



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001776
First-tier Tribunal No:
PA/52780/2020
IA/02653/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 May 2023**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MMKR
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer of Counsel, instructed by Broudie Jackson Canter Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 11 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically, save for the Respondent's reasons for refusal which the Appellant's Counsel has since provided from within the bundle before the First-tier Tribunal.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Devlin promulgated on 1 September 2021, in which the Appellant's appeal against the decision to refuse her protection claim dated 29 November 2020 was dismissed.
3. The Appellant is a national of Iraq, who first arrived in the United Kingdom in 2016 and claimed asylum. Although she was granted leave to remain on the basis of family life to 25 May 2023, the Respondent refused her protection claim on the basis that she was not found to be credible, having provided a vague and inconsistent account. Specifically the Respondent considered that the Appellant was not the victim of a blood feud, nor did she have any problems with the Jibouri tribe in Iraq; there was no risk of FGM to her daughter and in any event she would be able to re-document herself and internally relocate to the IKR.
4. Judge Devlin dismissed the appeal in a decision promulgated on 1 September 2021 on all grounds. Although the Judge found that most of the points taken against the Appellant by the Respondent were either ill-founded or had not been made out, he nevertheless made adverse credibility findings against the Appellant on the basis of difficulties in her account and responses. Whilst not inherently implausible, there was background country evidence to the effect that women and children were not normally part of blood feuds. It was also considered that there was a lack of detail in the Appellant's account and discrepancies in her evidence, in particular as to what happened to her eldest two children in 2014 (whether kidnapped or not) and that the account was wholly uncorroborated. The Judge expressly acknowledged that corroboration was not required, but found there were a number of matters upon which it would reasonably have been expected the Appellant could have produced such evidence, including from her family members in the United Kingdom and documentary evidence as to events in Iraq. Overall the Applicant was not considered to be credible and it was found that she would not be at risk on return to Iraq, nor would her daughter be at risk of FGM, that she would be able to be re-documented and that she would return to Iraq with family support, or in any event could internally relocate to Kirkuk where the Appellant had previously lived.

The appeal

5. The Appellant on two grounds. First, that the First-tier Tribunal erred in law as a matter of procedural fairness in not putting three points to the Appellant which were not raised by the Respondent and which were relied upon in support of the adverse credibility findings. These were that the Appellant had not explained the lack of evidence from her family members in the United Kingdom which would reasonably be expected; nor the lack of documentary evidence such as birth certificates of her children, reports of the incidents in Iraq to the authorities or organisations there, support and accommodation in Iraq, lack of background country evidence about the Jibouri tribe; and lack of detail in the Appellant's account, whilst acknowledging that the matters identified were not pursued during the asylum interview. Secondly, that the First-tier Tribunal erred in law by making a mistake as to fact as to the background country evidence in relation to blood feuds in Iraq, specifically that in paragraph 112 the Judge found that "*there*

is nothing in the CPIN - or elsewhere in the evidence - to suggest that retaliatory acts of vengeance are carried out against the transgressor's wife's family ..." when there was in fact a passage in the same CPIN referred to which stated expressly that women and children could be targeted in blood feuds.

6. At the oral hearing, Mr Greer relied on the grounds of appeal and submitted that because these matters went to the assessment of credibility, the whole decision was infected by the errors identified in the grounds.
7. On behalf of the Respondent, Mr Walker very properly and appropriately accepted that there were material errors of law on both grounds identified by the Appellant; specifically that there were matters going to the assessment of credibility which were not put to the Appellant and a factual error in relation to the CPIN on blood feuds.
8. The parties both agreed that there were no findings of fact that could be preserved from the First-tier Tribunal decision given the need when assessing credibility to consider matters in the round and that given the lack of fair hearing, it was appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing.

Findings and reasons

9. There is little that needs to be added to what is already set out above and the agreement of the parties of material errors of law on both grounds identified by the Appellant. On the first ground of appeal, whilst there may be some validity in substance as to the concern about the lack of supporting evidence which may reasonably be expected in this appeal, particularly from family members (although less so in terms of some of the documentary evidence suggested), this matter was simply not put to the Appellant who had no opportunity to address whether there were any reasons for the lack of such evidence. As to the third point, although the Respondent had relied in the reasons for refusal letter on the Appellant's account being vague and inconsistent, the Judge recognised that some of the specific examples he relied upon as to a lack of detail in the account were not in questions directly put to the Appellant either in her asylum interview or during the appeal hearing. As a matter of procedural fairness, all of these points should have been put to the Appellant, if not directly relied upon by the Respondent, before being relied upon as a significant part of the reasons for an overall adverse credibility finding. The First-tier Tribunal erred in law in failing to do so and given that the adverse credibility finding was the basis for dismissing most, if not all of the issues in the appeal; that error infected the whole decision such that it must be set aside.
10. The second ground of appeal is also made out. The First-tier Tribunal decision included an express statement in paragraph 112 which was contrary to the evidence before it contained in the Respondent's CPIN. This affected the assessment of the plausibility of the blood feud claim and fed in to the overall adverse credibility findings.
11. Credibility must be assessed in the round, such that it is not possible to preserve any of the findings of the First-tier Tribunal, the issues must all be considered together afresh in a de novo hearing. In circumstances where the Appellant has not had a fair hearing and findings of fact are required on a number of a distinct issues, it is appropriate in this case to remit the appeal for a fresh hearing in the First-tier Tribunal. In preparation for that, I have included a

direction for the Appellant to provide the full names, dates of birth and home office reference numbers of her husband and two oldest children. Whether or not the Appellant calls any evidence from those family members, their immigration history, particularly in relation to any claims for asylum, are likely to be relevant to the assessment of the Appellant's credibility and are likely to assist the Respondent in any further review before the re-hearing and likely to assist the First-tier Tribunal in determining the issues before it.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before any Judge except Judge Devlin.

Direction

1. The Appellant is to provide the Respondent with the full names, dates of birth and home office reference numbers for her husband and two eldest children within 21 days of the date this decision is promulgated.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15th May 2023