



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

Appeal Number: UI-2021-001695
[PA/52717/2020; IA/00721/2021]

THE IMMIGRATION ACTS

**Heard at Civil Justice Centre, Decision & Reasons Promulgated
Manchester
On 14 October 2022**

On 27 November 2022

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**HA
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. This is an appeal on protection grounds. It is therefore appropriate to continue that order. 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 his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Appellant: Mr Hussain, Legal representative, Fountain solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Holt dated 19 May 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 27 November 2020 refusing his protection and human rights claims.
2. The Appellant is a national of Iraq coming from the Kurdish region (IKR). He entered the UK illegally on about 18 March 2019 and claimed asylum on 19 March 2019. He claims to be at risk due to a relationship with a woman in Iraq ([F]) whose family disapproved of the relationship and wish him harm. It is claimed that [F] became pregnant as a result of the relationship. It is said that [F]’s family killed her.
3. The Respondent rejected the claim as not credible. The Judge similarly rejected it for reasons of credibility. She also found that the Appellant would not be at general risk on return and that he would be able to return to IKR and obtain identity documents there.
4. The Appellant appeals the Decision on five grounds as follows:

Ground one: Failure to apply the correct standard of proof.

Ground two: Irrationality of the rejection of the claim or lack of adequate reasons to support that conclusion.

Ground three: Failure to have regard to relevant evidence about [F]’s father.

Ground four: Failure properly to apply country guidance in relation to general risk.

Ground five: Failure to provide adequate reasons for finding that the Appellant would be able to re-document himself.
5. Permission to appeal was granted by First-tier Tribunal Judge L K Gibbs on 12 November 2021 in the following terms so far as relevant:

“... 4. It is arguable that the judge has based many of her findings on speculation e.g. it lacking credibility that [F] would fall pregnant after only having sex on two occasions or that [F] would have agreed to have sex with the appellant at their second meeting. Further, the judge refers to photographs in the appellant’s bundle but does not place weight on these because of a lack of objective evidence regarding the contents. At least one document is however from the Kurdish Government website and it is arguable that the judge has failed to fully address this in her decision.

5. The grounds of appeal disclose an arguable error of law. The grant of permission is not limited.”
6. The matter comes before me to decide whether there is an error of law in the Decision and, if I conclude that there is, whether to set aside the Decision for re-making. If the Decision is set aside, I may either retain the appeal in this Tribunal for redetermination or remit it to the First-tier Tribunal to re-hear the appeal.
7. I had before me a bundle of the core documents in the appeal, as well as the Appellant’s and Respondent’s bundles as before the First-tier Tribunal. I refer to documents in the Respondent’s bundle as [RB/xx] and the Appellant’s bundle as [AB/xx].
8. Having heard submissions from Mr Hussain and Mr Tan, I indicated that I would reserve my error of law decision and issue that in writing. I therefore turn to that consideration.

DISCUSSION AND CONCLUSIONS

9. Mr Hussain addressed me on grounds one and two together and I therefore take those two grounds first.

Grounds One and Two

10. Ground one as pleaded is that the Judge misdirected herself as to the correct standard of proof. Reference is made in that regard to [21] of the Decision. It is said that the Judge’s constant reference there to aspects of the claim being “incredible” indicates too high a standard of proof.
11. This is not the way in which Mr Hussain put the Appellant’s case and he was right not to do so. As Mr Tan pointed out, the Judge properly directed herself at [18] to the lower standard of proof which she said she had “carefully applied” but, having done so she concluded that the claim was not credible. That clearly indicates that the Judge understood the standard which applied. She also there referred to the benefit of the doubt to be given to the Appellant. Thereafter, her task was to assess the claim to determine whether it was to be believed. Whether her findings referred to aspects of the claim being “incredible” or “not credible” or “not capable of belief” matters not. Those all mean the same thing.
12. Ground two is formulated in writing as a challenge to the Judge’s reasoning at [21] of the Decision and this was the focus of Mr Hussain’s submissions on both grounds one and two.
13. Mr Hussain submitted that the Judge had erred in finding that the Appellant’s account of the relationship was not credible. He submitted that many people have relationships of which their families disapprove even when their families are strict. People might take chances and may get caught. That is though not a reason not to believe the account.

