



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04773/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham Civil Justice Centre  
On 5<sup>th</sup> June 2019

Decision & Reasons Promulgated  
On 25<sup>th</sup> June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

LSH

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Azmi of Counsel instructed by French & Company Solicitors  
For the Respondent: Mr C Williams, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Burns (the judge) of the First-tier Tribunal (the FtT) promulgated on 18<sup>th</sup> May 2018.
2. The Appellant is a female Iraqi citizen of Kurdish ethnicity born 30<sup>th</sup> March 1989.
3. She claimed asylum on 3<sup>rd</sup> October 2017 on the basis that she is a member of a particular social group in that she would be at risk of being the victim of an honour killing if returned to Iraq. This is because she had sex with her boyfriend without being married, and the Appellant's family refused permission for her to marry him.

After the second request was refused the Appellant was told she had to marry her paternal cousin. She said that she did not want to and her father said he would kill her if she did not. The Appellant left Iraq approximately one week after her father had threatened to kill her.

4. The international protection and human rights claim was refused by the Respondent on 28<sup>th</sup> March 2018.

### **The First-tier Tribunal Hearing**

5. The appeal was heard on 14<sup>th</sup> May 2018. The judge heard evidence from the Appellant. The judge considered credibility in accordance with the structured approach set out at paragraph 339L of the Immigration rules. A finding was made that the Appellant had made her claim for asylum at the earliest possible time in the UK, but the judge found that the Appellant's claim to fear being the victim of an honour killing ran counter to general information, and the Appellant had not established her general credibility.
6. As the judge found the Appellant to be an incredible witness it was not accepted that she would be at risk from her family if returned to Iraq. The judge did not find that the Appellant had a relationship with her boyfriend which culminated in her losing her virginity. It was not accepted that the Appellant had been betrothed to her cousin and that she had rejected a marriage proposal from her cousin. The appeal was dismissed on all grounds.

### **The Application for Permission to Appeal**

7. It was submitted that the judge had erred in assessing credibility. At paragraphs 45-48 the judge had made findings that the Appellant's evidence was counter to background information. It was submitted that the judge's findings are perverse, as the reasoning would suggest that no woman in the IKR above 18 is unmarried, is able to work rather than marry, be unchaperoned, as a potential victim of honour crime be able to avoid harm, and be able to overcome strict family restrictions. It was submitted that the judge applied far too rigid a criteria and held the objective evidence to be a script to follow rather than a general overview.
8. It was submitted that the judge had erred in considering coherency. At paragraphs 49-50 the judge found it incoherent for the Appellant to contemplate marrying her boyfriend as there was "a pre-existing promise" for her to marry her cousin. It was submitted that the judge had misunderstood this, and the evidence contained in the interview, and Appellant's witness statement, was that it was only after her boyfriend had proposed for a second time, that her father told her that she had to marry her paternal cousin. The Appellant in oral evidence misunderstood when asked about this at the hearing, and the judge had accepted at paragraph 38 that no adverse inference should be drawn from this potential inconsistency.
9. It was submitted that it was entirely speculative of the judge to find that there existed "a pre-existing promise" for the Appellant to marry her cousin, and as this was the basis of finding the Appellant's account not coherent, the assessment was flawed. In

addition there was a contradictory finding made by the judge at paragraph 53 in which it was found that the Appellant had not been betrothed to her cousin and it was not accepted that she had rejected a marriage proposal from her cousin.

10. It was contended that the judge had erred in considering plausibility. The judge found at paragraph 51 that it was difficult to accept that the Appellant had US\$10,000 to fund her journey to the United Kingdom and the Appellant's claim that she had a lack of freedom and controlling family did not "sit well with her claim that she applied for a visit visa without her father's permission."
11. It was submitted that the Appellant when interviewed had made her position clear in answering question 187 when she was asked how she was able to have so much freedom and allowed to apply for a visit visa to the UK given her claim that her family were tribal and strict. The Appellant replied that education was a part of life and her father was educated to a high level, as was the Appellant, and her family did not mind education, but was strict about other social matters like marriage. It was submitted that the plausibility findings are inadequate.

