Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04797/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 February 2020	**On 19 March 2020**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

KH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Alban, Fountain Solicitors.
For the Respondent: Mr Mills, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Iraq who made an asylum claim on arriving in the United Kingdom on 13 December 2018. His claim was refused and he appealed to the First-tier Tribunal. His appeal was heard by Judge Woolley and dismissed in a determination sent out on 15 October 2019.

He now appeals to this Tribunal on grounds drafted by Ms Alban who has expanded on them before me today. Permission was granted by Judge Macdonald in December 2019.

2. The appellant claims to have been in a relationship with a girl called Sumaya whom he met at school. That was a secret relationship until Sumaya's cousin saw them together. At that point members of the appellant's own family went to Sumaya's family to ask for her hand in marriage. The family is said to be a powerful one in the region and it is said that Sumaya's father is an important member of the PUK with regional power attributable to that. The application for marriage was refused. That was in about 2015 or 2016. The relationship continued, because it could continue at school, and because Sumaya and the appellant were in contact by telephone; a telephone which belonged to Sumaya's mother. The appellant was injured when a car was driven at him in November 2017. That is attributed by the appellant to being a deliberate attack by Sumaya's family on him. The relationship culminated in an incident on 26 October 2018. The appellant says that he visited Sumaya when she was at a relative's house. He was drunk. They had sexual contact. They were surprised and he escaped but she was killed. His own family were angry with him but his father and paternal uncle made arrangements for him to leave Iraq. He now fears that if he returns he will himself be in danger as the potential victim of an honour crime and that, because his former girlfriend's family are powerful within the PUK, there will be a lack of protection if he is at that risk.

3. The respondent, in refusing the appellant's claim had indicated that very little of what he said about the details upon which he relied was accepted. When the matter was listed for hearing standard directions were sent out: but it was only on the day before the hearing that the appellant sought to support his claim by what were said to be court documents from Sulamaniyah. They consist of a number of sheets of paper with Arabic writing on them, each of which has the same stamp. The documents produced were the originals. They were accompanied by a witness statement in rather general terms about what they might be. The Secretary of State took custody of the original documents and was directed by the judge at the time "to provide a supplementary report/decision dealing with the validity or allowance of the document produced at court today", and it was directed that the matter be relisted.

4. In due course the respondent made what enquiries could be made about them. Resources available in the United Kingdom merely indicated that there was no feature of them enabling authenticity to be confirmed here. There was then the possibility of looking abroad, and the Home Office indicated that enquiries could be made but the Iraqi authorities might take six to twelve months to indicate a reply and no reply could be guaranteed in any event. That was the state of affairs when the matter came before Judge Woolley at the hearing to which I have already referred. Judge Woolley's conclusion on examining the documents, and reading or examining the copies of the documents, the Secretary of State having

retained the originals, and examining also the translations was that he was not prepared to place any reliability on the documents or their contents.

5. Ground 1 of the grounds of appeal relates to that matter. Ms Alban submits that the Secretary of State had an obligation or burden in relation to the documents. She derives that proposition from the decision of the European Court of Human Rights in Singh & Others v Belgium (Application No. 33210/11) as expounded by the Court of Appeal in PJ (Sri Lanka) v Secretary of State [2014] EWCA Civ 1011. She says that in the circumstances the authenticity of the documents as court documents should have been accepted by the judge and that the judge was in those circumstances not entitled to take the view that they were not established as authentic.

6. Be that as it may, the judge did look at the contents of the documents and examined the other evidence supporting the appellant's claim. The judge's conclusion was that the appellant's story was not the truth. The judge's comments on the evidence before him and his analysis of it occupy paragraphs 43 to 52 of the decision. The judge notes a number of apparent inconsistencies in the story at various stages. The judge first of all notes that the appellant's account is that in a longstanding relationship which had been formerly rejected in 2015 or 2016 and in which the underlying motive of the account is the girl's parents' traditional protection of her virtue. Nevertheless, the girl was allowed to continue to go to the same school as the appellant, that she would evidently have contact with him there, and not only that, but that according to the appellant she did have contact with him very regularly by telephone two or three times a week using her mother's phone. The judge expresses the view that that is not the way in which the country information indicates that traditional Kurdish families behave but also that this is not a very obviously consistent account of the family's own activities.

