



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

Appeal Number: PA/02992/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 17 September 2019**

**Decision & Reasons Promulgated
On 23 September 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**N H
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford, Counsel, instructed by Turpin & Miller LLP (Oxford)

For the Respondent: Mr P Singh, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Nixon ('the Judge') issued on 10 July 2019 by which the appellant's appeal against the decision of respondent to refuse to grant him international protection was dismissed.
2. Judge of the First-tier Tribunal Simpson granted permission on all grounds.

Anonymity

3. I am mindful of Guidance Note 2013 No 1 concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal, as in all courts and Tribunals, is open justice. However, I note paragraph 13 of the Guidance Note, where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims.
4. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim being made public.

Background

5. The appellant is a national of Iraq and is presently aged 18. He arrived in this country in July 2016 and claimed asylum a month later. He detailed that he was an ethnic Kurd hailing from Kirkuk and that his father, a member of the Peshmerga had disappeared. By the date of his asylum interview on 18 August 2016 his father had returned to the family home and explained that he had been involved in a fight with another family and had killed two people. He stated that a blood feud had arisen and that members of that family had threatened to kill him. Subsequent to the interview, the applicant's father was killed on 7 February 2017.
6. The respondent took some two-and-a-half years to refuse the application for international protection consequent to the appellant's interview, issuing her decision on 15 March 2019, some four months before the appellant turned eighteen.

Hearing before the First-tier Tribunal

7. The appeal came before the Judge at Birmingham on 2 July 2019. I note at paragraph 29 of the decision the Judge observed before detailing her reasons, "*when making my findings, I keep in mind at all times the appellant's age and that when he was interviewed and gave his statement was (on his own evidence) aged 13 years old*". She therefore recognised that the appellant provided information as to his claim for international protections whilst a minor.

8. The Judge accepted that the appellant's father was one of three people found murdered on 7 February 2017, but she did not accept that it was the consequence of a blood feud and having made a number of adverse credibility findings she refused the appellant's appeal.

Ground of Appeal

9. The grounds of appeal were drafted by Miss Warren, Counsel, who represented the appellant before the First-tier Tribunal. Three grounds were identified, namely:
 - (1) the Judge erred in requiring corroborative evidence;
 - (2) the Judge erred in assessing the risk arising from the blood feud as at the time the appellant left Iraq, thereby not placing into the assessment the subsequent murder of the appellant's father, and
 - (3) the Judge erred in law by concluding that the appellant could safely obtain a CSID in Kirkuk and then travel on to Sulaymaniyah.
10. When granting permission to appeal, Judge of the First-tier Tribunal Simpson observed that the assessment of risk appeared to be internally inconsistent and erroneous in law by fixing in time the appellant's account of risk with reference to the appellant's disclosure when he claimed asylum and not as the date of hearing.
11. No Rule 24 response was filed by the respondent.

The Hearing

12. Both representatives at the hearing before me confirmed that they considered the Judge's decision to be flawed by legal error such that it should be set aside. Mr Singh, representing the respondent, confirmed that paragraph 34, by which the Judge addressed the crux of the appellant's evidence, was confused as to the relevant time for the assessment of the appellant's purported fear of persecution.

Decision on Error of Law

13. The Judge commenced her assessment of the appellant's evidence at paragraph 31 of her Decision and Reasons:

"31. However, I have not been provided with anything other than the appellant's assertion that his father was killed as a result of a blood feud and I therefore turn to an assessment of his credibility, keeping in mind his age. I start by looking at the independent evidence provided and find nothing to take this element of the claim any further. I have seen confirmation that his father was a peshmerga and

died of gun shots. It is of course plausible that he could have been killed on duty. I have seen from the newspaper article that his father's body was found with 2 others and that other men were seen fleeing the scene. It is unknown from this article whether the other dead men were known to the appellant's father, whether they were on the same side of any arguments and who was responsible for their deaths. There are many possible explanations for the deaths of these 3 men and accordingly the mere fact of their deaths does not assist me in determining whether they are as a result of a blood feud."

14. The Judge proceeded to reason at paragraphs 34 and 35:

"34. I do find significant however the discrepancies between the answers he gives for the reasons for coming to the UK. I note in his in-take interview that he stated that this was due to the hardships in Iraq and the difficulties in getting a job. He goes on to state that he had been told that his father was captured by ISIS and so he was afraid as the oldest male of the family. He makes no mention of any feud at this stage. It appears that he was not told of any feud until after his father was killed and he spoke to his uncle. It appears therefore that until his father was killed, the appellant was not at risk first, as he was a child and therefore unlikely to be the target of any feud and secondly as the other family had no need for revenge. I find therefore that the appellant has not shown that he came to the UK as he was at risk. Indeed, it appears likely that his first response as to why he came here – for a better life and to study – is the truth. He may well have feared ISIS as he stated, but there was no reason for him to have any specific fear and this was borne out by the apparent willingness of his family to permit him to go to work every day at the age of 13, notwithstanding the fact that his father was missing.

