



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07562/2018

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 19 July 2019

Decision & Reasons Promulgated  
On 11 September 2019

Before

**UPPER TRIBUNAL JUDGE HEMINGWAY**

Between

**Arsalan [M]  
(ANONYMITY NOT DIRECTED)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Sills (Counsel)

For the Respondent: Ms E Groves (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 made on 16 March 2019 (the date of its written reasons) following a hearing of 7 March 2019. The tribunal decided to dismiss the claimant's appeal against the Secretary of State's decision of 1 June 2018, refusing to grant him international protection.

2. I have not granted anonymity. The tribunal did not do so. Further, I was not invited to consider doing so myself. I can see no obvious basis for my doing so and am sure, if there had been such a basis, I would have been told about it.

3. By way of background, the claimant is a male national of Iraq and he was born on 12 November 1977. He first entered the United Kingdom (UK) on 29 August 2003. Having done that, he claimed asylum using a different name to that which he has given for the purposes of these proceedings as well as a different date of birth. But there is no reason to think that the name and the date of birth he is now using are false. His asylum claim was refused on 26 March 2004 and an appeal against that decision was then dismissed on 24 March 2005. It is said that further representations were sent to the Secretary of State, all of which were refused, that an application for leave to remain on the basis of a relationship was refused on 12 February 2010, and that he was removed to Iraq on 17 March 2010. There followed an out of country application for a settlement visa which was granted and on the basis of which he returned to the UK but his leave was curtailed which led to him returning to Iraq (I understand voluntarily and I proceed on that basis) shortly afterwards.

4. The claimant says that, having returned to Iraq, he lived in the area of Sulemaniya, which is located in the part of Iraq administered by the Kurdish authorities (the IKR). He got to know a Turkish national called Atham, through work, and the two would sometimes socialise. The claimant says that on a date in April 2016 he was at Atham's house when two female persons who turned out to be sex workers arrived. The claimant had been drinking and he had sexual relations with one of the sex workers. He claims that, unbeknown to him at the time, his sexual encounter was filmed. Two days afterwards, Atham asked him to deliver some guns to a place in the Qandil Mountains, which he refused to do. He says that, after he refused, Atham showed him the footage of his sexual encounter and told him that if he delivered the guns, the footage would be deleted. But, says the appellant, Atham also told him that if he did not do as asked, the footage would be placed on social media outlets. The claimant says he maintained his decision not to deliver the guns, informed his family as to what had happened and went with his older brother, a captain within the military, to the authorities to give them the guns and tell them what had happened. The authorities then, he says, spoke to Atham who denied everything. The claimant says that, thereafter, members of the authorities came to his house and arrested him. He was then beaten by the authorities and accused of working for the intelligence department of the Turkish government. He claims to have been detained for a period of one week until his brother secured his release by making a payment. He says that he then left Iraq, lawfully and via an airport, on 18 May 2016, and came to the UK once again. He says that since his arrival in the UK a member of the security forces in the IKR has attended at his father-in-law's house inquiring as to his whereabouts. He claims that if he is now to be returned to the IKR, members of the Sulemaniya security department will kill him. The Secretary of State, though, disbelieved the claimant and, was, therefore, satisfied that returning him would not place him at risk. The claimant appealed to the tribunal. It was that appeal that led to the tribunal's decision of 16 March 2019.

5. The claimant was represented before the tribunal as was the Secretary of State. The claimant gave oral evidence and the tribunal received submissions from each representative. It found the claimant not to be credible and, like the Secretary of State, disbelieved his account. It spent some time, in its written reasons, explaining why. It relevantly said this:

"27. The Appellant's age, gender, nationality and Sunni faith at birth are not in dispute in the appeal. During preliminary discussions to identify the basis of the appeal and the issues that needed to be resolved the Representatives indicated that the Refugee Convention reasons relied on were imputed political opinion and membership of a particular social group resulting in the Appellant being at risk of being the victim of an honour crime. The Appellant's Article 2 and 3 claims under the ECHR stand or fall with his asylum claims. The terms of the Qualification Directive are not engaged as the Appellant is from the IKR and there are direct international flights to the IKR. There is no discreet claim under the Immigration Rules and Article 8 of the ECHR is not engaged.

