



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

Appeal Number: PA/02795/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2019**

**Decision & Reasons Promulgated
On 15 August 2019**

Before

**UPPER TRIBUNAL JUDGE GILL
UPPER TRIBUNAL JUDGE KEITH**

Between

**'RKM'
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Sanders, Counsel, instructed by Wimbledon Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

These are the approved record of the decision and written reasons which were given ex tempore at the end of the hearing on 30 July 2019.

This is an appeal by the appellant against the decision (the 'Decision') of First-tier Tribunal Judge Talbot, (the 'FtT'), promulgated on 20 May 2019, by which he dismissed the appellant's appeal against the respondent's refusal of his protection and human rights claims on 13 March 2019. That decision in turn refused the appellant's application for leave to remain based on his claim of

asylum and under articles 2 and 3 of the European Convention on Human Rights ('ECHR').

In essence, the appellant's claims involved the following issues: whether the appellant's father, who had been a member of the PUK, but who had left it because of corruption within the party, was tortured and murdered in February 2017 at the behest of the PUK and KDP, as a result of having documents implicating them in corruption. It was said that the father had shown these to a friend, who was a judge. The appellant claimed to have reported to the police his father's murder and the associated corruption, as a result of which he himself was threatened by local police and received threatening phone calls. He claimed to have reported matters again and was then shot at outside a supermarket on 19 March 2017. He claimed that on 5 April 2017, men tried to seize his wife as she was picking up their son from school. She resisted, the family went into hiding, and fled.

The core points taken against the appellant by the respondent related to her rejection of the appellant's father being involved in the PUK, because of inconsistencies in the appellant's account at interview; her rejection of his father's death at the hands of the PUK and KDP, which, the respondent said, was based on what the appellant had been told by a family friend; her view that the reason why the appellant was shot at, if at all, was speculative, as was the attempted kidnapping of the appellant's wife. The respondent also took issue with the fact that the appellant had travelled through, but not claimed asylum in, Italy, so that section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 applied.

The FtT's Decision

The FtT made an analysis of the evidence, running from paragraphs [22] to [34] of the Decision. The FtT was not impressed by various aspects of the evidence, finding there to be a lack of plausibility and a lack of what he believed to have been reasonably obtainable supporting documents such as the death certificate of the appellant's father. Having considered the evidence as a whole, the FtT found that there was not sufficient evidence that the father was killed. Even if he had died, the FtT was not satisfied as to the plausibility of the death being attributable to the PUK or the KDP, who were political rivals in the area. The FtT was not satisfied that the appellant or his wife suffered adverse interest. In terms of risk on return, there was no reason why the appellant and his family could not obtain fresh passports and return to the IKR. Even if he were of adverse interest to the PUK in Sulaymaniyah, there was no reason to think he would be of adverse interest to the KDP in Erbil.

The Grounds of Appeal and Grant of Permission

The appellant lodged grounds of appeal which are essentially that the FtT failed to make any findings on the evidence of the appellant's wife, which the FtT described as being consistent with the appellant's account, at [17] of the Decision. It was said that the appellant's wife's witness evidence was not limited to the claimed abduction, but also gave details of the kidnapping and

murder of her father-in-law; how she found out about that incident, the discussion, in its aftermath, amongst other women in the family; the conversation with the appellant's father's friend who was a judge; and the injuries sustained by her husband following the shooting. At [30] of the Decision, the FtT had referred to not accepting that attempts were made to kidnap the appellant's wife, but without reasons for that finding. The failure to make findings on the appellant's wife's evidence or explain why he did not accept her account was material.

First-tier Tribunal Judge Povey granted permission to appeal on 28 June 2019. He regarded the Decision as containing an arguable error of law in relation to the adequacy of findings as to the corroborative evidence of the appellant's wife. It was not clear from the Decision whether her evidence was accepted; what weight, if any, was given to it; and if it was rejected, the reason why. Judge Povey regarded the wife's evidence as potentially material to the assessment of the appellant's credibility. The grant of permission was not limited in its scope.

The Hearing before us

The Appellant's submissions

Ms Sanders asked us to consider, particularly at [25] of the Decision, that the FtT's credibility assessment had focussed on the appellant, rather than his wife. There had not been a separate criticism of the wife's credibility, other than to note that her version of events was consistent with the appellant's. There was no separate consideration of the wife's credibility and the extent to which it was corroborative of the appellant's evidence. Instead, at [29] and [30] of the Decision, the FtT rejected the appellant's wife's account of her kidnap, but with no explanation for that rejection. While Mr Clarke now sought to criticise a large part of her evidence as being what others had told her, first, her evidence related to discussions at the time of events, rather than months afterwards, and so did have some evidential weight. Second, her evidence about the appellant's father's coffin not being opened at his funeral and the reasons for that (namely bullet wounds) was her own evidence, as was her experience of her attempted kidnap.

