



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004966
UI-2022-004967

First-tier Tribunal No: PA/52229/2021
PA/50553/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 September 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

DAH
PH
(ANONYMITY ORDERS MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan, legal representative acting on behalf of the appellants

For the Respondent : Mr Diwnycz, Senior Presenting Officer

Heard at (IAC) on 31 July 2023

DECISION AND REASONS

1. The appellants appeal, with permission of Upper Tribunal Judge Jackson against the determination of the First-tier Tribunal (Judge Mensah) promulgated on 6 July 2022. By its decision, the Tribunal dismissed both appeals on protection, human rights grounds and on humanitarian protection (Article 15 (c)) grounds against the Secretary of State's decisions dated 1 May 2021 and 28 April 2021, respectively.
2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

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

The background:

4. The factual background can be summarised as follows. The appellants are nationals of Iraq from the IKR. They stated that they fled Iraq in October 2018 and first arrived in the United Kingdom on 11 December 2018 hidden in the back of a lorry and claimed asylum.
5. The respondent refused their respective claims in a decision letters dated 1 May 2021 and the 28 April 2021. The respondent accepted their nationality and ethnicity and also that they were in a relationship with each other but did not accept that threats had been made by the 2nd appellant's family to either the 1st appellant or the 2nd appellant. In relation to both appellant the respondent set out in the decision letters the issues of credibility or inconsistency of the evidence in this regard. It was concluded that they were not at risk on return to Iraq and for the reasons in the decision letter they would be able to return to the IKR, or in the alternative to internally relocate.
6. The FtTJ recorded the factual basis of their respective claims at paragraphs 2 and 3 of her decision. The FtTJ also had their respective asylum interviews and statements. The first and second appellant are nationals of Iraq of Kurdish ethnicity who were in a relationship. The first appellant stated that his relationship with the 2nd appellant (P) started in 2012 after he met her at her brother's shop. He kept the relationship hidden from her family.
7. In 2014 the first appellant along with his father, uncle and brother approached her family for a marriage proposal which was rejected as her father intended to marry the 2nd appellant to her cousin.
8. The first appellant continued his relationship with P in secret.
9. In 2015 the 1st appellant and the second appellant P met at his sister's house and became intimate.
10. They continued to have contact and it is said that until 2016 they had "good communication" then the family took away her phone for 6 months.
11. In January 2016 he made a second proposal of marriage (Q178AI).
12. In 2016 the first appellant claimed that he was physically assaulted by his partner's brother, and they threatened to kill him as her brother assumed the 1st appellant was in a relationship with P. It is said that the 2nd appellant's father was a high ranking member of the peshmerga and that her brother was a bodyguard for him. The 2nd appellant stated that he was

a “very tribal man” who did not let her go out and they were not free to leave the house and needed an escort and had to ask her father or mother for permission even if she wanted to go to the market or see a friend (see interview responses).

13. The 2nd appellant claimed that in 2016 they threatened to kill her if she did not end her relationship with the 1st appellant.
14. In 2017 the first appellant claimed that he was assaulted by her family as he was inebriated near their house.
15. The first appellant claimed that his family proposed on his behalf in 2016 and in 2018 which were both refused again. P’s family realised that they were in a relationship. P’s father and brother assaulted P and broke her hand.
16. In 2018 the 2nd appellant’s family left her with her cousin at her aunt’s house and they arranged to meet at that house whereby they became intimate,
17. On the 24 September 2018, the 2nd appellant’s family found out that she was pregnant and decided to kill her. Her brother locked her in her room, so she texted everything to the 1st appellant to help her run away. The 1st appellant stated that her older brother had a plan to help run away. The second appellant stated that her brother asked the 2 bodyguards to get out of the car as he wanted to have a word with her she begged her brother not to harm her and her brother called the 1st appellant who put the phone down. A relative of the 1st appellant (L) then telephoned her brother who told him that he was not going to kill her provided she was taken away. Her brother left the mobile with her and so she called L who took her to the 1st appellant.
18. The first appellant was threatened as a result of his relationship with P. They left Iraq with the help of an agent.
19. The first appellant claimed that on return to Iraq he feared he would be killed by his partner’s family because he was in a premarital relationship with her.
20. The second appellant, P, confirmed the above factual account also stated that she was abused by her family and her older brother helped escape after her father and other brothers plan to kill her when they discovered she was pregnant. She says her family now believe she was murdered by that elder brother.

The decision of the FtTJ:

21. The FtTJ set out the agreed issues at paragraph 4 of her decision:

- (1) whether the 2nd appellant is at risk of honour killing on return/

- (2) whether the 1st appellant is at risk the same reason, or as a family member forming a particular social group?
- (3) Whether or not there is a Convention reason and if the judge were to find the claim credible whether they are at risk of article 2 and 3 breaches in any event,
- (4) whether they are documented or undocumented?
- (5) It was agreed by Mr Khan that any claim under rule 276ADE “ very significant obstacles” to integration Iraq stands and falls with the protection claim.