28. The Appellant adopted the contents of his witness statement as true and accurate accounts of his claim which he fully understood prior to signing. The Appellant at SI 1.8 stated that he gave his Iraqi passport to the agent en route to the UK but kept a copy of it and still has

his original passport. He stated that he was unaware if Atham had uploaded the film that he took of the Appellant and the prostitute onto the internet.

29. During the cross-examination by Mrs Fell he confirmed that he took the pistols given to him by Atham to the security forces the day after he received them. He accepted that he had not been given a copy of the video recording but stated that it had been shown to him by Atham.

30. He accepted that neither he nor his brother had asked the security forces to deliver the guns to the recipients and arrest them and Atham concurrently. He stated that he had told the security forces who had given him the pistols and where he was to deliver them to plus the telephone number he was given to contact the recipient.

31. He corrected the contents of paragraph 11 of his witness statement saying that he and his brothers only went out at night time and that he would call one of his brothers to come and pick him up. This was to prevent him being seen by Atham as security forces told him to avoid his employer.

32. The Appellant stated that if someone else sought to pay him to deliver a parcel which he did not know the contents of in his taxi he would refuse to do so. Additionally, if Atham had asked them to deliver a package and he did not know what the contents of it were he would refuse to do so.

33. He clarified his answer at A150 stating that the Turkish people that he drove in his taxi are owners of the building projects and not ordinary customers and he would take them from building project to building project to their work.

34. He clarified that Atham had never owned the barber shop and that he did not work for Atham but was "just with him". The barber shop was owned by himself and Atham's business involved the importation of building materials from abroad. When he had spoken to Atham he mentioned to him that he had been to the United Kingdom and he was then invited to Turkey. He had known Atham about nineteen months. He knew Atham had a wife and children although he could not remember how many children.

35. The drinking session was at Atham's home when his wife was not present or he had not seen her there. He was not shown the guns at Atham's house. They were shown to him at Atham's workplace. He accepted that he had put himself at risk but that he had got to know Atham over a period of time and had been to his house a number of times before he was asked to deliver the pistols. On the previous occasions there had been no sexual encounters with anyone. It was on the last occasion when he was plied with drink and drugs by Atham that the two women were brought to the house and they had sexual intercourse with them. He did not know what he was doing at the time due to drink and drugs and did not know the women were prostitutes. He could not remember Atham's surname as it was Turkish and very difficult to pronounce.

36. He clarified the contents of the documents at HOB at B3 stating that he came to the United Kingdom in 2012 to visit his ex-wife, [MA], but unfortunately their marriage broke down and they were divorced that year. He stated he returned to Iraq voluntarily.

37. In re-examination the Appellant stated he was asked to deliver the guns to the Qantil mountainous region. He had never been there before but knew it was a place where PKK guerrillas were based in their conflict with Turkey.

#### **The Honour Crime Basis claim**

38. The first and only reference by the Appellant that prevents his return on the basis that his own family and his wife's family would kill him is at paragraph 17 of his witness statement dated 11 February 2019 where he stated "I also fear my own family including my wife's side of the family. I fear that they will kill me for bringing shame on the family by sleeping with the prostitute". There is no further detail of any threats that either his or his wife's family members had made to him either directly despite the fact that, on his own account, he is still in contact with his mother in Iraq and his wife is still in contact with her family. Additionally, there is no suggestion by the Appellant at any stage of his Protection Claim that his brother-in-law in the United Kingdom has made any threats either personally or on behalf of any of the Appellant's relatives and in-laws in the IKR to him.

39. On the Appellant's own account he was plied with alcohol and his drinks were spiked with drugs. He does not suggest that the film he claims was made of him having sexual intercourse with a prostitute has ever been uploaded to any social media platform.

40. I conclude that the Appellant is not credible in this aspect of his claim and he has not shown, to the low standard required, that either his or his wife's family have taken any adverse interest in him for any reason recognised by the Refugee Convention and, in particular, that he has become a potential victim of an honour crime for bringing dishonour to either of those families.

