IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004593
First-tier Tribunal No:
PA/52337/2022
(IA/06114/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

SW (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S. Galliver-Andrew, Counsel instructed by BHT Immigration Legal Service
For the Respondent: Ms H. Gilmore, Senior Home Office Presenting Officer

Heard at Field House on 29 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Bart-Stewart (hereafter "the Judge") promulgated on 4 August 2023 in which she

dismissed the Appellant's appeal on Refugee Convention and Humanitarian Protection grounds against the Respondent's refusal, dated 9 June 2022.

2. Permission to appeal was granted by Judge Veloso on 16 October 2023.

Relevant background

3. In brief, the Appellant claims to be from a socio-economically deprived family and as such, at the age of 15, he was introduced to a 17-year-old girl named 'F' - the intention being that the Appellant would marry F and thereby improve the family's economic status.

4. The Appellant claims that he was introduced to F at a shop in which he worked in Kirkuk and that he proceeded to engage in a secret relationship with F who, the Appellant was told, was from a wealthy and politically connected family.

5. It is said that when the Appellant and his mother approached F's family to agree to marriage, they reacted angrily when F told them that she had been secretly speaking to the Appellant for six months and had agreed to marry him; F was told not to speak to the Appellant anymore.

6. Three months later, the Appellant received a text message from F's friend informing him that F had been beaten by her family in order to prevent her from seeing the Appellant. Later he received a call from the same friend telling him that F had been killed and the police were involved. The Appellant claims that F's father and two brothers went to the Appellant's family house looking to kill him and it was said that F had been killed due to the shame and dishonour brought upon her family. As a consequence, the Appellant left Iraq and eventually arrived in the United Kingdom where he claimed asylum when he was 17 years and nine months old.

The Judge's decision

7. At para. 17, the Judge noted that the Appellant had submitted a medical report from a psychologist indicating a diagnosis of generalised anxiety disorder of a moderate to severe level and an episode of depression at a mild to moderate level that did not meet the criteria for post-traumatic stress disorder.

8. At para. 20, the Judge noted the Appellant's age when he arrived in the United Kingdom and the Joint Presidential guidance on vulnerable appellants. Nonetheless, the Judge indicated that she considered the Appellant's account to be a fabrication and that she did not accept that he had had a relationship as claimed or that he left Iraq in fear of being killed because he brought dishonour to a wealthy, influential family in Iraq. The Judge also found that there was no such person called F.

9. In explaining her conclusions in the following paragraphs, the Judge made reference to the expert report of Dr Morad (para. 21) who is a British Kurdish academic based in the United Kingdom who lectures in anthropology at the University of Essex. In this paragraph, the Judge noted the expert's opinion that child marriages do occur in Iraq as laws are often not enforced. The Judge however noted that the background evidence cited by the expert related to the marriage of young girls and did not explain why the Appellant's mother would force him, as a child, to marry.

10. The Judge went on to find that the Appellant had not been consistent with his explanation for why he took the risk of meeting F in public and that it was also not plausible for the Appellant to do so as he did not want to marry, (para. 22).

11. At para. 23, the Judge noted the expert's confirmation that the Khafagee tribe is well known in Iraq (this being F's family tribe) and that some of their tribal members have challenged the state on two occasions in recent years. The Judge concluded that this evidence made it even more implausible that the Appellant and his mother would turn up at F's family home uninvited and ask permission to marry one of the daughters. The Judge also found that it was unlikely that the Appellant would continue to contact F after the family rejection when he had not wanted to marry.

12. The Judge also made a number of other negative findings in regard to plausibility at para 24.

13. The Judge also identified inconsistencies as to when it was that the proposal of marriage took place and that the Appellant's explanation for this discrepancy did not adequately address the issue, (para. 25). The Judge also disbelieved that the Appellant would continue to try to contact F after exposing her to risk by the making of the marriage proposal itself.

14. At para. 26, the Judge stated that the refusal letter detailed specific challenges to the Appellant's evidence and that the Judge considered those criticisms to be valid; this also led to the Judge finding that it was not credible that the police would have been involved because F had been killed by her own family.

15. At para. 27, the Judge agreed with a submission made by the Respondent's counsel that it was notable that the Appellant did not mention the incident with F at all when being assessed by the psychologist Ms Rogers. The Judge noted that at no point in those reports did the Appellant mention F and that he only really expressed his worries about his mother and his sister.