22. The FtTJ set out her assessment of the evidence and findings of fact between paragraphs 13-38. Dealing with the issue of Convention reasons, the FtTJ accepted that as the 2nd appellant was a woman and women formed a distinct group in Iraqi society, the respondent accepted that her claim had the potential Convention reason of “Particular Social Group”. As to the position for the 1st appellant, as a male, the FtTJ set out the country material that the respondent had considered in the decision letter to conclude that the 1st appellant as a male did not found a potential Convention reason as a member of a PSG (see paragraph [13] of the FtTJ’s decision citing paragraphs 29 – 32 of the decision letter). The FtTJ recorded that whilst the appellant’s legal representative did not concede the point, he had not presented evidence to show that men were a distinct group in Iraq. However the judge concluded that the reality is that the 1st appellant could potentially fall within a Convention reason as a family member which was capable of amounting to a PSG and concluded at paragraph 18, having undergone an assessment of the relevant authorities, that she was not satisfied that the appellant could rely upon a PSG as a result of the risk of an honour crime in the light of the country evidence. However the FtTJ concluded he could potentially demonstrate a Convention reason as a result of his family connection with his partner as they made up a “distinct family unit and both say they are at risk or susceptible to risk.”
23. The FtTJ set out her assessment of the evidence and findings of fact between paragraphs 13-38. They can be summarised as follows.
24. The respondent accepted that the appellants are Iraqi nationals, both of Kurdish ethnicity and are in a relationship together. The FtTJ gave those findings positive weight (at [19]).
25. The FtTJ identified that the dispute is that the claim their relationship was not acceptable to the 2nd appellant’s family and despite several requests for consent to marriage, the appellants’ claimed her father and brothers ultimately planned to kill them both, so they escaped (at [20]).
26. The FtTJ considered the issue raised by the respondent, who did not find it plausible that the 2nd appellant’s father would have planned for his daughter to marry a cousin and yet despite the proposals being made

between 2014 and 2018, she remained unmarried at the point they left Iraq. The FtTJ set out the evidence. The 1st appellant in his witness statement (paragraph 8-14) said he began a relationship with P in 2012 made his 1st proposal in 2014. At this stage, the 2nd appellant would have been 19. The 1st appellant says her father refused the proposal as he wanted the 2nd appellant to marry a cousin. He also claimed they were having contact by telephone and in 2016 the 2nd appellant's family took away her mobile phone for 6 months. The appellants say the 2nd appellant's father was a high-ranking officer for the Peshmerga and if he had found out about their relationship they knew he would have killed them both. The appellant said in 2018 he sent a 2nd proposal; the 2nd appellant would now be 23 years of age and still unmarried. The 1st appellant says that the 2nd appellant's father realised they were in a relationship was very rude to the 1st appellant's family, reiterating she was betrayed (betrothed) to her cousin (at [21]).

27. The 1st appellant stated he received threatening phone calls, and he suspected the 2nd appellant's father or brothers "I was threatened that if I keep on relationship with P he will kill me". The 1st appellant says he cannot recall when the call was made but the 2nd appellant says it was after the 2nd proposal and when her family took away her mobile phone and found the 1st appellant's number on it. The 2nd appellant says they broke her phone, twisted her arm, called the 1st appellant, and threatened him. The 2nd appellant says she was kept in her house under her father's bodyguards but used a mother's mobile phone to contact the 1st appellant (at [22]).
28. The FtTJ set out paragraph 6.1.13 of the respondent's CPIN on honour crimes dated March 2021, and concluded from that, " it is clear from the above that women in Iraq can be forced into marriage and from a young age. With nearly ¼ married off at aged 18 years it is not implausible but a concern in this claimed history that despite the claimed betrothal to a cousin, despite the age of the 2nd appellant and despite the various proposals and the clear beliefs of the 2nd appellant's family that there may be some relationship, the 2nd appellant was not in fact forced into marriage when this would have been a clear way of bringing any future proposal to a blunt end. It is being said that the 2nd appellant's father is a high-ranking peshmerga and a man capable of serious violence and even murder". The FtTJ then recorded that "To put this in context the same report states "repeatedly"" and highlighted paragraph 4.1.2 of the CPIN, that set out the relevant country material which provided evidence as to the nature of the patriarchal society, the defined gender roles for women and the way in which traditional forms of arranged, early and forced marriages took place and that women's bodies and sexualities represented the families and communities "honour" with strict rules of conduct. Reference was made to "a simple rumour can lead to sullyng women's public standing and reputation and may end up in extreme forms of honour related violence."
29. The FtTJ set the appellant's claim that the 2nd appellant's father was the kind of man to force his daughter into a marriage and willing to resort to

extreme forms of violence and murder against that background country evidence. The FtTJ stated that she agreed with the respondent that the claim was inconsistent with this claimed history that the 2nd appellant's father appears to have taken no proactive steps to enforce the marriage despite the 2nd appellant's rising age and the 2nd proposal from the same man. The FtTJ gave that negative weight in her assessment of the evidence (at paragraph [25]).

30. At paragraph [26] the FtTJ considered the 2nd appellant's father, and that if he had such a suspicion it was not consistent that he appeared to have taken very few steps to prevent the chance of a relationship. In this context the FtTJ considered the evidence of the 2nd appellant where she stated that her movements started to be restricted, "especially when I would be going on my own as well as keeping an eye on my daily routine". The FtTJ set her assessment out that evidence as follows "what this says is that despite her father and brother suspicions the relationship between the appellants being confirmed by finding his number on a mobile phone, she was still also able to go out alone after only 6 weeks under guard! This is simply implausible and inconsistent, and I give this negative weight."
31. At [27] the FtTJ made a finding of fact that it was inconsistent that the appellant said that the 2nd appellant's brothers were supportive of their father's position and the 1st appellant said that they had beaten him on 2 occasions in 2016 and 2017 and told him he will be killed if he did not stay away from the 2nd appellant, and yet they claimed that the 1st appellant put forward a 2nd proposal in 2018. The FtTJ considered the 2nd appellant's evidence said that her father was adamant she marry her cousin and "therefore I asked D to make one more attempt in persuading my father before it was too late." The FtTJ stated " I question what was the point of the 2nd proposal when both the 2nd appellant's father and her brothers had made their position abundantly clear? The appellants believe that they will be killed if there was even a hint of a relationship in the 2nd appellant was already betrothed to her cousin. I do not consider this credible in the context of the claimed history and the country evidence."
32. The FtTJ also rejected the evidence of the 2nd proposal at paragraph [28]. The FtTJ stated that she did not consider that the 2nd proposal would be put forward by the 1st appellant's family in such circumstances. "If the 2nd appellant's father was so powerful and so threatening, the 1st appellant says his entire family including all 8 of his siblings and their families will be forced to relocate from their home area to Sulaymaniyah after the appellants fled Iraq. The judge stated, "it is incredible they would have become involved in putting forward a 2nd proposal in the first place. I give this negative weight."
33. At paragraph [30] the FtTJ assessed the evidence further. The FtTJ found that despite finding the 1st appellant's phone number on the 2nd appellant's phone after the 2nd proposal over 4 years, the appellant's father did not resort to the extreme violence the appellants said he was likely to resort to and believed he would resort to. The judge asked herself