#### **The Imputed Political Opinion Basis of Claim**

41. On the Appellant's own account the IKR Security Forces appear to have preferred the account given to them by Atham than that given to them by the Appellant despite the fact that it was he, together with his brother who was a captain in the Iraqi military, who approached them to give them information about Atham, a Turkish National, seeking to get the Appellant to take pistols to a man named Mohammed in the Qandil mountainous area of Iraq. He has given no explanation other than corruption of officials in the IKR, which he claims is prevalent, as to why they would accept the word of a Turkish National as opposed to that of a Kurdish Sunni Muslim who was born and spent his whole life in Sulemaniya with his family, one of whom is a captain in the army. I reject the Appellant's explanation that Atham, a Turkish National, would be able to use any influence and financial power that he had to persuade the IKR Security Forces that he was innocent and that the Appellant was telling a pack of lies to get him into trouble.

42. It is submitted by Mr Sills on the Appellant's behalf that the CPIN at AB 23 shows there is an armed conflict between Turkey and the IKR and that the PKK are engaged in that conflict from a base in the Qandil Mountains. It is, therefore, being submitted the correct inference to be drawn is that the pistols given to the Appellant by Atham were intended for a member of the PKK, namely Mohammed.

43. The background material shows that the IKR government and security forces are operated by the PKK and the KDP and that those two parties co-operate with each other. There is no reliable explanation before me as to why the security forces would seek to arrest the Appellant on the basis that he would be effectively assisting the PKK in their fight against the Turkish government by taking the PKK guns.

44. At paragraph 12 of his witness statement the Appellant stated that "he was able to leave Iraq on his own documents because when the problem happened "my case didn't go any further"". He also states that "one of his brother's friends would be sorted without it going to court" and that "Even though I was told it would not go any further, I was scared and I was not prepared to accept what my brother's friend said about it would not go any further. I did not trust that it was going to stop. I was scared that the problem would get worse and that I would be killed because of what I had been accused of. I was scared that this was not going to go without punishment. I was sure that I was in danger".

45. The Appellant, on his own account, was able to leave the IKR seven to ten days later via an international airport using his own identity despite the fact he claims he was being released on bail, with his brother acting as a surety, without being detained at the airport as a suspect in either criminal and/ or terrorist offences. The Appellant provided no details of how the agent was able to procure his departure via the airport using his own identity. I do not regard the Appellant as credible and reliable in this aspect of his claim or that he has reached the low standard of proof required.

46. On the evidence taken as a whole the Appellant is inconsistent in his account of his relationship with Atham. At, for example, AI 50 he stated "I was working with some Turkish people. Some of these Turks were Kurds originally from Turkey. So I worked with them in building decoration. I was trusted by them, I became a driver. My English was ok so I communicated in English with them. So the boss/ owner trusted me. We associated in friendly events such as meals and drinking. The last occasion he invited me for a meal for his house in Sulemaniya". At answer AI 59, relating to his last visit to Atham's home, he stated "we sat there usually as before. After a bit, two females, two ladies got in. We all started drinking together. I believe they put drug as well, I was not sure what type of it. I became semi-conscious. We started having sex with these females. The ladies were Kurds".

47. In my judgment, the above answers indicate that the Appellant was either transporting Atham and his colleagues around the IKR as a taxi driver or as an independent person simply driving them around. He did not claim to be Atham's employee. Throughout his witness statement the Appellant referred to Atham as his boss which I infer is an indication that he was employed by Atham (paragraphs 6, 8, 11 and 16). During cross-examination by Mrs Fell the Appellant stated that he drove the owners of the building projects who were not ordinary customers to other building projects where they worked. When asked directly how he got the job at Atham's barbers shop he stated that it was he who owned the barber shop and not Atham and that he did not work for Atham. He was "just with him". He also stated in his oral testimony that he would refuse any request by Atham to deliver a parcel which he did not know the contents of. This answer, in my judgment, is a strong indication by him in cross-examination that Atham did not employ him.