7. Secondly, the judge notes the evidence about the appellant's assertion that he was attacked in November 2017 by being run over in a car driven by members of the girl's family. I will look at that in a little more detail in a moment.

8. Thirdly, and not the subject of any challenge by Ms Alban on the appellant's behalf, the judge noted substantial inconsistencies between the accounts given by the appellant at various stages of what happened on the night of 26 October 2018 which he says was the culminating event of the relationship. There are also substantial inconsistencies in the various accounts he gave particularly of his own departure from the scene and in due course from the country as well. Meanwhile the accounts that he gave are not consistent with the accounts given in the various supposedly court documents. On those points, the grounds of appeal assert first that the judge erred in reaching conclusions about the way in which the girl's family would have behaved if they were a traditional Kurdish family based on the country information, and that the judge erred in his assessment of the evidence of the incident with the car. As I have

said, there is no challenge to the judge's indication of the inconsistencies in other parts of the story.

9. The other two grounds of appeal apply only if the appellant's account is or may be the truth. It is alleged that the judge erred in his assessment of the possibility of relocation and of risk in Baghdad as part of the process of return.

10. I turn then to look at two specific grounds to the challenge to the judge's credibility findings. The first relates to the modalities of the relationship during the time when it took place. The judge says that bearing in mind what has happened:-

> "If the family had rejected the marriage proposals of the appellant it is not consistent with the tight control which traditional Kurdish families (as the appellant says this was) have over young women that Sumaya was still being allowed out on her own so as to be still able to meet the appellant, or that she was still allowed access to a phone so as to be able to contact him."

The judge goes on at paragraph 44:-

> "After Sumaya and the appellant were discovered in November 2017 they were still able to keep contact, and Sumaya was still allowed to go to the same school as the appellant. Her family must have been aware that they would still be able to see each other there. The inconsistency of this was put to the appellant at Q59 [that is to say of his asylum interview] and he answered "she said she was allowed to go out but had to go back quickly". I find this answer to be disingenuous. If she was allowed to go to school then her family would have known should would be there for a considerable time each day, and in that time that she would have the opportunity of seeing the appellant."

11. The judge's conclusion is not based solely on generalities about Kurdish families. It is based also on a common sense approach to the appellant's evidence. It seems to me that there is no error in either of those features. A traditional Kurdish family might or might not behave in the way that any other traditional Kurdish family does, but what is clear is the control over women exerted by the traditional Kurdish family does not appear to be a control exerted by the family of the appellant's friend. However, what is clear is that the family did behave in a particular way, that is to say, they allowed her to go to school, the same school as the appellant, where to their knowledge the appellant was, and was interested in her, and, what is more the two of them, that is to say the appellant and the girl, had regular contact using the girl's mother's telephone. That despite Ms Alban's assertion that there was no reason that the mother should have known what calls were being made from her own phone essentially does throw considerable doubt on any suggestion that the relationship was secret from the girl's parents.

12. The second point of credibility relates, as I have said, to the car incident. The position here is this. When the appellant was subject to a preliminary

screening interview he said that the car was driven by or that the incident was the responsibility of the girl's family. At his preliminary questionnaire he said that the car was driven by the brother and cousin of the girl. At his fuller asylum interview he was asked at question 6: "Were there any other people there", and he said this: "It was in the afternoon". He was asked: "Did you see who was driving the car?", he answered "No". He was asked: "Did you ever find out who hit you with the car", and his answer was this: "I knew the car. It belonged to their family, I don't know who was the driver". And he then repeated that he knew the car belonged to them, the family.

