



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000508

First-tier Tribunal No: PA/54444/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th of June 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAH
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr M. Diwnycz , Senior Presenting Officer

For the Respondent :Mr Holmes, Counsel instructed on behalf of HAH

Heard at Phoenix House, Bradford on 3 June 2024

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against the determination of the First-tier Tribunal (Judge Cox) promulgated on 5 January 2024. By its decision, the Tribunal allowed the appellant's appeal on asylum and on human rights grounds against the Secretary of State's decision dated 7 July 2023 to refuse his protection and human rights claim.
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 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.

4. Although the appellant in these proceedings is the Secretary of State, for convenience I will refer to the Secretary of State for the Home Department as the respondent and to the appellant before the FtT as “the appellant,” thus reflecting their positions before the First-tier Tribunal.

The background:

5. The factual background can be summarised as follows. The appellant is a national of Iraq of Kurdish ethnicity. He entered the United Kingdom on 27 March 2019 and claimed asylum on the following day. The basis of his claim was that he feared persecution in Iraq based on his membership of a particular social group as a victim or potential victim of Kurdish honour crimes.
6. The respondent refused the protection of human rights claim in a decision taken on 7 July 2023. The appellant’s nationality, identity and that he was from the IKR was accepted but the respondent did not accept the factual basis of his claim that he had issues with his ex-wife’s family or her lover and set out issues of credibility arising from the factual account given. It was not accepted that there was a convention reason.
7. The appellant appealed the decision. The skeleton argument (“ASA”) set out at paragraph 6 that the appellant had a well-founded fear of persecution for Refugee Convention reason and later at paragraph 11 referred to background material relevant to honour crimes (see paragraphs 11 - 13). The respondent set out in the review that it was not accepted that the appellant was a refugee or that he had a well-founded fear of or is it real risk from non-state actors for the reasons set out in the decision letter and that he was not a member of a PSG (paragraph 10). In the alternative the respondent set out that being a member of a PSG is not sufficient to form the grant of asylum and/or humanitarian protection because the respondent found the appellant to be internally and externally inconsistent and went on to state that the respondent did not find the appellant to be credible when considering the claim in the round (see paragraph 12).
8. The appeal came before the FtT (Judge Cox) at a hearing on 15 December 2023. FtTJ Cox heard oral evidence from the appellant with the assistance of an interpreter, and his account was the subject of cross-examination, and each party provided their closing submissions on the relevant issues.
9. In his decision promulgated on 5 January 2024, FtTJ Cox allowed the appeal on Refugee Convention grounds and also on human rights grounds (Article 3). His conclusions were summarised between paragraphs 48 - 55, finding that he was satisfied that the appellant had given a coherent and sufficiently detailed account of his experiences in Iraq and that his account was “plausible and generally consistent” (set out at paragraph 48). Having considered the medical evidence he attached weight to that evidence taking into account that the appellant had been receiving treatment for his mental health issues over a sustained period of time and was satisfied that his presentation was consistent with his account of experiences in Iraq and his journey to the UK (at paragraph 49). As regards his general circumstances, the FtTJ made a finding that his circumstances did not suggest that he was an economic migrant given his age and the fact that in Iraq he had a stable job and had regular contact with his child. The FtTJ found on the facts that “the appellant would not have taken the decision to leave Iraq

lightly”(at paragraph 50). At paragraph 51 the FtTJ stated, “having carefully considered all the evidence, I find that the appellant has discharged the burden of proof”. He set out additional findings that he was satisfied that some of the appellant’s in-laws worked for the KDP and were well connected, that the appellant suspected his wife was having an affair and raised concerns with her family, the appellant’s in-laws threatened the appellant and in May 2015 his brother-in-law shot him. The appellant’s brother-in-law was in prison for just over 2 years. The appellant was threatened by his ex-wife’s lover, and he had some influence within the PUK. In January 2018, the appellant was attacked again, and he managed to escape Iraq. The FtTJ concluded that the “appellant genuinely fears returning to Iraq and that there is a real risk that his in-laws still have an adverse interest in him.” At paragraph 53, the FtTJ also found that “the appellant has been shot at in the past, I am satisfied that the appellant has been persecuted in the past”.