48. The Appellant was inconsistent about his condition when he claims to have been plied with drink and drugs resulting in him sleeping with at least one Kurdish woman whom he later learnt was a prostitute paid for by Atham. In his Asylum Interview at answer 59, as set out above, he stated that he was semi-conscious at the time. At paragraph 5 of his witness statement he stated that he was "shocked and scared when he was with the prostitute" as he had never been in that situation before and he was scared that his wife would find out. He further stated "However, as I have said, they gave me alcohol and they put drugs in my drink as well and this affected me. I didn't have control of myself". At paragraph 6 of his witness statement he stated "To this day I do not know how my boss filmed the encounter that I had with the prostitute. I can only suspect. If I knew that I was being recorded then I am sure I would not have done it, even though I did not have control of myself. There must have been a hidden camera in the room. That is the only explanation I can think of". In my judgment, the Appellant's contention that he was semi-conscious, shocked and scared when he was with the prostitute is wholly inconsistent with his explanation that he would not have done it if he had known that he was being filmed despite the fact that he claimed he was not in control of himself.

49. The inconsistencies set out above are examples of why I did not find the Appellant credible and reliable in the core aspect of his account that he was plied with drink and secretly filmed with a prostitute in preparation for him being forced to take guns to a man named Mohammed in the Qandil Mountains and that following him informing the security forces, with his brother who was a captain in the army, he was arrested and tortured as a suspected double agent for the Turkish authorities. Additionally, the Appellant gives no explanation as to why he could be regarded as a double agent when he does not claim to be an agent of the IKR authorities.

50. I have taken the Appellant's lengthy immigration history into account as one factor to be weighed in the balance of the evidence as a whole in reaching my conclusion that he is not a credible and reliable witness in respect of the core aspects of his account".

6. An application for permission to appeal to the Upper Tribunal followed. Although not delineated in this way, there were, on my reading, four separate but related grounds of appeal. I say related because they are all concerned with the soundness or otherwise of the tribunal's credibility assessment. I paraphrase a little, but essentially, the grounds may be summarised as follows:

Ground 1 – The tribunal failed to give any reasons or adequate reasons for its conclusion that the claimant's contention that he is at risk at the hands of family members in Iraq was not credible.

Ground 2 – The tribunal comprehensively misunderstood the background material and an argument which was being put to it, this caused it to make a significant factual error, it wrongly thinking that the claimant was asserting, as part of his case, that there was an armed conflict between Turkey and the IKR.

Ground 3 – The tribunal erred through failing to explain why it thought it significant, with respect to its credibility assessment, whether the claimant was employed by a person named Atham or whether he was in fact self-employed.

Ground 4 – The tribunal had misrepresented the claimant’s evidence concerning the incident involving the sex workers and had failed to explain why it detected an inconsistency in his evidence that he had “lost control of himself” but in different circumstances “if he had realised that he was being filmed, he would not have committed adultery”.

7. The author of the grounds (Mr Sills) concludes by observing that, in light of the above matters, it is contended that the tribunal “*has given inadequate reasons for dismissing his appeal and that the decision is irrational*”.

8. I shall start with Ground 2. I shall then set out my evaluation of the other grounds. I shall then assess whether what I make of the grounds means that the credibility assessment is vitiated by legal error.

9. As to Ground 2, Ms Groves accepted that the tribunal had erred in the manner suggested by Mr Sills in the grounds and in his oral submissions although she contended it was an error which was not material. The pertinent part of the tribunal’s written reasons is that at paragraphs 42 and 43. I accept Mr Sills’ submission that it was not, in fact, argued on behalf of the claimant, that background material demonstrated the existence of an armed conflict between Turkey and the IKR, in which the Turkish Kurdish separatist organisation known as the PKK are engaged, or that it was submitted that it should be assumed or inferred that the guns given to the claimant by Atham were intended for a member of the PKK. That, therefore, invalidates the point the tribunal was seeking to make at paragraph 43 of its written reasons to the effect that the security forces in the IKR would not disapprove of the claimant assisting the PKK (in their fight against the Turkish Government). But it does not follow, of itself, that simply because one adverse credibility point is shown to be erroneous, the overall credibility assessment must fall.