35. Looking at all of the evidence put before me, I find that the appellant has failed to show to the low standard required that his father was killed as a result of a feud. Even if that were the case, most importantly I find that he has failed to show that he is at real risk as a potential victim of such a feud. If that feud had been continuing for some time prior to his departure, he experienced no problems and whilst I take into account that he was a child and therefore according to Country Information was unlikely to be a target, it is relevant that no other family member, such as his father's brother, experienced no problems. I note from the appellant's statement that his uncle told the other family not to exact revenge on him, but to seek out the appellant as he was in the UK and, therefore, they would not find him. I find this to be implausible. If the other family were seeking revenge, I find it unlikely that they would simply accept the uncle's word and leave him alone. I have heard no evidence to suggest that in the past 2 years after his father's death that efforts were being made to locate him, either through his uncle or even through his mother in Durkan. I find that the appellant has failed to show that he is at real risk as a result of the blood feud with his father."

15. The Judge undertook as her initial assessment the circumstances of the father's death and considered this as a discrete issue in which she made a plausibility assessment. It is appropriate to observe the judgment of Ouseley J, sitting as the President, in MM

(DRC - plausibility) Democratic Republic of Congo [2005] UKIAT 00019; [2005] Imm AR 198 where he confirmed that while it is correct that the assessment of credibility may involve an assessment of plausibility of what has been said, the assessment is not a separate stage in the assessment of credibility. A story can be implausible and yet be taken as credible. He further held that a decision as to whether an appellant is credible should be founded on the totality of the evidence, including consistency on essentials or major inconsistencies, omissions and details, improbabilities or reasonableness.

16. The Judge was therefore required to move on from her reflection upon plausibility and assess credibility, having considered the evidence in the round. Unfortunately, I accept the representatives' observations before me that in seeking to consider the evidence in the round, the Judge materially erred at paragraph 34 of her decision by rooting her assessment of risk as at the time the appellant claimed asylum, following his arrival in this country, rather than at the date of hearing. Consequently, as to the death of the appellant's father, which post-dated the appellant's arrival in this country, her assessment of credibility remained rooted in her original plausibility assessment, and this is insufficient for a lawful consideration as to credibility on this issue, and clearly constitutes a material error of law.
17. A further concern in the Decision and Reasons is whilst observing that the appellant was a minor when he claimed asylum and also when he was interviewed, there was no true engagement by the Judge with the impact of his minority upon the evidence presented. I observe that when considering evidence presented by minor asylum seekers such assessment is to incorporate the guidance of the Court of Appeal in *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123 [2018] 4 WLR 78 and the Joint Presidential Guidance Note No 2 of 2010 'Child, vulnerable adult and sensitive appellant guidance'. The Judge was required to expressly take into consideration that children often do not provide as much detail as adults in recalling experiences and may often manifest their fears differently from adults. The Judge was also required to assess as to whether when arriving in this country as a minor the appellant had a full understanding as to the notion of the feud in which his father had become involved and was required to weigh into her assessment of credibility the appellant's subsequent understanding of events that led to the death of his father.
18. For those reasons, I am satisfied that the errors identified in the grounds are made out as those errors go to findings of fact and analysis of evidence. I set aside the decision and do not preserve any of the findings.

Remittal to the First-tier Tribunal

19. As to remaking the decision, given the nature of the errors, I accept the submission made by both Ms Radford and Mr Singh that clear findings have to be made on the evidence presented. Both representatives submitted that the appeal should be

remitted to the First-tier Tribunal. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows at 7.2:

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
20. I have reached the conclusion that it is appropriate to remit this matter to the First-tier Tribunal for a fresh decision on all matters. The appellant has enjoyed no adequate consideration of his asylum claim to date and has not yet had a fair hearing.
21. I observe that the First-tier Tribunal will expect to be addressed by the representatives as to the Joint Presidential Guidance Note No 2 of 2010 'Child, vulnerable adult and sensitive appellant guidance' as well as the guidance of the Court of Appeal in AM (Afghanistan).

Notice of Decision

22. The Judge materially erred in law for the reasons identified. I set aside the Judge's decision promulgated on 10 July 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
23. It is remitted to the First-tier Tribunal at Birmingham for a fresh hearing before any judge other than Judge of the First-tier Tribunal Nixon.
24. No findings of fact are preserved.
25. An anonymity order is made.

Signed: *D O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 19 September 2019