Further, it is by no means unusual for a woman to get pregnant after two occasions or even one occasion of intercourse. That does not mean that the account is not to be believed. He pointed out that the Appellant's case is that he and [F] met in her family home where she was sometimes left alone by her family to look after a disabled sibling. They were able to do so safely because the Appellant lived next door. They had planned to get married, but her family had rejected the proposal. Mr Hussain submitted that the Appellant had given a consistent account of the relationship and should have been believed.

14. Mr Hussain also told me on instruction that the Decision contained an error in the reference to [F]'s family being Shia Muslims and the Appellant being a Sunni Muslim ([21(a)] and [21(b)]). The Appellant said he had not said this, and it must have been an error of interpretation because [F]'s family are from the Jaff tribe. I do not have regard to this point. It is not mentioned in the grounds of appeal and if the Appellant said he had realised this when reading the Decision, he should have raised it in the grounds. His representatives should also have picked it up if this is the case. Further, if this was an error of interpretation, the Judge cannot be faulted. She was entitled to take into account the evidence as presented to her. She was not required to question the way in which the Appellant presented his case.
15. As I pointed out to Mr Hussain, this is not an opportunity to re-argue the Appellant's case. He had to identify an error of law. Following discussions, he submitted that this was a failure to provide adequate reasons.
16. In reply, Mr Tan pointed out that ground two as pleaded is a challenge to the rationality of the Judge's reasoning at [21] of the Decision and/or a failure to provide adequate reasons. However, he also submitted, and I accept that this paragraph of the Decision has to be read in the context of [20] of the Decision where the Judge had regard to the background evidence about honour killings in Iraq and accepted at [20] of the Decision that the claim was consistent with the background evidence. She therefore clearly had in mind that the claim might be credible. However, [22] to [25] of the Decision were largely unchallenged ([25] is challenged by ground three as I will come to below). Those provided further reasons for rejecting the credibility of the claim. He submitted that, read in context, the findings at [21] were sufficient and in any event formed part only of the overall findings that the claim could not be believed.
17. Paragraph [21] of the Decision is quite lengthy and I do not need to set it out in full. In summary the reasons given with my comments on them are as follows:
 - (i) (a) The Appellant is Sunni and [F] was said to be Shia. There are significant tensions between the two groups. Even if this

is an error of fact (as noted above), it is but one reason for rejecting the credibility of the Appellant's account.

(b)[F]'s father is a well-known cleric who "would be intent on keeping his religious credentials and reputation 'intact'". He would therefore be unlikely to agree to [F] marrying outside her religion. Whilst that might be factually inaccurate on the Appellant's case as put by Mr Hussain as above (without I note any witness statement dealing with the error), it is but one reason for rejecting the claim on credibility grounds. In any event, the important point according to the Appellant is that [F]'s father is a well-connected and strict religious man, irrespective of his religious persuasion and that is the way in which the Judge understood the case.

(c)[F]'s family were said to be controlling and would not even allow her to go to school. As such, they would not be likely to agree to her marrying a Sunni boy. As above, even if there is an error in relation to the difference in religion, the point regarding control and that [F]'s father was a cleric who would wish to control his daughter's selection of husband still holds good.

(d)[F]'s family were said to be "well-connected with politics, the KDP and the Asayish". As such, this was a further reason why the Judge found that [F]'s family would never have approved the relationship as the Appellant said he intended. That finding holds good even if there is an error in relation to religion.

(ii) Following on from this, given the exercise of control which [F]'s family had over her, it would be highly unlikely that the Appellant would take the risk of entering into an intimate relationship with [F]. The Judge also noted that the Appellant's qualifications as a nurse would mean that he would know the risk of pregnancy and would not have put [F] at risk if he truly loved her. In that regard, the Judge noted that the claim "[c]rucially ...was against a background of zero evidence of why they liked each other, what they had in common or any ingredients whatsoever of a genuine relationship". There is nothing irrational about those findings which flow from the Appellant's account and evidence or lack of it.

(iii) Again, following on from that finding, the Judge finds it not credible that the Appellant and [F] would be given the opportunity to meet in her own house to conduct an intimate relationship given the degree of control which her family were said to exercise over her. The Judge was entitled to find it not credible that "[F]'s pious family would leave their unmarried daughters alone in the house for any length of time". The Judge considered the Appellant's explanation for this as being that "the family travelled to another city and [F] was left alone to look after her disabled sister" but

rejected that account again because of the inconsistency of that explanation with the fact of the control which her family were said to have over [F]. Those were findings open to the Judge.

