



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004628

First-Tier Tribunal Nos: PA/53016/2022
IA/07410/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th April 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**B.K.T.
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr James Howard (Counsel), Fountain Solicitors
For the Respondent: Ms Mahdi Parvar, Senior Home Office Presenting Officer

Heard remotely via EOL hearing at Field House on 29 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hena, promulgated on 27th September 2023, following a hearing at Birmingham on 8th August 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 27th August 1997. He appeals against the decision of the Respondent dated 12th July 2022, refusing his application to remain in the UK on the basis of a protection claim and with respect to a claim for humanitarian protection in the alternative.

The Appellant's Claim

3. The essence of the Appellant's claim is that he fears becoming a victim of a honour killing, and as such, falls into the category of a particular social group, such that this is covered by the Refugee Convention.
4. In substance, the Appellant's claim is that he fears the Kakai family, who are a minority faith group in Iraq, and who seek to threaten the Appellant allegedly on grounds that, he is not a Muslim, but who has had sexual relations with one of their girls, ZH, which was then discovered by her family, putting them both at risk.

The Judge's Findings

5. The judge noted how the Appellant claimed that the culture in Iraq was such that a relationship outside of marriage with someone such as Ms ZH, would be frowned upon to such an extent that, they would seek to attack the Appellant in order to restore the family honour. It was noted that the background evidence such as the CPIN report of March 2021 on Kurdish honour crimes supported such a contention (paragraph 16). At the hearing, it was noted by the judge also that the Respondent did not accept the Appellant's claim as being plausible. It was not accepted that the Appellant would do things that were not permitted by his religion, and if he did do them it was not plausible that his parents would then not allow him to marry someone outside of his faith (at paragraph 17). Having considered the arguments, the judge was of the view that, "it is clear that the objective evidence supports the concept of honour-based crimes in the Kurdish regions"(paragraph 18). The judge also added that, "I also do not find against the appellant that he chooses to practice his faith differently from his parents who may have more conservative interpretations or expectations" (at paragraph 18).
6. Nevertheless, the judge had concerns about the Appellant's account. This is because he had been giving differing accounts as to when his relationship with Ms ZH actually started because "in his interview he said it was 2014 and in his witness statement he said 2017". The judge observed that, "when this was put to him, he explained that he met her in 2014 and their love relationship started in 2017", but that "these are two different things, and I would expect him to know the difference between when he started a relationship and when he first met" the young lady (at paragraph 19).

7. Furthermore, although the Appellant had said in his oral evidence that Ms ZH had been killed in August 2018 “this was not set out in his first witness statement” (paragraph 21). The judge also did not find it credible that the Appellant had no issues for the two months that he remained in Iraq before he fled, “especially as he claims his girlfriend was killed by her family” (paragraph 22). For all these reasons, the appeal was dismissed.

The Grant of Permission

8. On 23rd October 2023, IJ Seelhoff in the First-tier Tribunal granted permission to appeal on all of the four grounds that the Appellant had tendered through his representatives. In particular, the judge observed that it was arguable that the Tribunal at first instance had made irrational factual findings. In particular, whilst the judge stated that the Appellant said that his relationship started in 2017 in his statement, he in fact said it started in 2014.
9. In granting permission, IJ Seelhoff observed that the judge may have erred in placing significant weight on this alleged discrepancy.
10. Furthermore, it was a matter of concern that the judge attached significant weight to the continuance of the relationship once it was “discovered” because there was no intrinsic reason why this in itself should be disbelieved. In fact, on any reading of the Appellant’s evidence, his parents were unaware of the relationship until June 2018. Moreover, the girl’s family appeared to have been unaware of the relationship until the end of August 2018, when she was allegedly then killed.

Submissions

11. At the hearing before me, Mr James Howard, appearing as Counsel on behalf of the Appellant relied in the detailed Grounds of Appeal and submitted that the judge’s conclusion was irrational because the distinction that the judge chose to make between when the Appellant *met* ZH and when their love relationship *started*, was not a tenable one. The judge’s statement that, “I would expect him to know the difference between when he started a relationship and when he first met” ZH (at paragraph 19) was a difficult one to draw in the particular circumstance of this case. In any event, the Appellant had not been inconsistent. Furthermore, the fact that the Appellant continued to meet with ZH even after discovery by the families was not improbable but that in any event, the judge was wrong about when this had been discovered, both by the Appellant’s own family and by the family of ZH. It was, therefore, not a proper basis upon which to have refused the appeal.
12. For her part, Ms Mahdi Parvar, appearing on behalf of the Respondent, submitted that the judge was entirely right to make findings of fact on precisely this basis. Moreover, these were not the only reasons given by the judge because the judge had also referred to the fact that the Appellant had remained in Iraq for two months before fleeing without any untoward events taking place.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. I find that the distinctions that the judge drew are not tenable ones. The evidence shows that the Appellant’s parents were unaware of the relationship until June 2018 and the family of ZH did not become

aware until the end of August 2018. In any event, it would not be inconceivable that a couple who were in a relationship would continue with that relationship if they were indeed committed to each other regardless of whether this was discovered by their respective parents. Furthermore, it is clear, given all the other findings that the judge has made, that too much reliance was placed upon the alleged distinction as to whether the relationship started in 2014 or in 2017, especially, as it cannot be ruled out that the Appellant's explanation for this is not an intrinsically implausible one.

14. This is a case where the judge has found that on the lower standard such a relationship "could trigger the appellant being a target of a honour based killing" (paragraph 19). The judge has found this on the clear evidence that "the objective evidence supports the concept of honour-based crimes in the Kurdish regions". This is so because "This type of honour-based crime would include the scenario described by the appellant, having an extra marital relationship with a lady that is from a different faith" (at paragraph 18).

Remaking the Decision

15. I have remade the decision on the basis of the findings of the original judge, the evidence before the judge, and the submissions that I have heard today. I am allowing this appeal for the reasons that I have given above.

Notice of Decision

16. 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. I remake the decision as follows. This appeal is allowed.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th April 2024