the question, “what more evidence would he need?” The FtTJ went on to that despite the evidence, neither the 2nd appellant’s father or brothers appeared to have taken any action to deal with the 1st appellant. Whilst he stated he had been beaten twice before he had not been sought or assaulted and he was in plain view at his home. The FtTJ’s assessment of that evidence was that whilst it was not implausible it was inconsistent, and she gave it “negative weight.”

34. At paragraph [31] the FtTJ assessed the evidence given by the appellants. The 2nd appellant had stated that despite all of the above and the risk to her life and her partner’s life, after all these events, her family went on a trip leaving her behind with a cousin. The FtTJ concluded from the evidence that it appeared from the account that this would have been a female cousin and she stated, “I have my reservations at such a step would have been taken by a man who was a high ranking peshmerga and who appear to have his own bodyguards at his disposal.” The FtTJ then considered the 2nd appellant’s claim that she had a cousin who phoned the 2nd appellant and invited him to her home where they lost control and had sex and they both claim that this cause it to become pregnant although she lost the pregnancy. The FtTJ set out her conclusion on that evidence as follows, “I can accept it comes to matters of the heart people can act recklessly but I struggle to accept the appellants would have behaved in such a flagrant way in the 2nd appellant’s family home. I also have doubts the 2nd appellant’s father would have left in such a position. In particular with a cousin who had access to mobile phone and knowing what he did about the use of a phone to have contact with the 1st appellant. I give this negative weight.”
35. At paragraph [32] the FtTJ assessed the evidence relating to the events thereafter. The FtTJ recorded the 1st appellant’s evidence at the hearing who told the FtTJ that he had 3 sisters and 5 brothers in Iraq and that they had all been forced to flee the area because they feared the 2nd appellant’s family and because of the trouble. The FtTJ recorded the evidence that the 1st appellant said his brothers left within 3 weeks of his own departure from Iraq and that when the judge had clarified where they had all gone, the 1st appellant said that they had moved to Sulaymaniyah which is 1 ½ hours away from the home area by car. The FtTJ considered this evidence in the context of their claim that the 2nd appellant’s father and brothers would be able to locate them if they returned and relocated to the IKR. In this context the FtTJ stated “however, they both asked me to believe they have not had any contact with any of the 1st appellant’s family in Iraq because of these past events and instead all contact is through a man called L who has told them this. I do not accept the 1st appellant and his family would have no contact. I do not find it credible they would not have an interest in the appellant’s welfare and in informing him of any developments given they were front, and centre involved in making a marriage proposals and was such a short car drive away from the 2nd appellant’s family. I give this negative weight. Further if the 2nd appellant’s father were a high ranking peshmerga it makes absolutely no sense he would not have sought to locate the appellant to his family and their

moving wholesale to Sulaymaniyah would not on their account have made any difference. I give this negative weight .”

36. The FtTJ assessed the supporting evidence given by L and observed that whilst the appellants had filed a copy of an Iraqi passport for a man called L and a witness statement, the FtTJ found that it was unsatisfactory that she had not been given any information within the statement as to how it was said to have been given by a person said to be still in Iraq, for example directly to the UK lawyer or through the appellants. The FtTJ stated that L did not give evidence and “no taking of evidence consent is before me.” The judge therefore considered she could give less weight to the document and the best she could do was to assess that evidence “in the round” (at [33]).
37. The FtTJ considered the appellant’s account of travel to the United Kingdom as set out in the decision letter. In particular their travel via Italy and the failure to claim asylum. The FtTJ recited the issue raised in the decision letter and at paragraph [35] made a finding that, “I do not consider it sufficient to say a person is under the control of an agent without more. In his witness statement the appellant says they were exploited and detained by the agents. If this is true then it is in my view a reasonable explanation for failing to claim asylum in Italy. There is no basis to assess this other than in the round.”
38. At paragraph [29] the FtTJ assessed the evidence as to what documentation the appellants had when leaving Iraq. The FtTJ took into account the evidence that both appellants stated that the 1st appellant was able to leave Iraq with his CSID and INC, but the 2nd appellant was able to leave undocumented. The FtTJ recorded the evidence that they say they used an agent who seized the 1st appellant’s documents in Turkey and told them this was so they could not be identified if found by the authorities. The FtTJ recorded that she asked the appellant who he thought the agent was talking about and that he had said “he did not know but it might have been the Turkish authorities.” The FtTJ stated that whether the appellant’s account was reliable would be a matter she decided to assess “in the round” in the light of all the evidence.
39. The FtTJ’s overall assessment of the evidence was set out at paragraph [36] as follows:

“take all of those matters together and weighing the negatives and the positives, I find the appellants are unreliable witnesses. I reject their entire account and do not accept they have any problems with the 2nd appellant’s family. I accept they are a genuine married Kurdish couple from Iraq. I don’t accept they are undocumented. I find the appellants are a documented Iraqi nationals with no adverse histories claimed have access to their Iraqi passport, CSID or INID if available to them when they left Iraq. I do not accept they are from K and find it is reasonably likely they are in fact from Sulaymaniyah, as this is the place the 2nd appellant says all his family now live and given I don’t accept his family relocated to escape any

risk from the 2nd appellant's family. I find the appellants are reasonably likely to be from the IKR."

