



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

Appeal Number: PA/07779/2019

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 21 February 2020**

**Decision & Reasons  
Promulgated  
On 19 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**HA**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Greer, instructed by Parker, Rhodes Hickmotts solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born in 1992 and is a male citizen of Iraq. By a decision dated 1 August 2019, the Secretary of State refused the appellant's application for international protection. The appellant appealed the First-tier Tribunal which, in a decision promulgated on 3 October 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal is flawed by legal error and should be set aside. My reasons for reaching that conclusion are as follows. First, I find that the judge has erred in his treatment of the appellant's asylum-seeking history (he travelled overland through Greece Germany and France and his asylum claim made in Switzerland was rejected) and in the application of section 8 of the 2004 Act. At [14], the judge states that, 'I do not accept that someone, who been forced to leave their homeland at short notice, would not seek to obtain asylum at the first available opportunity but coming any event, the appellant did not make his way to the UK and travel to Switzerland instead before returning to France. His asylum claim had been rejected in Switzerland but he had not been returned to Iraq I cannot see why he did not then seek asylum in France.'

3. Section 8(1) provides that:

In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.

Section 8(4) provides that;

This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.

As the judge records [14], the appellant did make an application for asylum in Switzerland; the judge was seemingly puzzled only by the fact that the appellant, his asylum application having been rejected in Switzerland, did not then apply for asylum in France. Section 8(4) does not apply, therefore, in terms to the circumstances in this appellant's case; he was in a safe country (Switzerland) and duly made an asylum claim. It was immaterial whether the appellant then subsequently claimed in France or in the United Kingdom. Moreover, I find that the passage from [14] which I quoted above indicates an opinion so sweeping and generalised as to constitute a unsafe basis for the application of the statutory provision and assessment of credibility generally. The judge's remark is not confined to the circumstances of the appellant; rather, he appears to believe that anyone forced to leave their homeland by persecution would, if he/she were a genuine asylum seeker, seek refuge in the first available country. It is trite law that asylum seekers may have many different reasons for travelling through safe countries before eventually making a claim for asylum. Indeed, it is difficult to see how any asylum seeker in the United Kingdom might succeed in a claim given that all neighbouring countries are signatories of the Refugee Convention.

4. Secondly, the judge has attached little weight to the inconsistencies identified by the respondent in the appellant's account [12]. Other than finding 'inconceivable' the appellant's account of a relationship with a woman which her family considered unacceptable, the judge has given no

reason, other than his application of section 8, for rejecting the appellant's account. This is not a case where the judge has given numerous reasons for rejecting the appellant's credibility and an error in the application of section 8 may, as a consequence, carry less material weight. In this decision, there is the judge's section 8 analysis and little else. Consequently, errors in that analysis loom larger.

5. Thirdly, I find that the judge's rejection of the appellants account of his relationship with the woman B is unsatisfactory. The judge states that he finds that it is inconceivable that, 'in the culture of the appellant describes', the appellant and his girlfriend would honestly believe that 'their family would accept their sexual relationship conducted outside of marriage and consent to their marriage.' I consider that any reader of the decision would be left puzzled by this statement. The 'culture the appellant describes' is not particularised at all whilst the judge has failed to set out in detail the appellant's account of the relationship. In his asylum interview, [Q95 *et seq*], the appellant explains that he and his girlfriend had decided to sleep together so that the families would have no option but to let them remain relationship and to marry. The Secretary of State found it difficult to accept that the appellant and his girlfriend had proposed marriage for a second time notwithstanding that members of his girlfriend's family had threatened to kill the appellant. That may be a reasonable reaction to the appellant's account but the judge, by conflating his treatment of that account, has failed properly to express the argument. Instead, the judge suggests that the appellant and his partner would never rationally have entered a relationship at all without obtaining the prior consent of their families. I find that the judge's analysis lacks precision and has failed to address in proper detail arguable credibility issues arising from the appellant's evidence. Again, given that his findings at [15] together with the section 8 analysis constitutes the entirety of the judge's assessment of the evidence, it was important that he got those findings right; unfortunately, I find that he did not.
6. For the reasons I have given above, I set aside the decision of the First-tier Tribunal. There will need to be a new fact-finding exercise *de novo*. That exercise is better conducted in the First-tier Tribunal to which this appeal is now returned for that Tribunal to remake the decision following a hearing. Both parties may adduce fresh evidence provided copies of any documentary evidence (including witness statements) are sent to the First-tier Tribunal and to the other party no later than 10 working days prior to the next Tribunal hearing.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision.

Signed

Date 17 March 2020

Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.