(iv) The Appellant's case is that the marriage proposal was put to [F]'s family in November 2018 but they rejected it. Notwithstanding that rejection, the Appellant said when interviewed that he continued the relationship until February 2019. That was inconsistent with what he said in oral evidence. That finding is not challenged by either ground one or two as pleaded. Mr Hussain did not address the inconsistency in oral submissions.

(v) The Judge did not find it credible that [F] would enter into a sexual relationship after the first meeting given her sheltered and very religious upbringing. Other than in relation to the use of the words "[m]ost incredible" which are challenged in relation to standard of proof (which argument I have rejected above), this finding is not challenged. It was a finding open to the Judge.

(vi) The Judge finds that "[w]hilst it is not impossible" "it would be unlikely" that [F] would become pregnant after intercourse on only two occasions. Whilst I (and the Judge) accept that this is not a physical impossibility, the Judge noted that "this unlikely detail is within the context of significant other frankly incredible claims".

18. As Mr Tan pointed out, leaving aside that most of the findings made at [21] of the Decision are sustainable and adequate to reject the claim as made, they also have to be read in the context of the Decision as a whole. At [22] of the Decision the Judge dealt with the Appellant's claim that [F]'s family had murdered her. The Appellant's case is that [F]'s father told the Appellant's mother that he had done so. As the Judge there said "[n]o matter how powerful and well-connected a family might be, it is still shocking for a family to admit that they have murdered anyone let alone a daughter, and above all to tell the hated family of the next person they were intending to murder". As the Judge there found, to do so might well open the family up to investigation and prosecution. The Judge also there identifies an inconsistency in the Appellant's claim because, having said that [F]'s father had told his mother what he had done, he said when asked whether there had been media coverage of the murder that "the family knew how to 'keep things covered'". The findings made at [22] of the Decision are not challenged.
19. At [23] of the Decision, the Judge identified a further inconsistency about whether the murder of [F] was reported. The Judge said that, when asked the Appellant "darkly hinted that [F]'s family knew how to 'deal with the media' but eventually he opted to say that the murder was not reported in the media". The Appellant was asked why he had not tried to publicise [F]'s death on his Facebook account, he said "that he had not done this because the security services in Iraq control Facebook". As the Judge pointed out, "Facebook is a global organisation". The Judge pointed out that the Appellant had provided no evidence of Iraqi control. For those

reasons, the Judge said that she was “left with the impression that the appellant was making things up as he went along”. She then identified a further inconsistency because the Appellant changed his evidence and said that he had published information about [F]’s murder but that “the information had been deleted by unspecified people”. The Judge was entitled to rely on these inconsistencies in the Appellant’s case. There is no challenge to the findings at [23] of the Decision.

20. At [24] of the Decision, the Judge dealt with the option of the Appellant relocating to the area controlled by the PUK if his fear were genuine. His evidence was that [F]’s family “had a presence everywhere in Iraq” because one brother was a police officer and the other a security officer and that the family were “members of the influential Jaff tribe”. The Judge did not find credible that “the appellant happened to live next door to such a powerful family who could become aware of the appellant’s whereabouts anywhere in Iraq, particularly given his absence from Iraq”. That finding is not challenged except perhaps indirectly in conjunction with [25] of the Decision which is challenged by ground three.
21. Even leaving out of account [24] and [25] of the reasoning, the Judge has given ample reasons for finding the Appellant’s account not to be credible. As Mr Tan put it, when the findings are considered cumulatively, there are sufficient reasons for the conclusion that the claim is not to be believed.

Ground three

22. The challenge in this regard is to [25] of the Decision and to what is said to be a failure by the Judge to have regard to relevant evidence concerning [F]’s father. At [25] of the Decision, the Judge said this:

