



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-000268**  
**First-tier Tribunal Nos:**  
**PA/55103/2021**  
**IA/15460/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 29 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

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

Appellant

**and**

**BH (IRAQ)**  
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Miss A Ahmed, Home Office Presenting Officer  
For the Respondent: Ms V Easty of Counsel, Turpin Miller LLP, Solicitors

**Heard at Field House on 4 May 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**Background**

1. These written reasons reflect the oral decision which I gave at the end of the hearing. I refer to the appellant as the Secretary of State, and to the respondent as the claimant, to avoid confusion. At the core of the appeal is whether the claimant, an Iraqi national of Kurdish ethnic origin and somebody with acknowledged health issues, had a well-founded fear of persecution based on two grounds. The first was her claimed fear from family members because of a claimed unmarried relationship in Iraq with a man, of whom her father did not

approve. As a consequence, she claimed that her father had threatened her with violence, when she hesitated in agreeing to marry a friend of his. Second, the Secretary of State had consented to the First-tier Tribunal considering a new matter, namely her fear on return as a lone woman, then pregnant in a new relationship, again outside marriage. She has since given birth.

2. A previous First-tier Tribunal Judge, Judge Gumsley, had rejected the claimant's account in a decision promulgated on 13<sup>th</sup> December 2018, concluding that the father's willingness to allow her to attend college was not consistent with his claimed traditionalism; that her claim that her father had been influential within the PUK had been withdrawn and this had damaged her credibility; and there were significant inconsistencies in her account of her education in the IKR, including whether she had completed her studies, the courses she had taken, and whether she or had, or had not, fled the IKR on the final day of her exam. Judge Gumsley also found as not credible her claim of separating in Europe from her former partner in Iraq and the lack of her attempts to locate him.

### **The decision under appeal**

3. The Judge hearing the fresh claim, Judge Gribble, reminded herself correctly at §38 of her decision of the well-known authority of Devaseelan (Second Appeals – ECHR – Extra-Territorial effect) Sri Lanka [2002] UKAIT 702. She also canvassed with the representatives the subsequent Court of Appeal decision of SSHD v Patel [2022] EWCA Civ 36. She considered two new sources of evidence. The first was an expert report on gender-related violence in Iraq, which in very broad terms confirmed that even those women permitted to undertake education were still subject to forced marriages under threats of violence. The second was medical evidence on scarring and PTSD.
4. Whilst Judge Gumsley had claimed that the claimant's claim to have separated from her former partner was not credible, at §44 of her decision, Judge Gribble disagreed, assessing the claimant as being somewhat "other worldly," not practical, and without a mobile phone.
5. At §49, Judge Gribble stated that she was also prepared to give considerable latitude in how things were recorded through intermediaries such as interpreters within formal medical settings. This answered concerns about inconsistencies in medical evidence, which was a second source of evidence. The medical report author had assessed the claimant's scars and her mental ill-health, which was diagnosed as moderate to severe in nature. Judge Gribble assessed the inconsistencies in the medical evidence, which still painted the picture of a sad and lonely young woman who had been moved around the UK and had been depressed for a long time. The Judge went on to find the claimant as credible, at §58, and allowed the claimant's appeal on the first basis.

### **The Secretary of State's appeal**

6. The Secretary of State appealed. She argues that in preferring the evidence of the expert on gender-based violence, Judge Gribble had failed to take into account that the author had not considered Judge Gumsley's decision and therefore, as per the authority of AAW (expert evidence - weight) [2015] UKUT 673, Judge Gribble ought to have applied less weight to it. Moreover, Judge Gribble should have attached less weight to the medical evidence as not being a sufficient basis on which to depart from previous adverse credibility findings, which it is argued did not explain the clear inconsistencies in the claimant's account. Put simply this was not a case where the claimant's claimed

vulnerabilities were said to have affected the reliability of her evidence. Judge Gribble had also failed to consider the deficiencies in the expert report as per HA (expert evidence; mental health) Sri Lanka [2002] UKUT 111 (IAC). Further, she had stepped into the shoes of an expert in carrying out her own assessment because of her perception of the claimant's behaviour in the hearing (see §57). Moreover, she had sought to reconcile inconsistencies based on difficulties with interpretation, as to which there was no evidence.

