Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03439/2016**

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons Promulgated**
on 26 May 2017	**on 15 June 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ARIVAN RAMZI-SALEH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Samra of Harbans Singh and Co.
For the Respondent: Mrs Aboni Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Hussain ('the Judge'), promulgated on 16 November 2016, in which the Judge dismissed the appellant's appeal on protection of human rights grounds against the respondent's decision dated 29 March 2016.

Background

2. The appellant, born on 25 February 1987, is a citizen of Iraq. The appellant arrived in the UK illegally from France on 20 November

2015, claiming to have left Irbil in Iraq and to have travelled through several countries before arriving in the UK.

3. The Judge noted the appellant is a Sunni Muslim who previously lived in Baghdad but who moved to Mosul in 2004 because of tension between Sunni and Shia Muslims. Following the arrival of IS forces the appellant and his family moved to Irbil where they were permitted entry as a result of his wife's Kurdish ethnicity.

4. The Judge considered the evidence provided before setting out the findings of fact from [15] of the decision on the challenge. The findings relating to the core of the claim may be summarised in the following terms:

   i. The appellant met his wife in 2007 and they married on 17 October 2007. The appellant's wife moved to live with him in Mosul [16].
   ii. The Judge noted the appellant's claim that his wife's father agreed with his brothers that she would marry his brother's son although the appellant's wife's father died in 2004 before any marriage was arranged [15].
   iii. The appellant claimed the family lived without threats or harassment from the appellant's wife's uncle or cousin until an incident in Irbil in 2015 [16].
   iv. The Judge noted "in other words, despite their claimed anger and positions of influence and power that they held, the appellant's wife's uncle and cousin were either unable to locate them or did not bother to do so" [16].
   v. The appellant's claim that the reason he and his wife were left alone for eight years between 2007 and 2015 was because the wife's uncle and cousin, as Kurds, had no power or influence in Mosul was not found plausible as they were said to be men of power and position and had the means to locate the appellant and his wife, which they did not need to do personally. Any action subsequently taken was said to have been taken through third parties [17].
   vi. The Judge found it implausible that despite's the wife's father having died in 2004 no marriage took place in the intervening years when, had the wife's cousin intended to marry her, there would have been ample opportunity to do so [18].
   vii. The failure of the cousin to marry the person who is now the appellant's wife did not support either the appellant's assertion that his wife was betrothed to her cousin or that the cousin or the uncle harboured such anger towards them because the appellant married her, that they now want to kill the appellant [18].
   viii. There is every possibility appellant's wife's uncle and cousin had moved on in the last eight years and it is unlikely the wife's cousin will have remained unmarried, possibly founded a family, making it questionable whether he wished to put that at risk by pursuing the alleged vendetta against his cousin or the man she married [19]. Lack of risk is said to be indicated by the failure to pursue the appellant's wife for the preceding eight years. The

Judge was not satisfied that this failure was because of the uncle and cousins lack of ability to find them [19].

ix. The Judge was not satisfied that the appellant's wife was betrothed to her cousin and, even if this was the case, that the uncle and cousin sent men to attack the appellant in Irbil as claimed, or at all [20].

x. The failure of the appellant to claim asylum in the first safe country he came to, namely Germany, damages his credibility. No credible reason was put forward as to why the appellant did not claim asylum in Germany [21].

5. The Judge, having dismissed the asylum claim, thereafter considered the appellant's humanitarian protection claim by reference to Article 15(c) of the Qualification Directive. The Judge notes that as the appellant's wife is a Kurd and as they were permitted to enter the IKR previously, this is a viable option especially as the appellant does not argue he would not be allowed to return there. The appellant's objection to relocating to the IKR was said to be the fear of the appellant's wife's uncle and cousin which the Judge did not find to be credible. The Judge found a viable internal flight alternative to the IKR [25].
6. The Judge also found the appellant remains in constant contact with his wife in Iraq enabling appropriate arrangements to be made.
7. In relation to relocation to Baghdad, the appellant claims the only reason he cannot return to Baghdad is because he is a Sunni Muslim but no real risk to the appellant if relocating to Baghdad was made out on this basis [28].

Grounds and submissions

8. Permission to appeal was granted to the appellant by another judge of the First-tier Tribunal on the basis it is arguable that the Judge has speculated on evidential matters upon for which an explanation could have been given by the appellant if asked.
9. In his oral submissions, Mr Samra confirmed this is a reasons challenge asserting the Judge failed to give adequate reasons for the findings made. It was asserted this case involves an honour issue.
10. In relation to relocation, it was asserted the Judges failed to give adequate reasons as to why relocating would not be unduly harsh.
11. On behalf of the Secretary State Mrs Aboni referred to the respondents Rule 24 response and asserted that even if the Judge had made an error it was not material to the decision to dismiss the appeal.

Error of law

12. In *VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC)* it was held that (i) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally demonstrate by reference to the material and arguments placed before that Tribunal that (a) the matter involved a substantial

issue between the parties at first instance and (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law. (ii) Given that parties are under a duty to help further the overriding objective and to co-operate with the Upper Tribunal, those drafting grounds of appeal (a) should proceed on the basis that decisions of the First-tier Tribunal are to be read fairly and as a whole and without excessive legalism; (b) should not seek to argue that a particular consideration was not taken into account by the Tribunal when it can be seen from the decision read fairly and as a whole that it was (and the real disagreement is with the Tribunal's assessment of the evidence or the merits); and (c) should not challenge the adequacy of the reasons given by the First-tier Tribunal without demonstrating how the principles in (i) above have been breached, by reference to the materials placed before that Tribunal and the important or substantial issues which it was asked to determine in that particular case.

