



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01607/2019

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 July 2019**

**Decision & Reasons Promulgated
On 16 August 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**IBRAHIM [W]
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard (Solicitor)

For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it sent to the parties on 1 April 2019 following a hearing of 20 March 2019. The tribunal allowed the claimant's appeal against the Secretary of State's decision of 5 February 2019 refusing to grant him international protection, on humanitarian grounds and on human rights grounds (Article 3 of the European Convention on Human Rights) but dismissed it on asylum grounds. The claimant

asserts that the tribunal erred in failing to allow the appeal on asylum grounds or at least in failing to explain why it was not doing so.

2. The claimant is a national of Iraq and a Sunni Kurd. He has given his date of birth as 1 January 2000. He entered the United Kingdom (UK) on 30 July 2018 and he made his claim for international protection the day after that. Put simply, his account, which the tribunal accepted as being a credible and truthful one, was that his brother had had a relationship with a young Iraqi female, that her brothers and other family members disapproved, that her father is a high-ranking PUK officer in the Kurdish administered area of Iraq (the IKR), that her brothers shot and killed the claimant's brother, that there is now a "blood feud" between the two families, and that had he remained in Iraq, the claimant too would have been killed.

3. The Secretary of State had, in fact, disbelieved the claimant's account. But he appeared to accept that, if the account was a truthful one, the claimant would be at risk in Iraq for the 1951 Refugee Convention reason of membership of a particular social group. Such was stated at paragraph 26 of the Secretary of State's written reasons of 5 February 2019.

4. As indicated, the tribunal believed the claimant's account of events. On that basis it decided that he would be at risk in his home area of Iraq. It also found that he had lost touch with his family, that he does not have an important identity document known as a CSID card, and that requiring him to relocate away from his home area, in light of those matters, would be unduly harsh.

5. The tribunals clearly explained and well justified positive credibility findings and its reasoning as to risk in the home area and the unavailability of internal flight has not been subjected to any challenge. The only issue before the Upper Tribunal, is the narrow one set out at paragraph 1 above. Permission having been granted on the point there was a hearing before the Upper Tribunal (before me) so that that matter could be further considered.

6. Representation at that hearing was as noted above. I am grateful to each representative. Mr Howard, essentially, relied upon the written grounds which asserted that a decision as to the applicability of the 1951 Refugee Convention had been required, particularly, given the Secretary of State's concession (see above) and the fact that the issue had been raised in the grounds of appeal to the tribunal and in a skeleton argument given to it. Mrs Pettersen, for her part, and very properly it seems to me, accepted that the tribunal had failed to deal with the question of whether the claimant is a refugee. In the circumstances she indicated, when asked, that she would not seek to resist my finding an error of law, setting aside the tribunal's decision and remaking it on the basis that the claimant's appeal is allowed on asylum grounds and under Article 3 of the European Convention on Human Rights.

7. I have decided to take that course of action. The tribunal's written reasons are careful, clearly expressed and thorough. Further it is understandable that the tribunal did not specifically deal with the Refugee Convention issue given that the evidence was that the claimant's potential assailants are non-state agents. But there had been a concession in this case that if the claimant was to be believed there would be an applicable 1951 Convention reason. The issue had been raised in the grounds of

appeal so was before the tribunal. I am not urged to conclude that the concession had been improperly made. I conclude, therefore, that the tribunal made one single error in failing to explain why it was not concluding that the claimant is a refugee. Accordingly, I have decided to set aside its decision but I maintain everything else with respect to its unchallenged findings of fact and conclusions.

8. Further, I have decided to go on to remake the decision myself. In so doing I allow the claimant's appeal against the Secretary of State's decision of 5 February 2019 on asylum grounds (membership of a particular social group) and on human rights grounds (Article 3 of the European Convention on Human Rights).

9. Finally, I would make the point that this decision is not authority for any general proposition regarding blood feuds in Iraq and whether or not, in general terms, the existence of such feuds might lead to a claimant being regarded as a member of a particular social group. This decision is based on the specific circumstances of this case and, in particular, on a concession made by the Secretary of State in the written reasons for refusal of the international protection claim which was not withdrawn before me.

Decision

The decision of the tribunal involved the making of an error of law and is set aside.

In remaking the decision, I allow the claimant's appeal against the Secretary of State's decision of 5 February 2019 on asylum grounds and on human rights grounds (Article 3).

I do not direct anonymity. The tribunal did not do so and I was not urged to consider doing so myself.

Signed

**M R Hemingway
Judge of the Upper Tribunal**

Dated

14 August 2019

**To the Respondent:
Fee award**

I make no fee award.

Signed

**M R Hemingway
Judge of the Upper Tribunal**

Dated

14 August 2019