7. Judge Fisher of the First-tier Tribunal granted permission on all grounds on 12<sup>th</sup> February 2023.

### **The parties' submissions and the hearing before me**

8. I do no more than summarise the claimant's rule 24 reply and the oral submissions, in order to explain why I have reached the decision I have. On one initial point, which I had not anticipated, Ms Easty suggested that the entirety of the Secretary of State's challenge was immaterial because the Secretary of State had expressly conceded that the second alternative basis for the claimant's claimed fear of persecution, namely as a lone pregnant woman returning to the IKR, was well-founded.
9. I do not accept that there was such a concession. The particular wording relied on by Ms Easty at §18 and §19 of the decision states:

"18. The agreed issue I had to decide was whether the appellant's account, seen in the light of the medical and country evidence, was, to the lower standard, a credible account. If it was, it was conceded the appeal would fall to be allowed, as had been the case in the appeal hearing before Judge Gumsley."

I refer to that as the so-called "honour" risk. Judge Gribble continued:

"19. If it was not, the respondent gave consent for the appellant's pregnancy to be considered as a 'new matter'. Although Ms Easty submitted that in fact the pregnancy was simply a continuation of the situation of risk claimed by the appellant and not a new matter, I must consider matters as of the date of the hearing."

10. That was a second alternative basis of claimed fear of persecution. Nowhere is any concession recorded and it would make no sense for the Judge to have considered it as being a second live issue, if it were. Moreover, it is also inconsistent with Judge Gribble's subsequent conclusion at §58 and §59 that because she accepted the "honour" risk, it was unnecessary for her to consider the alternative basis as a lone pregnant woman. Judge Gribble has allowed the appeal solely on the basis of the "honour" risk.
11. I turn to the remainder of the Secretary of State's challenges. I accept first, in contrast to Ms Easty's submission, that the challenges do include challenges to the adequacy of Judge Gribble's reasons. Again, I do no more than summarise them, but the gist is that Judge Gribble had failed to explain why it was appropriate to depart from some of Judge Gumsley's adverse findings in relation to the claimant's credibility because of inconsistencies in, and implausibility of, aspects of her account. Miss Ahmed took me in detail through Judge Gumsley's decision. They included the claimant's account of when she fled Iraq on her graduation day from college, the circumstances in which she suffered threats

from her father and the implausibility of leaving Iraq and being separated from her former partner.

12. The Secretary of State accepted that there were two new sources of evidence, which were not before Judge Gumsley, but both were flawed. The expert on gender-based violence had expressed a view of believing the claimant's account in its entirety. In relation to the medical evidence on scarring and PTSD, the expert had not dealt with inconsistencies, such as an earlier statement said to have been made by the claimant that scarring was as a result of an accident. The Judge had impermissibly erred in speculating on inconsistencies as being explicable through difficulties in translation, or had ignored them altogether. Moreover, the Judge had disagreed with the earlier findings of Judge Gumsley, not because of new evidence, but because she preferred a different conclusion on if and why the claimant had become separated from her partner.
13. The claimant's representatives argued, in their rule 24 reply and before me, that the grounds were a classic disagreement with the findings. The Judge had unarguably referred expressly to Devaseelan and SSHD v BK (Afghanistan) [2019] EWCA Civ 1358, which had been referred to in the recent Patel case. She had taken Judge Gumsley's decision as her starting point, based on her decision on the expertise of expert on gender-based violence, which she did not wholly accept, criticising aspects of it but going on to ultimately accept part of the proposition. Moreover, the Judge had expressly gone on to set out Judge Gumsley's critical findings in relation to the claimant and was also entitled, as a specialist Judge to make practical findings based on her observation of the claimant as a witness and also common difficulties in relation to interpreters, based on experience.