40. Having made that factual assessment, the FtTJ applied them to the country evidence in SMO (2). The FtTJ set out the headnote in its entirety. The FtTJ set out her conclusions at paragraph 38. The FtTJ applied the earlier findings of fact made and concluded that nothing said in the country guidance decision raised any risks to the appellants if they are now returned or changed their ability to return as documented Iraqis. The judge found that they had no adverse issues in Iraq and had a large family network. They did not fulfil any of the risk categories on the facts as she had found them and concluded that they could both return as documented husband and wife to the IKR.
41. The FtTJ dismissed the appeal on all grounds.

The appeal:

42. Following the decision the appellants sought permission to appeal. FtTJ Moon, on 20 September 2022 considered the challenges to the decision brought by the appellants and refused permission to appeal.
43. An application was made for renewal of permission to appeal on behalf of both parties. This was considered by UTJ Jackson in a decision dated 28 November 2022 who granted permission.
44. UTJ Jackson issued directions: No later than 14 days before the listed hearing in the Upper Tribunal, the Appellants shall file and serve a skeleton argument setting out the specific errors of law relied upon, with particularisation by reference to the First-tier Tribunal decision and evidence before it. At the hearing on 3 April 2023 that direction had not been complied with. The appeals were adjourned for that to be done.
45. Mr Khan appeared on behalf of the appellants and Mr Diwnycz ; Senior Presenting Officer appeared on behalf of the respondent. The hearing was conducted by way of a hybrid hearing where Mr Khan attended and gave his submissions by way of CVP whilst all other participants were at the hearing centre. There were no technical difficulties in Mr Khan advancing the appeal on behalf of the appellants nor for Mr Diwnycz to respond to the appeal. I am grateful for the help given by both advocates during their respective submissions.
46. Mr Khan confirmed that he relied upon the written grounds as set out in the skeleton argument.

The submissions on behalf of the appellants:

47. The grounds of challenge are set out in a skeleton argument dated 21 June 2023 as follows:

- (a) That the decision of the FtT decision is flawed in law.
 - (b) That the appellant's claim has not be properly/adequately assessed.
 - (c) That the relevant weight has not been given to the evidence provided by the appellants in support of their claim for asylum.
 - (d) That the FtT Judge failed to ascribe appropriate weight to the circumstances of the case.
- 48. The appellants submit that there was inadequate/insufficient consideration of their asylum/humanitarian protection claim.
 - 49. It is submitted that the FtT Judge fails to give reasons or any adequate reasons for findings on material matters.
 - 50. It is submitted that the approach by the Judge in assessing the reliability of the appellant's evidence is unfair, unreasonable, and inadequate.
 - 51. The appellants submit that the reasoning of the FtT Judge in dismissing both Appellant's appeal for protection under the Refugee Convention and under Art 3 ECHR is inadequate and based on mistake of fact.
 - 52. It is submitted that the FtT Judge's determination is flawed in its overall assessment of the Appellant's credibility and in relation to her limited assessment on documentation.
 - 53. It is submitted that the FtT Judge completely fails to address the evidence which had been put forward by the appellants, the very least which should have been expected was an engagement with the material in her determination.
 - 54. It is submitted that from paragraphs 24 to 25 of the IJ's determination, the FtT Judge makes finding on enforced marriages in relation to the second appellant.
 - 55. It is submitted that the Judge has fallen into error by not applying the correct standard of proof, and that the standard of proof applied was too high.
 - 56. The FtT Judge states within paragraph 24 that the second appellant was not forced into marriage when this would have been a clear way of bringing any future proposal to a blunt end and at paragraph 25 where the Judge states, I do agree with the respondent it is inconsistent with this claimed history that the second appellant's father appears to have taken no proactive steps to enforce marriage.
 - 57. At paragraph 30 the Judge finds that the appellant's father did not resort to the extreme violence the appellant's she was likely to resort to and believed he would resort to, she then goes on to say I have to ask what more evidence he would need. It is submitted that this is a generalised

statement whereby the FtT Judge is expecting every young woman to be forced into marriage in Iraq or for their fathers to resort to extreme violence, whereas this is not the case, this is manifestly an incorrect standard of proof applied by the Judge to the appellant's protection case.

58. The evidence presented by the appellants to the Judge demonstrated that there is a genuine and credible threat to their lives in Iraq, it is submitted that the Judge had made sweeping assumptions in order to make the findings in her determination she has considered the appellant's evidence with the required degree of anxious scrutiny which resulted in her adverse findings based on implausibility. It is submitted that the FtT Judge has erred in rejecting the entirety of the Appellant's claim for reasons of plausibility.
59. Attention is drawn to paragraphs 31 and 32 of FtT Judge judgement. The findings of FtT judge are based on mere assumptions and are completely not based on the evidence presented before the Judge. The appellants account has been totally disregarded just because the events explained by the appellants, in their life do not seem to be plausible by the Judge.
60. It is submitted that the FtT judge has failed to engage Article 8 in respect of the Appellants private and family life in the UK. The right to private life encompasses the rights to; make choices regarding one's own life without interference by the state; to develop one's own personality and to establish relationships with others amongst others. This includes the physical and psychological integrity of individuals.
61. As to the issue of documentation in the context of return, the written submissions state as follows:
62. It is submitted that the FtT Judge has erred in the findings regarding documentation. The FtT Judge at paragraph 36 finds that it is not accepted that the appellants are undocumented and then goes on to say that they have access to their passports, CSID or INID if available to them when they left Iraq and then applies at paragraph 37 the country evidence in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC), without explaining how this case affects the appellants ability to return back to Iraq and redocument themselves. The FtT Judge findings were merely based on what she thought about the CSID not what had happened to the appellant's CSID during their journey to the UK. The appellants have clearly explained their witness statements as to when and where their CSIDs were retained.
63. It is submitted that the FtT Judge's assessment in relation to documentation is incomplete and inadequate, at paragraph 38 the Judge finds that both appellants can return as documented husband and wife to the IKR. It is unclear based on what evidence the FtT Judge has arrived at this conclusion. As both appellants are undocumented and they were not legally married in accordance with the Iraqi law, so how would they be able to return to Iraq as husband and wife? The FtT Judge has not