### **Permission to Appeal**

12. Permission to appeal was granted by Judge Simpson in the following terms;

"2. Permission to appeal is granted for the following reasons:

- (i) there was arguable (sic) that the treatment of the background country information in assessing the credibility of the Appellant's claim as a female Kurdish Iraqi national from Sulamaniyah to face risk on return for the sake of honour, because she had fallen in love with a man from a different tribe with whom she had lost her virginity when betrothed to a paternal cousin, was not reasonably sustainable, there appearing a cherry picking and rigidity of assessment of that evidence, arguably devoid of comprehension that the norms of social practices cited may be more fluid depending say on class, financial need etc., notwithstanding there further appearing that there (sic) was accepted that the Appellant was someone who had been educated to university level, and following university had gone on to hold professional employment (paragraphs 45-48);
- (ii) further arguable that the assessment of the coherence and plausibility of the Appellant's claim, more generally, was not sustainable, consistent or adequately reasoned, there appearing missing a comprehension of the human condition, particularly when concerning human relations, the business of falling in love and maternal/parental love not always adding up to the proclaimed norms and practices in a society or the laws of rationality (paragraphs 49-53);
- (iii) all grounds arguable."

13. Following the grant of permission to appeal, directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must set aside.

## My Analysis and Conclusions

14. At the oral hearing Mr Azmi relied and expanded upon the grounds upon which permission to appeal had been granted.
15. Mr Williams submitted that the judge was entitled to make findings based on the evidence, and adequate and sustainable reasons for those findings had been given. Even if the judge was mistaken as to whether there was a pre-existing agreement for the Appellant to marry her cousin, this was not material because there were a number of other credibility findings made, and the grounds amounted to a disagreement with conclusions properly reached by the judge.
16. Dealing firstly with the Appellant's challenge to credibility, the judge at paragraphs 45-48 gives reasons why the Appellant's account runs counter to what the judge describes as background information or evidence. The judge summarises at paragraphs 27-37 the background information contained in section B of the Appellant's bundle.
17. At paragraph 46 the judge finds that the Appellant's account is not consistent with background information which indicates that within traditional families in the IKR, the paternal cousin would have expected marriage when the female was between 15 and 18 years. The Appellant's account was that she finished university when aged 24, and her boyfriend made the first proposal when she was 28 years of age.
18. At paragraph 47 the judge describes the background information confirming that women are rarely seen out on the streets and not permitted to have boyfriends which runs counter to the Appellant's claim that she met her boyfriend on the mountain or in a café and that they met frequently. Although the mountain was secluded they would travel in a car and the judge found her unchaperoned journeys to be counter to the background evidence.
19. At paragraph 48 the judge found it was contrary to the background evidence that the Appellant was not harmed and managed to escape after her father had refused permission for her to marry her boyfriend, and she had not agreed to marry her cousin. It was counter to background information that the Appellant's mother would directly disobey her husband's instructions and let her daughter leave the home.
20. In my view there is force in the submission made by Mr Azmi on this issue. The judge does appear to have applied a rigid view when considering the background evidence. I find the description of the background evidence as "a general overview" in the Grounds of Appeal to be a fair description. It cannot be the case that there are no women in the IKR who disobey their father or husband, and no women who are educated to degree level and work before marrying.
21. It is a correct approach to consider an Appellant's account with reference to background evidence, but in this case I am persuaded that the judge has taken too rigid a view, and not adequately reasoned why the Appellant's account cannot be

accepted simply because it does not conform to background evidence. I find this to be an error of law.

22. With reference to coherency, I find that the judge was mistaken in finding that there was a pre-existing promise for the Appellant to marry her cousin. The Appellant's evidence in interview and her witness statement was that this was raised after the second proposal from her boyfriend was refused. The finding at paragraphs 49 and 50 that there was a pre-existing promise for the Appellant to marry her cousin does appear to be inconsistent with the conclusion at paragraph 53 in which the judge rejects the Appellant's account that she has been betrothed to her cousin and that she has rejected a proposal.
23. In conclusion I do not find that the judge has provided adequate and sustainable reasons for finding the Appellant to be an incredible witness. The decision is therefore unsafe and must be set aside.
24. Both representatives agreed at the hearing, when I reserved my decision, that if a material error of law was found as contended, it would be appropriate to remit the appeal back to the FtT to be heard afresh.
25. I have considered paragraph 7 of the Senior President's Practice Statements, and find that the appropriate course is to remit the appeal back to the FtT, because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
26. The appeal will be heard at the Birmingham Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge Burns.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

### **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 her or any member of

her 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

Date 13<sup>th</sup> June 2019

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 13<sup>th</sup> June 2019

Deputy Upper Tribunal Judge M A Hall