



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

Case Nos: UI-2023-001299  
UI-2023-001449  
First-tier Tribunal Nos: PA/51935/2022  
PA/51628/2022  
IA/05093/2022  
IA/04342/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 October 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

- (i) D R A**
- (ii) H B A**

**(ANONYMITY ORDER MADE)**

**and**

**The Secretary of State for the Home Department**

Appellants

Respondent

**Representation:**

For the Appellant: Mr Brown (Counsel)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

**Heard at Manchester Civil Justice Centre on 31 August 2023**

**Order Regarding Anonymity**

**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 appellant, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.**

## DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Eden, promulgated on 9<sup>th</sup> February 2023, following a hearing at Manchester Piccadilly on 24<sup>th</sup> January 2023. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### The Appellants

2. The Appellants are citizens of Iraq. Both are of Kurdish ethnicity. The first Appellant was born on 5<sup>th</sup> November 1991 and is a male and the second Appellant was born on 10<sup>th</sup> November 1993 and is a female. They appealed against the decision of the Respondent dated 12<sup>th</sup> April 2022 and 11<sup>th</sup> May 2022 respectively refusing them their protection claim and the grant of asylum in this country.

### The Appellants' Claim

3. The Appellants claim that they were in an unmarried relationship with each other when they eloped and fled Iraq, although in the United Kingdom they were Islamically married on 11<sup>th</sup> November 2019, and are likely to be subject to ill-treatment and persecution in Iraq now if they were to be returned for reasons of having engaged in immoral and Westernised behaviour, so as to be subject to a so called "honour" crime by their respective families.

### The Judge's Findings

4. The judge held that whereas it was reasonably likely that the first Appellant would be at risk of "honour" based violence at the hands of her family (given that they had already promised her to a cousin) so that her relationship would not have been accepted with the second Appellant (at paragraph 46); on the other hand, this would not have been the case with the second Appellant who would not have been at a risk of "honour" based violence at the hands of the first Appellant's family. There was some "consistency of their accounts" that the second Appellant was threatened by the first Appellant's family, but his account "has been significantly lacking in detail and inconsistent in the regard to the number of people present when the threats were made" (paragraph 47). In any event, it was open to them to avail themselves of internal relocation upon return in Iraq (see paragraphs 53 to 54). The appeals were dismissed.

### Grounds of Application

5. The grounds of application state that the judge made contradictory and unclear findings on the risk of persecutory treatment, because whilst the judge accepted the credibility of the Appellant's relationship and that the first Appellant would be at risk of honour based violence at the hands of her family, the judge was wrong to have then concluded that her fear was not objectively well-founded.
6. On 30<sup>th</sup> April 2023, permission to appeal was granted by the First-tier Tribunal.

### Submissions

7. At the hearing before me on 31<sup>st</sup> August 2023 there was general agreement between the parties that the judge had erred in the stated respect above. Mr Tan, appearing on behalf of the Respondent, conceded that the Rule 24 response from the Respondent left no doubt that

the judge's findings were contradictory and that the decision should be set aside. For his part, Mr Brown, appearing on behalf of the Appellants, submitted that whilst this was the case, the judge's positive findings under the heading "honour killing" in the determination at paragraphs 42 to 46, ought to be preserved going forward. This is because there was a clear acceptance by the judge that given the betrothal of the first Appellant by her family to someone else that she would be at risk of ill-treatment from them as she "would be deemed to have brought shame on her family" (see paragraph 42 of the decision by Judge Eden). The judge had also stated that "both the Appellants have provided detailed and consistent accounts of how they met, how their relationship developed, their communications" and "where they fled to and the assistance sought from a friend" (paragraph 42).

8. The Country Policy and Information Note on Iraq (at paragraph 43 of Judge Eden's decision) should also be accepted, submitted Mr Brown. The prevalence of honour crimes in the KRI, in relation to which Judge Eden records that the first Appellant "would be perceived by her family to have committed these 'offences'" (at paragraph 44) should also be preserved. Furthermore, as the judge also noted (at paragraph 45) "women are the main victims of such crimes". It was after consideration of these matters that the judge had concluded (at paragraph 46) that, "I am satisfied that it is reasonably likely" that the first Appellant "would be at risk of 'honour' based violence at the hands of her family" (paragraph 46). These findings, submitted Mr Brown should be preserved.

#### **Error of Law**

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. My reasons are those that have been identified both by Mr Brown and Mr Tan by common consent, as set out above. The normal course of action, in a remittal back to the First-tier Tribunal where there is not be a de novo hearing will apply, so that paragraphs 42 to 46 of the determination of Judge Eden will be preserved.

#### **Notice of Decision**

10. 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 under Practice Statement 7.2.(b) because 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, for the appeal to be heard by a judge other than Judge Eden, with paragraphs 42 to 46 of that decision to be preserved intact.

**Satvinder S Juss**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18<sup>th</sup> October 2023**