explained how they would redocument themselves or taken into account whether when returned back to Iraq, how they would travel safely to their home area to redocument themselves whereas the second appellant is deemed to have been killed by his family.

64. The FtT Judge has arguably erred in a limited assessment of documentation given the transfer to the INID system.
65. It is submitted that if they are returned to Iraq, will be subjected to persecution/serious harm at the hands of his opponents, and also from the authorities, it would not be possible to relocate to another part of Iraq to escape that risk.
66. Mr Khan made following oral submissions. He submitted that the FtTJ focused on the plausibility of the account and that at paragraphs 24 and 25 the FtTJ made assumptions and applied a subjective view as to what was plausible. He referred also to paragraph 26 and submitted that a further finding of plausibility was made by the FtTJ and the judge failed to make a finding of fact on the issue before her.
67. Mr Khan reminded the tribunal that both appellants evidence was consistent with each other and when the decision was read as a whole the FtTJ focused on the plausibility of the account rather than looking at other factors such as the internal consistency of the account.
68. Aside from issues of plausibility, Mr Khan submitted that the judge assumed an incorrect standard of proof and that the FtTJ should have adopted the lower standard of the reasonable likelihood. In this respect he referred to paragraph 30 of the decision where the FtTJ found that despite finding the 1st appellants phone number on the 2nd appellants phone after the 2nd proposal over 4 years the appellant's father did not resort to extreme violence the appellants said he was likely to resort to believe you would resort to. The judge stated "I have to ask what more evidence would you need? Mr Khan submitted that demonstrated too high a standard set for the appellants and that there was a subjective view of the evidence taken rather than a finding of fact.
69. Mr Khan submitted that there were errors in relation to the issue of documentation. He referred to paragraph 36, where the FtTJ stated that she did not accept that they were from K but that they were from Sulaymaniyah. However both were in the IKR. Mr Khan referred to the grant of permission that there had been a limited consideration of the issue of return and the INID rollout.
70. He submitted that at paragraph 37 of the FtTJ set out the country guidance decision. However the judge did not assess how these appellants were able to return to Iraq and redocument bearing in mind that the 1st appellant's account is that the documents are taken off him by an agent. As of the 2nd appellant she was an undocumented individual. As CSID's are now phased out, there has been an inadequate assessment of the

appellant's claim on the issue of documentation and whether it is feasible for them to return back to Iraq and redocument themselves.

The submissions on behalf of the respondent:

71. Mr Diwnycz on behalf of the respondent relied upon the Rule 24 response which stated that the grounds of appeal were nothing more than a disagreement with the findings of the FtTJ. In an earlier Rule 24 response (dated 20/12/22) it was submitted that the FtTJ properly directed herself as to the burden of proof and the matters that were before her and given adequate reasons the findings made. The judge took into account the evidence presented and it was open to her having regard to the country information, to find that the account given by the appellants was not deemed to be credible. It is submitted that the rejection of the account is not solely based on plausibility. The judge acknowledged background information that honour killings did occur in Iraq, but it was a matter for the judge to assess the credibility of the appellant's claim in the light of the background information.
72. The respondent continues to rely on her grounds of appeal as advanced to the First Tier Tribunal. It is submitted that contrary to the grounds of appeal and the grant of permission it is the appellants' account, in the context of the background evidence and the context of the appellants' claim that the second appellant's father was a conservative high ranking official prone to violence against his own daughter, that the Judge found was implausible. The findings of the FtTJ at paragraphs 24 & 25 were clearly based on the background evidence and it was open for the Judge to find it was implausible that the second appellant's father would not have simply forced the appellant to marry when she had been betrothed to her cousin for a period of 4-6 years, and he was aware that the First appellant wanted to marry the appellant.
73. It is submitted that it was further open for the FtTJ to find that the second appellant would not have been given the freedom to leave the house on her own despite the fact she was under suspicion for being in a relationship if they were as controlling as claimed.
74. It is submitted that the FtTJ is entirely entitled to find an account implausible when that account is directly contradicted by the background evidence, and a judge is not restricted to refusing an appeal solely based on potential inconsistencies.
75. In his oral submissions, Mr Diwnycz referred to the findings of fact made by the FtTJ and that the judge found no risk on return. He submitted that return would be to the IKR directly and that they would be issued with a laissez passez and would be able to travel to their home area. He submitted they could rely on their original documents.
76. Mr Diwnycz further submitted that the judge had not fell into error when assessing the facts and she had looked at the prevalence of forced marriages and accepted that $\frac{1}{4}$ were forced marriages, but the judge was

not satisfied that the 2nd appellant was at risk of a forced marriage. He submitted the judge looked at the background evidence and found the account of both appellants not to be reliable. Thus the FtTJ had assessed the evidence “in the round” and the grounds were no more than an attempt to reargue the claim.