### **Discussion and conclusions**

14. On the one, hand I accept Ms Easty's submission that the Judge was acutely conscious of the weaknesses in aspects of the expert report in gender-based violence, commenting that they strayed into the expert opining on the plausibility of the claimant's account. I also accept Miss Ahmed's submission that while accepting the expert's expertise, the Secretary of State had taken issue with that same weakness. I accept Ms Easty's submission that the Judge did not err in accepting that even those permitted to attend college or tertiary education might still be at risk of so-called "honour" killing. That was a proposition based on what the Judge accepted was clearly within the expert's expertise. I also accept Ms Easty's submission that the expert's evidence on that particular general proposition was not undermined by the expert being something of an advocate for the claimant, elsewhere in her report. It was new evidence, not previously before Judge Gumsley.
15. I further accept Ms Easty's submission, as a general proposition that when taking a previous judgment as a starting point, it is not incumbent on the subsequent Judge to deal with and resolve each and every factual finding made by the previous Judge, when considering whether it is appropriate to depart from the earlier findings.
16. I remind myself of the guidance in the recent Court of Appeal decision in Patel at §37:
  - (i) Where there are different parties but with a material overlap of evidence, the Devaseelan principles of fairness apply with appropriate modification.

(ii) What fairness requires will depend on the particular facts of the case. The findings at an earlier FTT hearing will be an important starting point but the second FTT judge cannot avoid the obligation to address the merits of the case on the evidence then available.

(iii) The second FTT judge necessarily will look for a very good reason to depart from the earlier findings. Whether the evidence could have been adduced at the previous hearing may be relevant to that issue. Equally, a very good reason may be that the new evidence is so cogent and compelling as to justify a different finding.”

17. I accept Miss Ahmed’s submission that the Judge erred when considering whether to depart from Judge Gumsley’s previous findings, when in reality, there was no additional evidence or good reason in relation to specific points, in contrast to the new evidence on “honour” killings. In particular, at §§33 to 39, Judge Gumsley made various findings on the claimant’s father’s claimed prominence within the PUK (§33); the account of the discussions about an arranged marriage and threats to kill her (§§35 and 36); the inconsistencies in her screening interview about her family’s relationship with a former partner (§37); her account of her education and how she left it (§38) and her claims of separation from the former partner (§39). In contrast, Judge Gribble “disagreed” at §44 with Judge Gumsley’s findings about the implausibility of the account of separation from the former partner, on the basis that the claimant was “other worldly;” lacked a phone; and the criticism (by Judge Gumsley) that she had not attempted to contact her former partner was “perhaps unwarranted” (§46). In reality, Judge Gribble did not treat the previous findings as a starting point, rather she departed from them simply on the basis of her disagreement with them, other than on a principled and properly-reasoned basis (see: §66 of R (MW) v SSHD (Fast track appeal: Devaseelan guidelines) [2019] UKUT 00411 (IAC)). Moreover, to Ms Easty’s point that it was not incumbent on Judge Gribble to deal with each and every finding of Judge Gumsley, the latter’s findings were more than generalised, broad brush assessments of the claimant’s credibility, but specific findings from which Judge Gribble has departed, other than on the basis of evidence or other principled reason.
18. Moreover, I further accept Miss Ahmed’s criticism that Judge Gribble erred in speculating about the possibility of interpretation errors in formal medical settings (§49), as distinct from inaccuracies because of vulnerabilities as a witness or the summary nature of screening interviews. Judge Gribble recorded: “I am prepared here to give considerable latitude in how things are recorded through intermediaries such as interpreters within formal medical settings.” I accept that there is impermissible speculation where there is no evidence as whether, for example, the recording of answers during formal medical interviews is particularly lax, or if the Judge was relying on particular expertise, what that expertise was.
19. Even if the Secretary of State’s criticism of the Judge’s assessment of the medical evidence on scarring was unwarranted (and the Judge did appreciate the weaknesses in that evidence), bearing in mind that the medical evidence was only aspect of the assessment of the claimant’s credibility, which required consideration of the evidence in the round, the Judge’s errors were material, such that her assessment of the claimant’s credibility is not safe and cannot stand.

### **Disposal of proceedings**

20. I discussed with the representatives how to dispose of the proceedings. Both agreed that as the error undermined the assessment of the Claimant's credibility, given the nature and extent of the necessary fact-finding on remaking, it was only appropriate to remit remaking back to the First-tier Tribunal (see paragraph 7.2(b) of the Senior President's Practice Statement).

**Notice of Decision**

**The decision of First-tier Tribunal Judge Gribble contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal, without preserved findings of fact.**

**Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a rehearing, with no preserved findings.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Gribble.**

**The anonymity directions continue to apply.**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**25<sup>th</sup> May 2023**