



IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2023-000275**

First tier Tribunal No: PA/50195/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:  
5<sup>th</sup> September 2023

Before

UPPER TRIBUNAL JUDGES MACLEMAN & RINTOUL

Between

**A H**

(Anonymity order made)

Appellant

and

**S S H D**

Respondent

Heard at Edinburgh on 23 August 2023

For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors

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

**DECISION AND REASONS**

1. FtT Judge Komorowski dismissed the appellant's appeal by a decision issued on 3 January 2023. He found three significant areas of inconsistency in the appellant's evidence, set out under the headings of "The decision to marry", [7 - 12], "The efforts made to arrange a marriage", [12 - 33], and "The discovery of the appellant with the woman", [34 - 45]. This was followed by an "Overall assessment", [46 - 48], finding no reasonable likelihood that the appellant's family approached the family of the woman in the claim to propose marriage, that he had illicit sexual relations with her, or was being pursued by her family.

2. The FtT refused permission to appeal. The appellant renewed his application to the UT, on the grounds that the Judge was wrong to detect inconsistencies and reticence in his evidence, and that it was irrational to take a discrepancy over a range of dates as major rather than peripheral.

3. UT Judge Rimington granted permission on 24 February 2023:

Against the judge's finding at the outset [5] that *'the appellant's evidence accords with the general background evidence, that it is plausible and that the appellant has provided a detailed statement from the outset of his asylum claim'*, it is arguable that judge has failed adequately to explain how the said three inconsistencies, the first being whether the appellant decided to marry at the end of 2018 or the start of 2019, and the second relating to the number of visits to arrange the marriage, and which arguably the judge misunderstood as an inconsistency, and the third as to the nature/number of visits, are sufficiently material to undermine the claim.

4. Mr Heeps submitted thus:

- i. There was an unresolved tension between what the Judge said at [5] and what followed in his decision. He did not explain what he meant by finding the appellant's evidence plausible.
- ii. On the number of visits to arrange the marriage, the appellant, taking his evidence as a whole, described 3 not 2 occasions of contact between the families. Either there was no ultimate inconsistency, or it was so minor and peripheral as to be of no importance.
- iii. On the date of the decision to marry, there was no serious distinction to be drawn between the end of 2018 and the beginning of 2019. The Judge had correctly investigated and excluded any confusion over the Kurdish New Year on 31 March and the beginning of the Georgian year, but although the appellant was referring to the western calendar years, the defining line between the years might not have been of much importance to him.
- iv. The one area of potential significance was whether the appellant visited the woman and had sex with her at her home (after her marriage to another) once or twice, and was discovered by her husband the first or the second time. It had to be accepted that the Judge identified self-contradictions. However, this was given a weight it could not bear on its own, after excision of the other two thirds of the reasoning.
- v. The case should be remitted for fresh hearing by another Judge.

5. Mr Basra submitted that the Judge's reasoning was clear and sustainable on all three particular issues, and as a whole; he was entitled to found upon all the discrepancies identified; and the decision should stand.
6. We reserved our decision.
7. "Plausibility" and "credibility" are overlapping and elastic concepts. Judges are always to be on the alert that what is implausible in a familiar cultural context may be plausible in an unfamiliar one, and that the apparently implausible may yet be true, or "credible".
8. What the Judge found plausible at [5] is clear enough; in Kurdistan a husband and family would be outraged by a contravention of sexual mores such as the appellant described. The use of the word is not intended to add to the previous comment, "accords with the general background evidence". The passage is part of a balancing exercise, not reasonably to be read as acceptance that events did take place as claimed, contradicting the rest of the decision.
9. The Judge correctly identified discrepancies among prior statements and the evidence at the hearing over whether the decision to marry took place in 2018 or 2019. This issue is considered in detail. The question then was how much adverse weight that was to bear in the whole decision.
10. On the efforts to arrange a marriage, and the number of visits, the Judge identified differences among what was said in prior statements, in cross-examination, and in re-examination, ample opportunities having been given to clarify the matter. Again, this was a matter to be weighed.
11. The discovery of the appellant with the woman is, as Mr Heeps recognised, the most crucial of the problems with the appellant's evidence. It is beyond reasonable possibility that he does not know whether he had intimate relations with the woman at her marital home in August 2019 and again in August or September 2020, or only once, when he was discovered. Either he had previously been with her in her house or he had not. The Judge carefully considers all the evidence on this point, again including the oral evidence, and explains why it is weak and self-contradictory.
12. This is the most important component of the overall assessment at [47] that the appellant has not given "an honest account in its central respects as to what occurred to him".
13. We might have been persuaded that the first and second areas of discrepancy did not bear much weight, but they were there. The third area was capable of carrying significant weight. The three have to be taken

together. We must guard against characterising as error of law grounds which are in reality no more than disagreement with the weight given to different factors in the evidence, particularly when the Judge had the advantage over us of hearing the evidence, and much of his analysis is based on how the evidence fared when tested at the hearing.

14. The Judge's conclusion turned not on plausibility (might such a situation occur?) but on credibility (is it reasonably likely this situation did occur?). The conclusion reached was open to him. The explanation given is not shown to be less than legally adequate. We do not find that process to have involved the making of any error on a point of law.
15. We make one passing observation. The respondent held that the claim, even "taken at highest", failed on either or both of (i) legal sufficiency of protection and (ii) availability of internal relocation. It would have been preferable for the tribunal to state its findings, briefly at least, on those alternatives.
16. The appeal to the UT is dismissed. The decision of the FtT stands.
17. The FtT directed anonymity until these proceedings were exhausted. The matter was not addressed before us. We maintain anonymity to the same extent.

Hugh Macleman  
Judge of the Upper Tribunal, Immigration and Asylum Chamber  
24 August 2023