



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003392
First-tier Tribunal No:
PA/56192/2021
IA/00001/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[S M M]
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Janjua (Counsel)
For the Respondent: Mr McVeety (Senior HOPO)

Heard at Manchester Civil Justice Centre on 14 June 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 is an appeal against a determination of First-tier Tribunal Judge Kelly, promulgated on 8th July 2022, following a hearing at Bradford on 30th June 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matters comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, who was born on 12th March 2002. He appeals against the refusal of asylum and the grant of leave to remain in the United Kingdom, as a person falling under the Refugee Convention 1951.

The Appellant's Claim

3. The Appellant's claim is that if he is returned to Iraq there is an alleged threat to his life from a senior member of the Peshmerga, who is the father of a woman ("Fatima"), with whom he had a relationship. He also fears persecution and ill-treatment because of his vocal opposition while he has been in the UK to human rights violations perpetrated by the Democratic Party of Kurdistan (KDP), the Patriotic Union of Kurdistan (PUK), and various Shia militias.

The Judge's Findings

4. The judge held that, "based upon the totality of the evidence I am satisfied that there is a reasonable degree of likelihood that the Appellant has (or at least had) some kind of relationship with a young woman called 'Fatima Ibrahim', and that this woman's father is indeed called 'Ibrahim Musa Ibrahim', a senior member of a military organisation.'
5. However, the judge went on to also add that this "does not of itself provide independent evidence to substantiate the claim that Ibrahim Musa Ibrahim is intent upon killing him for besmirching the family honour" (at paragraph 22).
6. The judge also accepted that the Appellant had posted on his Facebook page photographs "which I accept show him attending protests in London ..." and also in "Piccadilly Gardens in Manchester" (paragraph 26). However, the judge concluded that the Appellant was not "anything other than a very low-level protester", and "there is moreover no evidence that anybody has been arrested by the IKR authorities in respect of their activities outside its territory." (Paragraph 29). The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in failing to conduct a thorough assessment of the risk to the Appellant if he were to be returned to Iraq. They also assert that the judge failed to properly consider the country information. Importantly, they assert that the judge applied a higher evidential test.
8. On 2nd August 2022, permission to appeal was granted by the First-tier Tribunal on the basis that when assessing whether the Appellant had been in a relationship in Iraq, the judge had effectively applied the balance of probabilities

test, and not the lower evidential test. Therefore, arguably there was an error of law.

Submissions

9. At the hearing before on 14th June 2023, Mr Janjua began by saying that given that the judge had accepted the core of the Appellant's claim, namely, that the Appellant had been in a relationship with a girl whose father was a senior army officer, it behoved him to look at the objective evidence which showed that in Iraq honour crimes were not just restricted to women but also were inflicted upon men. This was a relationship outside of wedlock and if the correct standard of proof had been applied the Appellant ought to have succeeded on his appeal.
10. For his part, Mr McVeety submitted that it was by no means clear that the judge had accepted that there was a sexual relationship between the Appellant and a young woman by the name of "Fatima". What the judge had said was that, "I am satisfied that there is a reasonable degree of likelihood that the Appellant has (or last least had) some kind of relationship with the young woman ..." and that her father was "a senior member of a military organisation" (at paragraph 22). This was not the same as saying that the two of them were in an intimate relationship. The judge seems to suggest, submitted Mr McVeety, that because there were photographs which identified the Appellant and a young woman, that there was something going on. Mr McVeety submitted that he would have to accept that this was a poor determination because of the lack of clarity in the judge's approach to the facts. However, the judge had not accepted that there was in existence an illicit relationship. That being so, he had gone on to conclude that the Appellant was under no threat from the girl's family (see paragraphs 23 to 25).
11. In his reply, Mr Janjua submitted that the objective evidence (which the judge does not cite) is clear that no kind of relationship outside marriage is accepted between two unmarried couples. If the judge had found the relationship to be in existence, in the way that he had plainly done on the facts of this case, then on the application of the proper standard of proof, the Appellant stood to succeed on his appeal. Once the judge accepts that there is a relationship the Appellant succeeds on the facts. The objective evidence is clear that in this part of the world in Kurdistan everyone who is involved in a relationship outside marriage in this way is at risk. Mr Janjua added that all the previous evidence of the Appellant in his witness statements, including the findings of the previous judge, confirm that the Appellant was in a relationship with a young woman, whose father was a senior military officer.

Error of Law

12. I have considered this matter on the basis of the findings of the judge, the evidence before him, and the submissions that I have heard today. I find that there is an error of law in the determination. This is a case where the judge on "the totality of the evidence" has concluded that "the appellant has (or at least had) some kind of relationship with a young woman ...". The woman is identified by her full name. Her father is identified by his full name so that their surname of "Ibrahim" matches. The judge concludes that he is a "a senior member of a military organisation". His finding is that "this substantiates some of the previously unsubstantiated parts of the appellant's account ...". However, for the

judge then to go on to say that “it does not of itself provide independent evidence to substantiate the claim that Ibrahim Mussa Ibrahim is intent upon killing him for besmirching the family honour” (at paragraph 22) is an error. Mr Janjua in his Grounds of Appeal refers to the Danish fact-finding mission report, which is to the effect that if a man had sexual relationships outside of marriage then, “he would most likely be offered protection”, but that “the only possible way for him to be protected would be to be kept in police custody” which was not viable in the long-term. A better reference would be to the Country Policy and Information Note Iraq: ‘honour’ crimes (version 2.0; March 2021) which states that,

“In the June 2018 UNHRC report honour killings were defined as ‘the arbitrary deprivation of life of women and girls (but possibly also men and boys) by (male) family members or Tribunal members, because they are deemed to have brought shame or ‘dishonour’ on the family or tribe” (At paragraph 5.1.3).

13. This is an issue that needed a proper consideration, as did the establishment of the facts, on the applicable standard of proof. This appeal involved the question of the relationship between the Appellant and a girl by the name of “Fatima”, a daughter of a senior military official. The issues needed a clear and comprehensive evaluation. This was not done.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. The nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal (see paragraph 7.2 of Practice Statement).

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st July 2023