13. At question 51 it was pointed out to him that in his preliminary questionnaire he had said that the car was driven by the brother and the cousin, and he was asked why he had said that, when now he said he did not know who was driving, and he said this: "I didn't know were they exactly but I recognised the car and I thought it might be themselves, the brother and the cousins". Looked at by themselves those answers are in my judgement perfectly consistent with one another. He had a view that it was the brother and the cousin. He was not certain of it. It seemed to their car. When he was asked in brief he said it was the brother and the cousin. When asked in detail he said he did not know exactly but he thought it might be them. That is of itself perfectly fair and in my view perfectly consistent. However, the problem for the appellant is this. When it comes to making a witness statement for the purposes of his appeal he says that his brother and his friend who witnessed the incident said that it was the girl's brother and cousin. That is something which in the nature of things had to have happened before his asylum interview. In other words, when he said on each of those three occasions what he knew about the incident, he already had been told that it was the brother and the cousin by witnesses who had seen them. That is, as the judge pointed out, a new elaboration.

14. Contrary to Ms Alban's submission, it is not consistent with what he previously said. What he previously said was that he did not know. He now says that he did know, and what is more, that he has known all the time. The judge took the view that this elaboration using a new pair of independent witnesses to produce clear evidence that the attack had been from the girl's family showed signs of trying to support an otherwise unsupported or even incredible story. That judgement was in my view amply merited. It is perfectly clear that the appellant's account that he did not know who it was but thought it might have been them when he was interviewed is inconsistent with what he subsequently said which was that two people had told him that it was them because they were watching.

15. So much for the judge's points on credibility as attacked by Ms Alban. The two points that she raises on credibility in my view are each points which the judge was entitled to make and the other points as I have indicated are not challenged.

16. In order to deal with the other points, as I have said, the judge looked at the court documents, so that even if the documents were accepted as being authentic court documents the judge's judgement was that they were not a reliable support of the appellant's account because indeed they cast further inconsistencies. But Ms Alban's case is that the judge was led wrongly into a criticism of the documents themselves. That is an important argument if it is to be accepted. It is not to be accepted. As I have indicated it is not important in the context of this case because the judge's view was that the contents of the documents did not support the appellant's story anyway. What Ms Alban says is that these were documents which were able to be verified, that the respondent took the responsibility of verifying them, that the respondent failed to verify them, and that as a result they should be treated as authentic.

17. There is a very considerable number of problems with that series of submissions. The first is that the documents do not speak themselves as court documents. Sometimes the very appearance of a document indicates that it purports to be a particular thing, a passport for example, or a birth certificate. These are not documents in such a form. They are, as I have indicated, simply pieces of paper with writing in Arabic on them, each bearing, as it happens, the same stamp. Even the stamp does not demonstrate that they are court documents.

18. Secondly, there is no real indication of what they even purport to be. They were accompanied by a witness statement by the appellant saying that the documents were obtained from the court by a person who works there, being his aunt's husband. They are produced with what is said to be the envelope they came in but without any covering letter in which the aunt's husband or anybody else could say how they were obtained. They are, it is said, the original documents, that is to say the actual documents from the court file, not copies of them. In other words, the person who obtained them must have obtained them by removing them from the court file, if what is said is correct. And indeed there is nothing in their translated form which suggests other than that they purport to be the original documents, including in at least two cases the fact that they are not from the court but from the police reporting to the court. It seems to me that it can only be in circumstances where documents on their face appear to be documents of a particular sort that it can be said that in the absence of any query about them they should be accepted as genuinely from that source. So that is the first problem. The starting point of the submission that they should have been accepted as court documents in the absence of information to the contrary does not get off the ground because there is no reason to suppose from anything on them that they purport to be court documents.

19. Thirdly, I do not understand from the accounts as I have been given of what happened, including their very late presentation without translation the day before the original date fixed for the hearing, that the Secretary of State could be interpreted as having undertaken any burden in relation to

them, that is to say, any formal burden of proof in relation to their status at a forthcoming hearing.