16. The Judge observed a lack of emotion and/or grieving on the part of the Appellant for F and that the Appellant could not remember when she was killed even though the asylum interview was just a year later. The Judge concluded that the Appellant was more concerned with his lack of status in

the UK and inability to work or study and this was the reason why he left Iraq, (para. 28).

17. The Judge concluded, by reference to the psychologist reports and the letter from the Appellant's personal adviser from the Children's Social Work Services in Brighton, that these reports were based upon an account which the Appellant had lied about and any trauma/loss the Appellant had suffered was just as likely to have been caused by his journey to the UK and separation from his family. The Judge also considered that the Appellant's experience of life in the UK was a matter which had negatively impacted his mental health.

18. In respect of documentation issues relating to risk on return to Iraq, the Judge found that the Appellant had a CSID card in Iraq (para. 32) and that he has his mother, sister and male relatives in that country to assist him. The Judge went on to conclude that the Appellant had been in touch with his mother and that she could send him a copy of the original CSID so that he could be issued with a laissez passer document for travel to and inside Iraq.

19. The Judge therefore found that the Appellant was not credible and dismissed the related appeals.

The error of law hearing

20. At the beginning of the hearing before me, I confirmed the relevant documentation including the Respondent's rule 24 response (dated 2 November 2023) and the Appellant's skeleton argument for the error of law hearing dated 23 November 2023.

21. Additionally, Ms Gilmore indicated to the Tribunal that she accepted that the Appellant's criticism of the Judge's assessment of the documentation issues relating to return to Iraq were made out in light of the Upper Tribunal's decision in SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110 (IAC), ("SMO (2)")

22. Ms Gilmore submitted that the Judge had erred in finding that the Appellant could obtain a laissez passer document and then internally relocate in Iraq because the Upper Tribunal had expressly found that such internal relocation was not possible other than by reliance upon a CSID/INID document.

23. Ms Gilmore contended however that this error was not material because the Judge otherwise lawfully found that the Appellant could access his CSID card and therefore he would be able to internally relocate in line with the guidance given by the Upper Tribunal in SMO (2).

24. I then heard a brief submission from Mr Galliver-Andrew, who relied upon his detailed grounds of appeal and skeleton argument and added that a number of the grounds interplay with each other.

25. In response, Ms Gilmore argued that the Judge had made sufficient reference to Dr Morad's expert report at para. 21 and that the Judge was entitled to make the observation that some of the background evidence relied upon by the expert in respect of the prevalence of underage marriage in Iraq was based on the circumstances of young girls which did not directly apply here.

26. Ms Gilmore also submitted that the expert report was brief in terms of specific engagement with the Appellant's own circumstances and finally added that the Judge was entitled to reach the conclusions which she did at para. 21 and further by reference to Dr Morad's report at paras. 22 & 23.

27. In respect of the Appellant's argument that the Judge had failed to properly take into account the psychological reports of Ms Rogers, Ms Gilmore submitted that it was obvious that the Judge had referred to Ms Rogers' report at para. 20 & 27; she also argued that it was clear that the Judge had accepted the Appellant's vulnerability at para. 30. Ms Gilmore also argued that para. 30 showed the Judge engaging with the Appellant's evidence from his personal adviser relevant to a lawful disposal of the relevant mental health evidence. Ms Gilmore finally encouraged the Upper Tribunal to read paras. 27 – 30 as a whole.

28. I then heard submissions in response from Mr Galliver-Andrew which I do not summarise for the reasons which I lay out below.

Findings and reasons

29. Having heard the competing submissions, I indicated to the representatives that I was of the view that the Judge had made material errors and that I would explain why in a detailed written decision.

30. It is plain to me, that the Judge did materially err in her engagement with the expert reports of Ms Rogers. Whilst the Judge was technically correct to say, as she did at para. 27, that the Appellant did not mention F to Ms Rogers during her assessments with him, it is nonetheless apparent from the decision that the Judge did not in fact engage with what Ms Rogers said about the Appellant's account, manner and presentation during those assessments.

31. It is absolutely plain that the Appellant's representative relied upon some of those observations both in writing and in submissions to the First-tier Tribunal. This includes, for instance as quoted at para. 15 of the skeleton argument for the Upper Tribunal proceedings, Ms Rogers' observation that the Appellant was highly avoidant in speaking about past events and that he was clearly frightened to do so during the interview with her which had led to a deterioration in his mood.

32. Ms Rogers went on to observe that the Appellant would likely appear irritable under cross-examination as he had done with her when centring on past events. It was her view that such irritability should not be interpreted negatively or as an attempt to subvert or avoid the process.