10. Having made those findings of fact the FtTJ turned to the issues of sufficiency of protection and whether or not the appellant could relocate. He recorded at paragraph 54 the position taken by the presenting officer at the hearing and it was recorded that he had confirmed that if the FtTJ,” accepted the key elements of the appellant’s account, the respondent accepted they would not be sufficient protection from persecution in Iraq and that the appellant could not relocate. In this context, the respondent noted the power and influence of both the appellant’s ex-wife’s family and his ex-wife’s lover.”
11. The FtTJ therefore recorded his final conclusion at paragraph 55 that “on the totality of the evidence, I find there is a real risk of the appellant being persecuted for a Convention reason if he were returned to Iraq. Accordingly I allow his asylum appeal. Based on the same factual findings, the FtTJ also set out his decision on human rights Convention at paragraph 56 that there was a real risk of the appellant’s Article 3 rights being violated on return to Iraq. As the FtTJ had determined that the appellant qualified as a refugee, the FtTJ dismissed his claim for humanitarian protection.
 1. Following the decision, the respondent sought permission to appeal, and it was granted on 12 February 24 by FtTJ O’Brien. It is right to record that whilst the grounds for permission to appeal only referred to “ground 1; failing to give reasons or any adequate reasons the findings on a material matter/making a ministerial misdirection in law-redocumentation, sufficiency of protection and feasibility of return, there were a number of paragraphs from 7- 14 which set out the grounds of challenge. Paragraph 7 submitted that the FtTJ failed to make any findings on whether the appellant’s claim engaged the Refugee Convention and at paragraph 8 submitted that the judge had failed to provide adequate reasons finding that the Refugee convention had been engaged. Other paragraphs asserted that whilst the judge had found the appellant’s account plausible the FtTJ had failed to provide adequate reasons and/or made a material misdirection in law in failing to have regard to and apply the findings in the established case law of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 001100 (IAC) (hereinafter referred to as “SMO(2)”). In this context, it was submitted that the appellant’s evidence was that he remained in contact with his relatives and therefore they would be able to assist in obtaining an INID document on his return (paragraph 10) and that as the decision in SMO (2) had been relied upon in the decision letter and the review, it was incumbent upon the judge to make findings on that key issue (paragraph 11) and that apart from a “cursory consideration” at paragraph 47 it

was submitted that the judge failed to consider the feasibility of the appellant's return and his ability to obtain new documentation (); that the appellant had failed to demonstrate any continuing threat (paragraph 13) and finally that they would be sufficiency protection (paragraph 14).

12. Permission to appeal was only granted on paragraph 8 of the grounds. The other grounds of permission as summarised above were rejected with the Permission judge giving reasons and that the "remainder of the application discloses no separate material arguable error of law." The grant of permission was therefore a limited grant of permission granting only permission on paragraph 8.
13. No application was made for reconsideration of those grounds of permission by way of a renewal application before the Upper Tribunal and it was not argued at the hearing that this was anything other than a limited grant of permission.
14. At the hearing before the Upper Tribunal Mr Diwnycz, Senior Presenting Officer appeared on behalf of the Secretary of State and Mr Holmes, Counsel who appeared on behalf of the appellant before the FtTJ, appeared on behalf of HAH. At the outset of the hearing, Mr Diwnycz informed the Tribunal that he had discussed the issues arising from the appeal with Mr Holmes and was of the view that the factual claim fell within honour-based violence and that by reference to paragraph 7 of the grounds, the FtTJ at paragraph 55 had set out that he had found a risk of the appellant being persecuted for a Convention reason if he were returned to Iraq, and that the FtTJ must have been referring to a particular social group ("PSG") as it could not have been anything else. He accepted that it would be difficult to argue materiality and that even if there was an error in theory, it would not be material to the outcome.
15. Mr Holmes on behalf of the appellant indicated that both he and Mr Diwnycz were in agreement and that whilst he acknowledged that the judge did not deal with the Convention reason in any real way, the point raised is that it could not be material in circumstances where there was a Convention reason. Thus even if the decision were set aside on that narrow point the outcome would still be the same.
16. There was no Rule 24 response and Mr Holmes was invited to provide his submissions on the factual basis and the issue of materiality. He submitted that there were 2 potential Convention grounds; risk based on honour-based violence which had been acknowledged by Mr Diwnycz notwithstanding the grounds of challenge, and the second based on the PSG of "family". The second basis was explained that as the reason the appellant faced persecution from his ex-wife's family, the family were recognised as the persecutors notwithstanding their divorce therefore it fell within a "social group". Mr Holmes went on to explain that his factual claim that he was at risk of harm from the family and that the FtTJ had accepted all material aspects of the appellant's claim. He submitted that the Convention reason (honour crimes) had been identified in the relevant CPIN dated 31 March 2021, although this had not been exhibited in the bundle and the FtTJ's decision at paragraph 23 was consistent with what was set out at 2.3 of the relevant CPIN. The FtTJ accepted this issue as falling within a particular social group. As the application for asylum was made in 2019 it predated the new provisions set out in the 2022 Act. As to being at risk of persecution, the FtTJ had set out his conclusions at paragraph 31 which were then summarised at paragraph 48 - 51. At paragraph 52 he accepted that there would be ongoing interest in the appellant and past persecution had been accepted. He submitted there had been no challenge in the grounds to those conclusions.