“I note that the appellant’s bundle contains pictures of characters claimed to be in Iraqi Kurdistan. There is no objective evidence to say who these people are, how they are connected to the appellant nor is narrative. I note these photographs appear to have been gleaned from the internet. I apply Tanveer Ahmed [2002] UKAIT 00439 to the photos and YouTube video clips”.
23. The documents are at [AB/23-77]. They are a series of photographs of a man named [MK] who, from the context of the photographs is a cleric. Some show him with a congregation. Others show him with one, two or more persons who are not identified on the photograph or by any accompanying narrative. Some bear a narrative showing this individual with well-known figures who are identified in other photographs by name. The name of [MK] bears some similarity to [F]’s name and could be the same. However, as the Judge rightly identified, there is nothing to link this individual to the Appellant. In particular, as Mr Tan pointed out, there is nothing in these documents which show that [MK] even has a daughter and certainly not whether her name is [F]. Since it is a point which appears to have troubled Judge Gibbs when granting permission, I should say that I do not understand Judge Holt to be saying that the documents

are not genuine in spite of the reference to Tanveer Ahmed. The relevance of Tanveer Ahmed in this context goes to weight and, as the Judge says, these documents all appear to come from the internet and have no evidential probity in support of the Appellant's case save that there is a man who is probably a cleric and who may have some links to influential figures. Beyond that, there is nothing to connect these documents to the Appellant's case and the Judge was entitled so to find.

Ground four

24. I can deal with this ground very shortly. The failure asserted in the Appellant's pleaded grounds is to not have regard to the country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) ("SMO1"). Although SMO1 has now been overtaken by SMO and KSP (Civil status documentation; Article 15) CG [2022] UKUT 110 (IAC) ("SMO2"), SMO2 was not reported at the time of the Decision. As such, it could not be relevant to whether there is an error of law by the Judge's failure to have regard to SMO1.
25. As Mr Tan pointed out, the Appellant confirmed in his screening interview on 21 March 2019 that he had left Iraq only one month earlier ([RB/A5]). At interview, he confirmed that, before leaving Iraq, he had lived in Erbil Governate and that his family were still living there ([RB/B8-9]). He did not claim to have experienced any general problems or to have been at risk in the area where he was living prior to coming to the UK ([RB/B12]).
26. In any event, as Mr Hussain frankly accepted, based on the country guidance, there is no Article 15(c) risk in Erbil and any error by failing to have regard to SMO1 could not be material.

Ground five

27. At [26] of the Decision, the Judge made the following findings about whether the Appellant would be able to re-document himself to return to IKR:

"It was accepted by the respondent that the appellant would struggle to get himself re-documented with a CSID card in London or Manchester. However, when asked about his CSID card and the redocumentation procedure, the appellant eventually agreed that, in principle, he would be able to re-document himself, but that his problem would be physically getting to the requisite office in Iraq to go about the formalities. Linked to this, he claimed that if he got to an office to re-document himself, then [F]'s well-connected family would find out and, by implication, it would be an opportunity for them to hunt the appellant down. I do not accept that he is at risk because I am not remotely satisfied by the claims about [F] and her family nor the appellant's connections with them. Therefore, I find that, upon return, his family will help him re-document himself with any missing documents and he will have normal, safe access to the civil service authorities."

28. The Appellant asserts that the Judge has failed adequately to consider whether the Appellant could obtain a replacement Civil Status Identity Document (“CSID”) and has failed to explain which family members are considered able to assist him to obtain that document.
29. In his submissions, Mr Hussain said that the family would not be able to assist because they had moved away. That submission however turns on the Appellant’s account being believed (as to why they would need to move away) and it was not. As Mr Tan pointed out, the Appellant accepted that he could be re-documented and that the obstacle he claimed was because of his relationship with [F] and the risk from her family, none of which was accepted as the Judge repeats at [26]. If that risk was removed, then none of the Appellant’s objections to return and obtaining the documents which he accepted he could access have any bearing. The Appellant could return directly to Erbil without passing checkpoints and, once there, his family members could assist with re-documentation.
30. Although there has been development of the position in Iraq in relation to identity documents since SMO1, the Judge was entitled to reach the findings she did based on the material at that time and the Appellant’s evidence. If the Appellant considers that any of the later country guidance alters the position in relation to his situation, it is open to him to make further submissions in that regard to the Respondent. However, what is said in SMO2 can have no bearing on the error asserted in this appeal as it was not reported until well after the Decision was promulgated.
31. For the foregoing reasons, there is no error of law disclosed by the Appellant’s ground five.

CONCLUSION

32. For the foregoing reasons, I conclude that the grounds do not disclose any error of law in the decision of First-tier Tribunal Judge Holt. I therefore uphold the Decision with the consequence that the Appellant’s appeal is dismissed.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. I therefore uphold the Decision of First-tier Tribunal Judge Holt dated 19 May 2021 with the consequence that the Appellant’s appeal remains dismissed.

Signed L K Smith
2022

Dated: 18 October

Upper Tribunal Judge Smith