The Respondent's submissions

Mr Clarke argued that the core focus of the appeal was the fact of, and reasons for, the murder of the appellant's father. The FtT had adequately considered and explained his concerns about the lack of the death certificate, which was readily obtainable; the quality of the written correspondence from the father's friend; and the objective evidence about the likely adverse relations between the PUK and the KDP. All damaged the plausibility of the account. The Decision had focussed less on the witness evidence of either the appellant or his wife. The FtT had based his rejection of the appellant's account on the wider evidence and it would be odd if the appellant's wife's evidence, most of which was hearsay, could dispel the FtT's concerns based on the wider evidence. There was a substantial degree of overlap between the witness evidence of the

appellant and his wife. In reality, they were 'part and parcel' of the couple's witness evidence. It was implicit in the Decision that when the FtT did not accept the appellant's evidence, he had also not accepted the appellant's wife's evidence.

The FtT had adopted a balanced view when assessing the appellant's credibility, finding that the appellant's father had been a member of the PUK. The FtT had also recognised the risk to whistleblowers in relation to corruption. Nevertheless, the FtT had not accepted the account in relation to the appellant's father's death and the subsequent adverse interest. That was a finding open to the FtT on the evidence before him.

Our Decision on the Error of Law

On the one hand, we accept Mr Clarke's submission that there is a substantial degree of overlap in the witness evidence of the appellant and his wife. That is not something to be unexpected where people go through shared experiences. We also accept Mr Clarke's submission that the FtT considered, and explained, his concerns about the wider evidence. This included the absence of the appellant's father's death certificate and the plausibility of PUK and KDP connivance in a murder, when the objective evidence suggests fierce rivalry.

On the other hand, we accept Ms Sanders' submission that an assessment of the appellant's wife's evidence was material and may have had an impact on the FtT's conclusions about the appellant's credibility. The crux of the appeal is the appellant's credibility. Even where, as here, a substantial amount of the appellant's wife's evidence was to recount what she had heard and been told, we accept that she was relaying what she had heard and been told shortly after the events in question, so that her evidence was capable of carrying some potential evidential weight. We agree that it is not clear what weight, if any, the FtT attached to her evidence; and if not, why not.

We further accept Ms Sanders' submission that in an assessment of credibility, it was not sufficient to reason, as the Decision possibly suggests, that because the appellant's account is disbelieved, therefore the appellant's wife's evidence is also to be disbelieved. We accept the submission that if the appellant's wife's account is assessed as not adding any weight, the FtT must explain its rationale for that assessment. Whilst there was a substantial degree of overlap in relation to the evidence, there was not an entire overlap. One example is the appellant's wife's evidence about discussions with relatives at the time of the appellant's father's funeral, and the fact of the funeral not being an 'open coffin' funeral, for reasons she explained. The appellant's wife's evidence was potentially corroborative and the FtT erred in failing to explain its reasoning as to the weight he attached to her evidence.

The lack of adequate reasoning was material to the Decision. There had been positive findings in respect of the appellant's account such as the appellant's father's membership of the PUK and the potential risks to whistle-blowers. Whilst other evidence was found as weighing against the appellant, we are satisfied that the potentially corroborative evidence of the appellant's wife was

material when weighing up the credibility and plausibility of the appellant's account, in the context of the lower standard of proof and the need for anxious scrutiny of a protection claim. The lack of reasoning in relation to the appellant's wife's evidence was a material error of law. The Decision cannot stand and we set it aside.

Disposal

1. With reference to paragraph 7.2 of the Practice Direction and the necessary fact-finding, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing. Both representatives were agreed on this course of action should we find there to be material errors of law.
2. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and we set it aside.

We remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

1. **This appeal is remitted to the First-tier Tribunal for a complete rehearing.**
2. **The remitted appeal shall not be heard by First-tier Tribunal Judge Talbot.**

Anonymity Order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings. We make this order because the subject matter of the appeal relates to a protection claim. The parties are at liberty to apply to discharge this order, with reasons.

Signed **J Keith**
2019
Upper Tribunal Judge Keith

Date 9 August

TO THE RESPONDENT
FEE AWARD

While we have allowed the appeal, costs are reserved until the First-tier Tribunal has remade the Decision.

Signed **J Keith**
2019
Upper Tribunal Judge Keith

Date 9 August