77. By way of reply, Mr that the appellant’s case were based on facts as to what had happened to them in Iraq.

Discussion:

78. This is an error of law jurisdiction and as Floyd LJ set out in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095 at paragraph 19, “ .. Although “error of law” is widely defined, it is not the case that the Upper Tribunal is entitled to remake the decision of the FtT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter.”

79. When granting permission to appeal UTJ Jackson observed that much of the grounds of appeal were generic rather than identifying any particular point that the tribunal had failed to consider or specific issues as to the burden and standard of proof. She directed the appellant to file the skeleton argument prior to the error of law hearing setting out specifically the errors of law relied upon. As a result the skeleton argument was provided on 21 June 2023. Despite the further opportunity to reframe the grounds the skeleton argument continues to set out what are properly described as generic grounds as can be seen from paragraphs 4, 5, 6, 7, 8 and 9. The grounds begin to set out the points relied upon from paragraph 10 where reference is made to the FtTJ’s decision and findings of fact at paragraphs 24 to 25.

80. It is submitted on behalf of the appellant that the FtTJ fell into error by not applying the correct standard of proof or that the standard applied was “too high.” The submission sets out parts of paragraph 24 and 25. In respect of paragraph 30, it is submitted that the paragraph is a generalised statement “where the FtTJ expecting “every young woman to be forced into marriage in Iraq or for their father’s to resort to extreme violence, whereas this is not the case and is manifestly an incorrect standard of proof applied by the judge to the appellant’s protection case.”

81. In this context I take into account the decision of EJA v SSHD [2017] EWCA Civ 10 where the following was stated:

“27. Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention *dicta* from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372, “reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account”. He added that an “appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected

himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."

82. In her decision the FtTJ expressly set out the self-direction as to burden and standard of proof at paragraph 8 as follows; "the burden of proof is on the appellants to satisfy me, that to return them to Iraq will expose them to a real risk of persecution for a Refugee Convention reason. The standard of proof is a reasonable degree of likelihood, which has also been described as a reasonable chance, or of serious possibility, although those descriptions are one and the same." At paragraph 9 of her decision the FtTJ directed herself to the burden and standard of proof in relation to humanitarian protection and human rights grounds. There is no dispute that that is a correct self-direction in law.
83. When reading the FtTJ's decision it can be seen that in her analysis the FtTJ referred to considering the evidence "in the round" (see paragraphs 29, 33, 35) and throughout her assessment of the evidence identified findings which ones she gave "positive weight" "for example the evidence given as to nationality, ethnicity and whether they had demonstrated they were in a relationship (see paragraph 19) and those which she found weighed against the credibility and consistency to which she gave "negative weight" (see paragraphs 25, 26, 28, 30 and 31). It is also clear from the decision that her assessment of the appellants' factual account and evidence was considered against the backdrop of the country materials relevant to Iraq and in particular that which related to the position of women in Iraq and the issue of honour crimes (see paragraphs 23 and 24).
84. Thus the FtTJ's assessed the evidence in accordance with the correct legal principles in mind before reaching her omnibus conclusion which she set out at paragraph 36, where she stated that having "taken into account all matters and having weighed the negatives and the positives", and during her conclusion used the phrase "reasonably likely" on 2 occasions thereby demonstrating that she recognised and applied the correct standard of proof.
85. None of the paragraphs identified at paragraph 10 of the skeleton argument (paragraphs 24 or 25) demonstrate that the FtTJ applied a too high a standard of proof and on a careful reading demonstrates that the assessment of the evidence was firmly based on the country materials relating to honour crimes and the position of women in Iraqi society, as set out in paragraph 23 and later in paragraph 24. In those paragraphs the FtTJ summarised the appellant's account and claimed history and set it against the background country materials. The FtTJ also expressly considered the description and profile of the 2nd appellant's father based on the evidence given by the 2nd appellant herself of her father as a high-ranking peshmerga and a man that was capable of serious violence and

even murder, but concluded that against the factual background of the 2nd appellant as to her father's behaviour and conduct and in the light of the country information concerning the position of women in Iraqi patriarchal society and honour crimes, the account given was not consistent with the country materials. As submitted on behalf of the respondent, it was the appellant's account, in the context of the background evidence in the context of the appellants claim the 2nd appellant's father was a "tribal man", and conservative high-ranking official prone to violence against his own daughter, that the judge found was implausible. The FtTJ's findings at paragraphs 24 and 25 were clearly based on the country materials and background evidence and it was reasonably open to the FtTJ to find it was implausible that the 2nd appellant's father would not have simply forced the appellant to marry when she had been betrothed to her cousin for a substantial period of time and against the background that her father was aware that the 1st appellant had wanted to marry the appellant since the 1st proposal of marriage in 2014. The FtTJ took into account the rising age of the 2nd appellant having been aged 19 in 2014 and aged 23 in 2018 at the time of the last approach made by the 1st appellant and did so in the context of the country materials as set out at paragraph 24. The finding made against the evidential background was that the clear way to bring about the end of any further proposals would have been for that marriage to have taken place (see paragraphs 24 and 25 when read in context).