33. At 6.1.14 of the 18 October 2022 report, Ms Rogers noted that the Appellant had not attended the first assessment with her because he had forgotten. This was despite the Appellant having told his solicitor that he was anxious about having the assessment because it would make him feel worse. He also told Ms Rogers that he forgets very important things at times.

34. Importantly, in the same paragraph, Ms Rogers recorded that when she began to ask the Appellant about his past he put his head down and, after answering a few questions, said that he did not know why he had to be asked about the past saying it had nothing to do with what is happening now. He answered a couple more questions before then telling Ms Rogers that he did not want to be asked about the past anymore. He also told Ms Rogers that she should read his witness statement as to why it was that he did not want to return to Iraq and that he would not answer the question.

35. At para 7.2.1, Ms Rogers concluded that the Appellant's avoidance of thinking and talking about things that made him feel bad was not an attempt to subvert the interview and that this behaviour was not uncommon in those who had experienced trauma or were very afraid.

36. At para 7.4.1 Ms Rogers made reference to her own considerable experience working with trauma and that she currently does so for the NHS at Great Ormond Street Hospital in a specialist trauma team. At 7.4.2, Ms Rogers considered that the Appellant's presentation and reporting of symptoms was authentic and that they were observable as well as reported. She considered that there was no sense of exaggeration of symptoms and in his psychometric assessment the Appellant did not try to present the worst possible picture.

37. In my view, it is difficult to square the detailed description of the Appellant's manner and behaviour during the assessment with Ms Rogers in September 2022 with the Judge's brief finding that it was material that the Appellant had not mentioned F during the assessment.

38. It may well be said that Ms Rogers has, on occasion, gone too far in her report by, for instance, asserting that the Appellant's failure to mention certain aspects of his past cannot be held against him, but nonetheless the reports plainly constitute important evidence from a professional with an obvious expertise in working with people who have experienced trauma.

39. I therefore conclude that the Judge did materially err by failing to make any reference to, or findings on, Ms Rogers' opinion that the Appellant was deliberately refusing to talk about past events in Iraq due to trauma

consistent with his description of what happened to F. It was simply not open to the Judge to conclude that other factors were more likely the cause of his mental health problems without at least explaining why Ms Rogers' conclusions, which partly drew upon the Appellant's behaviour and presentation during the assessments, should not be given weight.

40. I also accept the Appellant's criticism of the Judge's decision as explained at ground 3 and find that the Judge did materially err in law by sidelining the expert report of Dr Morad and failing to explain why some of the Appellant's evidence was insufficient to allay her concerns about his credibility.

41. A prime example of this is at para. 22 in which the Judge observed that Dr Morad agreed that there was a risk for unmarried people meeting in Kurdistan followed by her conclusion that the Appellant had been inconsistent with his explanation for taking such risks which he blamed on his age. The difficulty with this finding is that: 1) the Judge does not explain what the inconsistency is and 2) the Judge does not make a clear finding as to why the Appellant's age at the time of the events or the time he claimed asylum was not a reasonable explanation for the unspecified inconsistency.

42. Equally at para. 21, the Judge notes the expert's evidence of child marriages conducted in Iraq but finds that the underpinning background evidence does not explain why the Appellant's mother was forcing him to marry as a child.

43. In this example, the Judge has both ignored the expert's view of the kinds of cultural/social economic factors which can play a part in such decisions and has failed to explain why the Appellant's own evidence as to why his mother decided that he should be married at the age of 15, (including the ethno/cultural difficulties which led to his mother being the sole parent to the Appellant, as well as their own relative poverty), was not a sufficient answer at the lower standard of proof.

44. I therefore also conclude that the Judge failed to give adequate reasons for giving no real weight to the expert report of Dr Morad or aspects of the Appellant's own evidence.

Notice of Decision

45. The effect of my findings is that the decision of the Judge must be set aside in its entirety.

Remittal to the First-tier Tribunal

46. On the basis that the entirety of the decision has been set aside, I find that the remaking of the appeal must be carried out in the First-tier Tribunal.

DIRECTIONS

(1) In light of the Appellant's current socio-economic vulnerability in the UK, I direct that the First-tier Tribunal expedites (as best as possible) his appeal hearing.

(2) The next substantive hearing shall be in the First-tier Tribunal to be listed as an in-person hearing at Taylor House before a Judge other than Judge Bart-Stewart.

(3) The Tribunal shall arrange for a Kurdish Sorani interpreter to be provided.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 December 2023