20. Fourthly, the authorities on the subject appear to be directly counter to the proposition Ms Alban makes. The authorities are those to which she refers and which I have referred to earlier. In PJ (Sri Lanka) the Court of Appeal was concerned to interpret and to apply the judgment of the European Court of Human Rights in Singh v Belgium. In Singh v Belgium the documents in question related directly to the nationality of the claimants. The documents purported to be UNHCR attestations. If they were genuine they would have established the claimant's nationality, if not, of course, not. Their genuineness was a matter which could have been ascertained from the UNHCR. The court indicated that in circumstances where documents were central to a claim and where a simple process of enquiry would have resolved conclusively whether they were authentic and reliable that there was a duty on the authority to make a careful review of the grounds of claim. No more than that. In PJ (Sri Lanka) itself Counsel for the appellant submitted that there was an obligation on the Secretary of State to check the authenticity of the documents disputed in that case which were documents which purported to transcribe part of the court records in Sri Lanka and which had been attested by two independent Sri Lankan lawyers. The court concluded as follows in the judgment of Fulford LJ, with whom the other members of the court agreed:-

> "29. In my judgment, there is no basis in domestic or ECHR jurisprudence for the general approach that Mr Martin submitted ought to be adopted whenever local lawyers obtain relevant documents from a domestic court, and thereafter transmit them directly to lawyers in the United Kingdom. The involvement of lawyers does not create the rebuttable presumption that the documents they produce in this situation are reliable. Instead, the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection against mistreatment under article 3 ECHR. It is important to stress, however, that this step will frequently not be feasible or it may be unjustified or disproportionate. In *Tanveer Ahmed* [2002] IAR 318 the court highlighted the cost and logistical difficulties that may be involved, for instance because of the number of documents submitted by some asylum claimants. The enquiries may put the applicant or his family at risk, they may be impossible to undertake because of the prevailing local situation or they may place the United Kingdom authorities in the difficult position of making covert local enquiries without the permission of the relevant authorities. Furthermore, given the uncertainties that frequently remain following attempts to establish the reliability of documents, if the outcome of any enquiry is likely to be inconclusive this is a highly relevant factor. As the court in *Tanveer Ahmed* observed, documents should not be viewed in isolation and the evidence needs to be considered in its entirety.

> 30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see *Singh v Belgium* [101] – [105]). I do not consider that there is any material difference in approach between the decisions in *Tanveer Ahmed* and *Singh v Belgium*, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification."

21. In the present case it may be that the documents were at the centre of the claim although that proposition itself might be subject to dispute. The position is perfectly clear that there was no simple process of verification which would conclusively establish whether they were what they purported to be or not. First, there was no clear authority to which they could be referred. Secondly, the process of referral was as the Secretary of State's response indicated neither simple nor likely to be conclusive. Thirdly, the very process of their production, that is to say, apparently by abstraction of the originals from the court files would itself have led to difficulties in discovering whether they had originally been at the court or not.

22. I therefore reject in its entirety the submission based on anything other than the appellant's burden of proof in relation to the documents and their content. As I have said, in any event the judge considered the contents of the documents and what would have been drawn from them if they had been what they purported to be. That would to an extent have demonstrated that the appellant was not telling a consistent story about the events on that night. But the position is also that the judge was clearly entitled to regard the form of the document and the absence of any confirmation of the document's origin or that the form was what might be expected in a document of that sort or any other matter verifying them by a statement from the person who had obtained them or anything else to the conclusions which he did reach that they were not entitled to be treated as reliable.

23. For those reasons, I conclude that the judge was entitled to make the findings he did make about the appellant's account. It is not an account which is reasonably likely to be the truth.

24. In those circumstances grounds 3 and 4 as pleaded have no application; but I must nevertheless consider whether the appellant might be able to show that his return could raise protection or other issues despite the rejection of his story. The position is that he would be returning to his own area. The journey would be likely to be via Baghdad airport, but would not need to include any presence in Baghdad itself. As the judge found, and as is not challenged, the appellant will have no difficulty in obtaining, or

renewing, his CS ID. There is no basis for any finding that his return would raise any relevant issue.

25. For the reasons, I have given I find no material error of law in the judge's decision and I dismiss this appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 17 March 2020