86. The original grounds refer to the FtTJ making "sweeping assumptions" and not engaging with the background material, however the FtTJ plainly did have regard to the background material which she set out at paragraphs 23 and 24 and had also referenced the evidence of both appellants in reaching that assessment.
87. The grounds and skeleton argument challenge paragraph 30 on the basis that the "FtTJ makes a generalised statement whereby the FtTJ is expecting every young woman to be forced into marriage in Iraq and for their fathers to resort to extreme violence, whereas this is not the case, this is manifestly an incorrect standard of proof applied by the FtTJ". However the grounds only cite part of paragraph 30 rather than considering the entirety of that paragraph. Furthermore the grounds do not set out that paragraph and the finding of fact in its proper evidential context. At paragraph 30, the FtTJ was addressing the factual account of the appellants as to the events that had taken place. There had been a proposal of marriage in 2014, 2016 and later steps were taken in 2018 and it was claimed that as a result of the proposal the 2nd appellant's father became suspicious about them having a relationship and so took the 2nd appellants phone away and found the 1st appellant number on her phone (see evidence at paragraphs 14 - 18 of the 2nd appellant's witness statement p11AB). The FtTJ found that the action taken by the 2nd appellant's father was inconsistent with the claimed factual background and also the claim made by the appellants that the 1st appellant had been threatened by threats of death. The FtTJ found on the evidence that neither the 2nd appellant's father or her brothers appear to have taken any action against the 1st appellant despite "being in plain view" in his home.

The FtTJ therefore found their account to be internally inconsistent. The findings were not, as the ground suggests, a generalised statement concerning the position of young women in Iraq but the FtTJ setting appellant's account in its own factual background and with the appropriate inferences being drawn from that evidence.

88. The skeleton argument also challenges the findings made at paragraphs 31 and 32 stating that they are based on "mere assumptions" and not based on the evidence before the FtTJ. The complaint made is that the appellant's account was disregarded because the events explained by the appellant do not seem to be plausible.
89. Paragraphs 31 of 32 need to be read in the light of the entirety decision and the factual accounts given and assessment of the evidence. In particular paragraph 31 referred back to the evidence recited in the preceding paragraph and the threats made to the 1st appellant, the proposals made by him over 4 years and the evidence at paragraph 27 that they told him he would be killed if he did not stay away from the 2nd appellant. Contrary to the grounds, the FtTJ was addressing the evidence in the 2nd appellant's witness statement at paragraph 19, that in 2018, despite all of those events and the consequent risk to her and her partner's life, the family went on a trip and left the 2nd appellant with her cousin who telephoned the 1st appellant to meet at the 2nd appellant's aunts home. It was open to the FtTJ to consider the events as stated in the context of the claim as a whole and in the light of the earlier conduct of her father and that of her family members. It was open to the FtTJ to find that she doubted or did not accept that the 2nd appellant's father would have left her with a cousin with access to a phone, having found the 1st appellant's phone number previously on her device. There is no error of law in the findings at paragraph 31 and it was open to the FtTJ to find the 2nd appellant would not have been given the freedom to leave the house on her own given the evidence that she was under suspicion for being in a relationship and that steps had been taken to control her freedom.
90. Contrary to the grounds, the finding made at paragraph 32 was also based on the appellant's evidence. It is not a matter of plausibility but of inference reasonably drawn from the evidence given by the appellants. The FtTJ was entitled to consider the 1st appellant's evidence given at the hearing that his family had been forced to flee from the area due to the trouble with the 2nd appellant's family but that they had only gone to Sulaymaniyah a distance of one half hours away. The FtTJ was entitled to draw the inference from that evidence that if the 2nd appellants father did have the profile as both appellants stated in the evidence as a high ranking peshmerga that it was not credible that he would not have sought to locate the appellant through his family. This is also based on evidence given by both appellants where they stated they could not return to Iraq or relocate as the 2nd appellants brothers and father would be able to locate them.

91. The 2nd point made by the FtTJ was that both appellant's evidence was that they had had no contact with the 1st appellant's family and instead all contact had been through the individual named L who told them about the events. The FtTJ did not believe that evidence as credible and that the family members would not have had an interest in their welfare and informing the 1st appellant of any developments given that they were "front and centre" involved in making the marriage proposals and were a short car drive away from the family. Consequently those findings were ones reasonably open to the FtTJ and were based on the evidence.
92. The overarching submission made by Mr Khan and as reflected in the original grounds and in the grant of permission is that the FtTJ erred in law because the FtTJ considered the claim based on the plausibility of events.
93. Whilst Mr Khan did not cite any legal authorities in support of that submission, in fairness the original grounds did cite the decision of HK v SSHD [2006] EWCA Civ 1037 and the observations made by Neuberger LJ at paragraph 28. This is a decision often cited when addressing the issue of plausibility and Lord Justice Neuberger gave the leading judgement. In HK it was recognised that the judge there had made primary findings of fact or direct inferences for such findings as the reasons to dismiss the appeal.
94. The relevant paragraphs are those set out at paragraphs 28 -30 of the decision:
 28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).
 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

"In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear

implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

95. When looking at the FtTJ's decision in light of the observations made in HK, the FtTJ's assessment of the evidence did not fall into an impermissible assessment of the evidence before the tribunal. The FtTJ did not reject the accounts on the basis of her own perceptions or reasonability of risk but did so by considering the factual account in the light of the country materials. The overall assessment of the evidence was not undertaken against the background of what might be or not be reasonable in the UK but by considering the issues raised relevant to the position of women in society in Iraq and in the context of honour crimes. As set out at paragraph 28, the ingredients of the story, the story as a whole have to be considered against the available country evidence and other familiar factors such as consistency and other factual evidence. This was what the FtTJ did.
96. In Esen v SSHD [2006] CSIH 21 the Court of Sessions said that Adjudicators are entitled to draw inferences of implausibility when assessing credibility and to draw on their common sense and ability to identify what was or was not credible, as long as it was based on hard evidence. A reading of the determination in this appeal indicates this is the approach adopted by the Judge.
97. In HA v Secretary of State for the Home Department [2007] CSIH 65 the Court of Sessions said that the bare assertion of incredibility or implausibility may amount to an error of law but that is not the situation that exists in this appeal. The FtTJ identified the issues of concern, credibility and consistency (in the sense of internal inconsistency with the factual and background evidence) and the consequence of such concerns and provided adequate reasons in support of them.
98. The last issue raised in the grounds relates to the issue of documentation (see paragraphs 14 - 16 of the skeleton argument). It is submitted that the FtTJ erred in her assessment and did not explain how the CG decision of SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 (IAC) (16 March 2022) affected the appellants' ability to return to Iraq or redocument themselves.
99. It is further submitted that the findings were based on what the FtTJ thought about the CSID's and not what had happened to the appellant's CSID during the journey.
100. The 3rd point raised is the assessment is incomplete as the FtTJ found that the appellants could return as documented husband and wife. It is submitted that is both appellants are undocumented, and they were not legally married in accordance with Iraqi law, how could they return to Iraq as husband-and-wife?

