (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212 (IAC)**, more especially, with reference to issues with documentation, arguably, as asserted, there was not materially addressed the question whether he could be reasonably expected to return to Kirkuk or relocate.*

3. Arguable material error(s) of law disclosed."

3. Thus, the appeal came before me today.
4. Mrs Brakaj relied upon her grounds seeking permission to appeal which she duly expanded. Her initial broad point is that the Judge's findings fail to take into account or fully appreciate the evidence given and take immaterial factors into account too. The findings require corroboration without considering whether such documentation could reasonably be obtained. Mrs Brakaj's first substantive ground is that at paragraph 26 of the decision the Judge has found that the Appellant is capable of lying by reason of having given a false name in France en route to the United Kingdom and that he concluded "that it is not the action of a genuine

asylum seeker". Mrs Brakaj argues that it is unclear how determinative this has been over the claim as a whole, however such a statement is wide ranging and has the potential to be determinative of the claim as a whole. This is the starting point of the findings and no alternative is considered when reaching such a conclusion. The Appellant had been open about this aspect of his case, had not concealed it and presented a witness and evidence of his activities in France whilst the Respondent presented no further submissions on the point.

5. Counsel's second ground relates to the Judge's consideration of the proposal of marriage and contends that the Judge has failed to appreciate the evidence given. Contrary to the Judge's findings she maintains that there is no inconsistency within the Appellant's evidence and that it was not open to the Judge to find implausibility about the number of marriage proposals made in 2012 between the start of the year until March when marriage occurred. She asserts that there is an impossibility in understanding why two formal proposals and informal proposals could not be made within a three-month period. Further, again contrary to the Judge's findings, there is no inconsistency between the marriage being kept secret but that the Appellant's cousin and mother were aware of it. The Judge's findings at paragraph 26.4 of his decision presume that other family would suspect that their daughter would elope. However, there is no basis for such a finding and that this fails to consider the claim by the standards of Iraq where the family may not consider that their daughter would act in such a way. The fact that there were proposals made does not indicate in any way that the family should have been suspicious toward the Appellant; the evidence suggests that a family would receive proposals for marriage in respect of their daughter, but the assumption and expectation would be that there would have been no direct contact. The strict moral code prevents such contact and provides for peace of mind of families, especially those with "eligible" daughters. The Judge's decision fails to appreciate this.
6. Thirdly the Judge has again materially erred in concluding at paragraph 26.6 of his decision that the Appellant's actions in fleeing Iraq are those of someone who has planned his journey. Had the Appellant not fled as soon as possible an alternative version could be said to be incredible in that he did not flee at the first opportunity. Further, the Judge has erred in questioning why the family could not locate the couple in Mosul but located quickly in Erbil. The Judge has also failed to consider the situation in Mosul at the time that the couple left. There would be clear motivation to leave when large portions of the population were leaving for their own safety.
7. Fourthly, it is argued that the Judge has erred in seeking corroboration and that there is an expectation that a death certificate and marriage certificate should be provided in evidence.

8. Finally, it is argued that even if not considered to be credible, the Appellant is from a contested area outside the IKR. There has been no consideration to the authority of **AAH (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212 (IAC)** as to whether he could be expected to return to Kirkuk or could internally relocate taking into account his individual circumstances.
9. Mrs Petterson's broad submission is that the Judge had come to conclusions that were open to be made on the totality of the evidence and has not materially erred as asserted by her opponent.
10. The procedural history of this appeal is that the Appellant's initial claim was rejected but the Respondent withdrew the decision on the day of his appeal hearing on 9 March 2017 to investigate the Appellant's activity during his time in France. A new decision was not made until 26 September 2018, but this made no mention of any investigation or findings and was to all intents and purposes similar to the earlier decision. At paragraph 26.1 the Judge has found that the Appellant has shown himself to be capable of lying to the authorities when in France and making use of a false name as stated in his screening interview. It was open to the Judge to conclude that that was not the action of a genuine asylum seeker. Mrs Brakaj argues that it is unclear how determinative this finding has been over the claim. On any reading of the decision it is but one factor that the Judge has taken into account, having considered the totality of the evidence in the round, before coming to his overall conclusion that the Appellant has provided discrepant evidence and is not a credible witness. The Judge has not taken this finding in isolation and has subsumed it into his overall credibility findings. Ultimately this finding sits well with those made within paragraph 28 of the Judge's decision when he considers Section 8 of the 2004 Act and the failure of the Appellant to take advantage of a reasonable opportunity to make an asylum claim whilst in a safe country. Before arriving in the United Kingdom on the Appellant's own evidence, he spent a considerable time in France. He was arrested there and held in custody and it was open to the Judge to factor this into his credibility assessment when looking at the totality of the evidence.
11. I am not persuaded that the Judge has either a disbelieving attitude or that he has misunderstood the evidence. Throughout paragraph 26 of his decision and the eight sub-paragraphs the Judge has identified the "several troubling inconsistencies with the various accounts of the Appellant" in his screening interview, interview, witness statements and oral evidence. The Judge has gone on to identify gaps in that evidence which appear neither plausible nor credible. In so doing the Judge has set out the arguments for and against the Appellant's position and, as I say, was entitled to look at the issue of the false name given in France, even if the Respondent had not taken the point. There is nothing within the Judge's analysis to suggest that he has misunderstood the issues around the Appellant's marriage proposal. They have been carefully analysed as

has the issue of locating the couple in Mosul and Erbil. The Judge has considered these issues within the context of the background evidence before coming to conclusions that were open to be made. It was open for him to conclude at paragraph 26.6 of his decision that the events described by the Appellant lacked credibility and were consistent only with his departure from Iraq being planned well in advance.

12. Both representatives accepted that at paragraph 26.8 of the Judge's decision there was a typographical error and that the word "not" had been omitted from the second sentence. It should read "There does not need to be any documentation...". On any reading of this decision the Judge has not sought documentary corroboration of the Appellant's claim. Indeed, quite the opposite.
13. These grounds are no more than a dispute with the Judge's findings. The findings were open to be made on the totality of the evidence and the Judge has not materially erred as asserted.
14. Likewise, again contrary to the grounds, the Judge has considered the authority of **AAH** and to whether or not the Appellant could be expected to return to Kirkuk or could internally relocate in light of his individual circumstances.
15. There is here no material error of law whatsoever.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision but order that it shall stand.

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

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.

Signed



2019

Date: 31 May

Deputy Upper Tribunal Judge Appleyard