17. Mr Diwnycz referred the Tribunal to the CPIN at 1.2.2 and that it was recognised that men could be the subject of honour crimes.
18. In the circumstances Mr Holmes submitted that applying R (Iran), any error if there was such an error was not material to the outcome and therefore to dismiss the respondent's appeal and to uphold the decision.
19. Notwithstanding this was the respondent's appeal, it is the position that the parties are in agreement that the decision of the FtTJ does not involve the making a material error of law. As set out above, the grant of permission was limited to one paragraph, that at paragraph 8 where it was submitted that the judge had failed to provide adequate reasons for finding that the Refugee Convention had been engaged. There had been no rule 24 response in answer to the grounds of challenge, but Mr Holmes provided his oral submissions at the hearing. Having heard those submissions in the context of the FtTJ's decision, I conclude that there is no error of law that is material to the outcome of this decision.
20. Notwithstanding the issues of credibility raised in the decision letter, it is clear from his decision that the FtTJ was satisfied that appellant's account was a credible and plausible account. At paragraph 18, he stated that he had reached that decision after "having carefully considered all the evidence" and as set out in his decision, having had the opportunity to hear the oral evidence as challenged in cross examination.
21. The FtTJ set out his analysis of the evidence and his reasons for reaching that decision on credibility from paragraphs 15- 47. His overall conclusions were then summarised between paragraphs 49 - 54. Those factual findings concerning the core of the appellant's claim were not challenged in the grounds beyond the reference to obtaining documentation on return and the feasibility of return and sufficiency of protection. As set out above, the grant of permission was a limited grant of permission and permission was not granted on those other issues. As also set out in the decision of the FtTJ at paragraph 54, the respondent at the hearing confirmed that if the key elements of the appellant's account had been accepted then it was also accepted by the respondent that there would not be sufficient protection from persecution in Iraq and the appellant could not relocate. Thereby rendering the written grounds to be wholly immaterial. This was because the respondent noted the power and influence both the appellant's ex-wife family and his ex-wife's lover. The grounds failed to take that into account.
22. The FtTJ accepted the factual basis of the appellant's claim as credible and plausible, having considered not only the oral evidence but also the medical evidence which he found provided support for his account. The FtTJ concluded that he had not embellished his account (paragraphs 39 and 40) and he had given a "coherent and sufficiently detailed account of his experiences in Iraq. The account is plausible and generally consistent" (paragraph 48). The FtTJ accepted that the appellant had been married and had a daughter from the relationship and also his occupation. As at the core of the account, he accepted the appellant's evidence that the appellant began to suspect his wife having an affair and that by April 2015 he discovered everything and told her family about that. As a result he had been approached by her family members who accused him of damaging the family's name and reputation. He was the subject of past persecution which the judge accepted having been shot and the surgery to remove the bullet. The incident was reported to the police and the assailant was dealt with. Following this the appellant was attacked for a 2nd time being left with

a head injury but those responsible were not arrested and that no protection was provided for him. The FtTJ also found that some of the appellant's in-laws had worked for the KDP, and others had influence with the PUK, and the family were "well-connected", and that he had been attacked on the 2 occasions described had an adverse interest in him (paragraph 52 and 54).

23. Whilst the written grounds asserted that the FtTJ failed to provide adequate reasons for finding the Refugee Convention was engaged, I agree with the oral submissions of Mr Holmes that the grounds have to be read in the context of the factual findings that were made on the core of the account as set out above and also in the context of paragraph 23. In that paragraph the judge set out that he had had regard to the background material "which demonstrated that an offence against perceived family honour can be taken very seriously. As such, the appellant's claim that his wife's family believe that he had dishonoured them by accusing her of having an affair is plausible. They are likely to be concerned about the local community's reaction to an allegation that she committed adultery and as a result it is plausible that they wanted to harm the appellant. The background material also demonstrated that although women are predominantly the victims of honour crimes, there are some men punished." Whilst the FtTJ did not have the relevant CPIN of 31 March 2021 before him, both advocates agree that the CPIN acknowledged that honour crimes fell within a PSG which was what the FtTJ was referring to at paragraph 23. Whilst it would have been preferable for the FtTJ to have expressly identified the Convention ground as a falling in the category of a "particular social group" at paragraph 55, when the decision is read together and in the light of the factual findings made and in the context of the evidence, any such error is not material to the outcome.
24. For those reasons, even if it were the case that the FtTJ did not give any reasons at paragraph 55, it would not be material to the outcome because the factual findings that he made when viewed in the context of the background material was sufficient to demonstrate that it fell within a PSG.

Notice of Decision:

25. Therefore the decision of the FtTJ did not involve the making of a material error of law and the decision to allow the appeal under the Refugee Convention shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

3 June 2024