101. It is submitted that the FtTJ has not explained how they could redocument themselves or taken into account if returned how they would safely return to their home area to re-document.
102. Having considered those submissions in the light of the factual findings made by the FtTJ, I am satisfied that there is no material error of law in the assessment of the issue of documentation. As can be seen from the submissions made they all refer to the appellants returning as “undocumented” and therefore having to “redocument.” However those were not the factual findings of the FtTJ. In relation to the 2nd appellant, she was not undocumented in the sense that she had no documents available to her as the claim was that her parents retained all her documents (see Q194, Q198). The FtTJ’s assessment of the overall evidence was that she had rejected the factual accounts of the appellants being at risk of harm from the 2nd appellant’s parents and therefore they had no adverse history in Iraq and as a consequence would be able to access their documents as when they left Iraq (see paragraph 36).
103. The FtTJ clearly had regard to the country guidance decision of SMO (2) which she set out at paragraph 37. At Section B paragraph 7 it states that return of former residents of the IKR will be to the IKR and all other Iraqi’s will be to Baghdad. The FtTJ found as fact that both appellants were from the IKR and therefore that was the place of return. In light of its contents that if a returnee can be provided with their documents, that is , a CSID, within a reasonable time, they would not be at risk of ill treatment contrary to article 3, as the FtTJ found, there was no bar to the 2nd appellant having access to her original documents as she was not at risk on return. Therefore in accordance with the CG decision of SMO (2) as the 2nd appellant had access to the original CSID it would not matter if the IKR had moved to the INID system as CSID’s were still valid (see section C paragraph 11).
104. In relation to the 1st appellant, the FtTJ clearly had regard to his claim that he did not have a CSID because it was taken off him by the smugglers/agent. The FtTJ recorded this at paragraph 29. It is clear from that paragraph that the FtTJ had asked the 1st appellant why the CSID was taken by the agent and when considering that response she concluded that whether that evidence was a reliable account she would assess “in the round”. Having done so at paragraph 36, the FtTJ set out her omnibus findings on assessment of their evidence and that she had found that both appellants to have been unreliable witnesses and had rejected their accounts. In this context she also rejected the claim that the appellants were “undocumented” (see paragraphs 36 in conjunction with paragraph 38). It was therefore reasonably open to the FtTJ to conclude from the evidence taken as a whole that she did not accept that they were “undocumented” and therefore in accordance with the decision of SMO (2) would have access to that original documentation in Iraq within a reasonable timeframe. Given that the FtTJ made a finding of fact that they were not of any adverse interest, there would be nothing to prevent family

members providing their original documentation to them, either prior to leaving or upon arrival.

105. Dealing with the last point made it is submitted that the FtTJ's finding at paragraph 38 that both appellants could return as documented husband and wife and as they are undocumented and not legally married according to Iraqi law, how could they return as husband-and-wife?
106. The evidence before the FtTJ was that they were married having undergone an Islamic ceremony in March 2019 (see paragraph 31 of statement). There is no reference in the grounds to any evidence placed before the FtTJ as to Iraqi marriage law and in any event as the respondent submits, what the FtTJ was saying was that they could return together as she had rejected their factual account of being at risk of harm due to their relationship therefore could return as husband-and-wife. As the FtTJ found that they had access to their original documents, they were not "undocumented" could rely on their own respective documents. The grounds do not demonstrate that the FtTJ fell into error in the assessment of return in the light of documentation issues.
107. Whilst the skeleton argument appeared to raise a point about Article 8, no oral submissions were made detailing the basis of this in the context of the FtTJ's decision. It is of note that the FtTJ set out the agreed issues as raised on behalf of the appellants at paragraph 4 and at (e) set out that it was agreed that any claim under rule 276ADE and very significant obstacles integration in Iraq stood and fell with the protection claim. It has not been demonstrated on behalf of the appellants that there had been any other basis for an article 8 claim to be advanced.
108. In conclusion and as often observed, it might be said that a different judge may have reached a different conclusion on the particular facts however, it is not an error of law to make findings of fact which the appellate tribunal might not make or reach a conclusion with which the Upper Tribunal may disagree. The temptation to repackage disagreement as a finding that there has been an error of law should be resisted as Baroness Hale set out in The Secretary of State for the Home Department v AH (Sudan) UKHL 49 at paragraph 30:

"appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or express themselves differently."
109. The FtTJ considered the core aspects of the factual claim and assessed the evidence cumulatively and as the FtTJ stated "in the round" and the reasons have not been shown to be unsupported by the evidence nor to be outside the range of those reasonably open to the FtTJ. The FtTJ was entitled to find the accounts implausible where the FtTJ found that the account was directly inconsistent with the background evidence. The FtTJ was not restricted to refusing the appeals solely based on potential inconsistencies.

110. Consequently for those reasons the appellants have not established that the FtTJ's decision involved the making of an error on a point of law therefore the decision shall stand.

Notice of Decision:

111. The decision of the FtTJ did not involve the making of a material error of law and the decision of the FtT shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

24 August 2023