13. It has not been made out that the Judge failed to consider the evidence made available with the required degree of anxious scrutiny.

14. The appellant asserts in his grounds that the Judge has speculated. It is accepted that in certain circumstances speculation can amount to arguable legal error, an example being the decision in *HA v SSHD [2007] CSIH 65* where the Court of Sessions said that basing a finding on conjecture may amount to an error of law.

15. The findings of the Judge have not been shown to be based solely upon speculation or conjecture. Mr Samra asserted that the core of this case was that of the alleged marriage and an issue of honour, as a result of the marriage involving the appellant. It is accepted that in some parts of the world, such as in Iraq, the family is a very important institution with parties expected to found their own families through marriage to enable them to have children. The appellant was asserting that as a result of his wife not marrying her cousin there was a real risk as a result of the alleged threats.

16. Against this, the Judge noted that there had been no attempt by the cousin to marry the appellant's wife. The Judge noted the appellant's wife's father died in 2004 with no marriage taking place between 2004 and the date the appellant married his wife on 17 October 2007. It is stated in the grounds that it was not until 18 May 2007 that the appellant's wife turned 18. The point being made in the grounds is that the Judge erred in commenting upon the period when no effort was made by her cousin to marry the appellant's wife as she could not marry until she attained the age of 18.

17. In Iraq, the legal age of marriage is 18 for both girls and boys, but a girl can marry at the age of 15 with parental consent. When the appellant's wife's father died, she was 15. There was no evidence before the Judge of any approach being made to the person who would then have been the appellant's wife's guardian seeking her hand in marriage. The fact appellant only attained 18 in May 2017 is therefore not an absolute bar to her having married earlier, and does not undermine the Judge's comments that there was no evidence of the cousin attempting to marry the appellant's wife when he could have done so.

18. According to UNICEF (UNICEF, State of the World's Children, 2016), approximately 1 in 5 girls are married before the age of 18 in Iraq. Poverty, conflict and strict religious and social traditions are drivers of child marriage in Iraq and increased financial hardship in Iraq has meant that the number of child brides has increased. According to the Iraqi government, in 1997, 15% of marriages involved women under 18. This number jumped to more than 20% in 2012, with almost 5% married by the age of 15.
19. The comment by the Judge regarding the availability of the appellant's wife for marriage to the cousin, if the cousin genuinely wished to marry her, has therefore not been shown to be a finding based upon speculation. The conclusion drawn from such a finding that the Judge erred in suggesting the cousin was no longer interested in marrying the appellant's wife, based upon consideration is the evidence as a whole, has therefore not been shown to be a finding not reasonably open to the Judge.
20. The appellant challenges the Judges conclusions regarding the ability of the appellant's cousin and wife to use their influence to find the appellant and his wife during the eight years prior to leaving Iraq on the basis the appellant's wife's cousin was a lieutenant in the police and her uncle had a position in the PUK. Whilst it is accepted these are positions that exist within the IKR/KRG the assertion in the grounds that the respondent did not provide evidence that members of these groups have influence outside the KRG does not admit arguable legal error.
21. The Judge found that the appellant moved to Mosul in 2004 where he remained until June 2014 after which they moved to Irbil in the IKR. The evidence shows that individuals arriving are documented within an administrative system to which those in authority in the IKR may have had access. Mosul to Irbil is approximately 60 miles which is not a great distance away. The appellant must also have felt Mosul was a safe area if he claimed to have relocated from Baghdad to this area earlier. Family must also have felt safe relocating to Irbil in 2014 and to have lived openly in that city as evidenced by the appellant working for 15 months prior to leaving, where he lived with his wife, without experiencing difficulties. It has not been made out that the finding by the Judge was not available to him or is infected by speculation based upon the Judges analysis of the facts of this case.
22. The grounds refer to the issue of honour arising from the appellant's wife being promised to her cousin but marrying somebody else, but the Judge did not find that the appellant's wife was betrothed to her cousin [20] and therefore the basis the claim for honour was not made out.
23. The Judge found that the family could return to Iraq for the reasons set out in the decision under challenge by returning to either the IKR or Baghdad which the Judge arguably considered in light of the country guidance case of *AA*. The appellant's wife is Kurdish and it was not made out the Judges conclusions that the appellant would be permitted to re-enter Irbil to join his wife is infected by arguable legal error. The appellant worked previously and it has not been made out

that with his skill as a mechanic he would not be able to obtain employment as he did in the past.

24. The Judge noted the appellant remains in constant contact with his wife and that arrangements could be made between them [26]. This is not a finding infected by arguable legal error and, as the Judge finds, would enable arrangements to be made which must include the provision of appropriate documentation together with the necessary arrangements with the authorities to facilitate the appellant's re-entry. It is also not made out the appellant could not obtain the required documents to gain entry or obtain appropriate support through his CSID. The Judge at [28] found the appellant could relocated to Baghdad, even as a Sunni Muslim, on the basis return becomes feasible on the obtaining of the appropriate documentation including a CSID.

25. The Secretary of State raised the issue of internal relocation in the refusal letter. The applicant failed to produce sufficient evidence to show internal location was unreasonable or unduly harsh on the facts of this case.

26. Having considered the evidence, I find the Judge has given adequate reasons for findings made. The grounds are, in effect, a repeat of the claim and disagreement with the core findings which does not, of itself, establish arguable legal error material to the decision to dismiss the appeal.

Decision

27. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

28. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 13 June 2017