10. As to Ground 1, the point the tribunal was seeking to make at the passage from paragraph 38 to 40 of its written reasons, was that whilst the claimant had expressed the fear that he might be harmed by family members, as a result of his sexual liaison, he had not asserted that any threat had been made by any family member in circumstances where it would have reasonably been expected that, if there was such an intention to harm him, such a threat would have been made (bearing in mind that on his own account, as the tribunal had pointed out, the claimant was still in contact with family in Iraq). In my judgment that was a perfectly proper adverse credibility point to take and it was open to the tribunal, if it wished, to take it for the reasons it gave. I do not accept the contention in the grounds that, in effect, it amounts to an adverse credibility assertion without reasoning.

11. As to Ground 3, the tribunal was concerned that the claimant had been inconsistent with respect to his claimed employment relationship with Atham (see paragraph 46 and paragraph 47 of the written reasons). The attack in the grounds is to the effect that the tribunal did not explain why any inconsistency was of significance or, as it was put in the written grounds, why it was “relevant to resolving the issues in the appeal”. The tribunal identified material which it felt demonstrated that the claimant had been inconsistent as to whether he was employed by Atham or whether he was not. It is not argued that the tribunal was wrong to detect such an inconsistency. Anyway, in my judgment, it was entitled to find an inconsistency on the material before it and for the reasons it gave. Viewed from one perspective it might be thought the question of whether the claimant was employed by Atham or not was immaterial. But, nevertheless, Atham was, on the claimant’s account, a key figure in the scenario which he says led to his fearing for his safety to the extent that he had fled Iraq. Further, the question of whether he was or was not employed by Atham was, on the face of it, a simple and straightforward matter about which one might reasonably expect consistency from a truthful claimant. Against that background I am satisfied that it was open to the tribunal to treat that inconsistency as being relevant to its overall credibility assessment. It was not required, as a matter of law, to offer any further explanation as to why it considered the matter to be important. Quite simply, the inconsistency informed as to whether the claimant was telling the truth or whether he was not.

12. As to Ground 4, the relevant part of the tribunal's written reasons is at paragraph 48. On my reading, the tribunal, in that paragraph, was identifying what it thought to be an inconsistency with respect to the claimant's assertion, on the one hand, that he no longer had "control of myself", presumably as a result of his being given alcohol and drugs, and his assertion that, nevertheless, he would not have participated in the liaison had he known he was being filmed. The point the tribunal was making was that if he was not in control of himself, as he had claimed, he would not have been in a position to make a rational decision to desist even if it had come to his attention that he was being filmed. I do not accept the contention in the grounds that the tribunal had misrepresented the claimant's evidence at paragraph 48 of its written reasons. Further, notwithstanding what is said in the written grounds, it does seem clear to me that the tribunal was itself clear in what inconsistency it was identifying. It is not contended and I am not able to say that the tribunal's conclusion that there was an inconsistency was perverse, irrational or otherwise not open to it. I do not, for myself, think that the point is a particularly strong one with respect to the credibility assessment but the tribunal did not suggest that it was. Of course, it is inevitable in a credibility assessment that some points which are taken are stronger than others. But in my judgment the tribunal was entitled to detect an inconsistency and to apply that as a component of its overall credibility assessment and that is all it did.

13. It is fair to say there were other components of the adverse credibility assessment which were not the subject of a specific attack in the grounds. As to that I noted the tribunal's reliance upon what it described as the claimant's "lengthy immigration history" (paragraph 50 of the written reasons). Its reference to that was, I accept, somewhat fleeting. But I have set out the relevant immigration history above and, to repeat, it is right to say that that history discloses the making of an ultimately unsuccessful asylum claim under a different identity. In context, it seems to me that the tribunal must have had that in mind when it made its reference to the claimant's immigration history, despite its not fleshing out precisely what it meant. I put the point to Mr Sills who argued that the question of the immigration history "could go either way" on the basis that after returning to Iraq the claimant had subsequently lawfully re-entered the UK and, when his leave had then been curtailed, had voluntarily departed. He suggested, in effect, that the tribunal might have taken a different view as to what the claimant's immigration history told it about his credibility had it had in mind "the full factual background". But there is nothing to suggest that it did not have the full immigration history in mind. After all, it set it out in summary form at paragraph 1 of its written reasons. Further, insofar as it was being argued later in compliance with immigration requirements might neutralise earlier noncompliance, I do not accept the proposition. Compliance is simply to be expected and not something which affords significant credit in a balancing exercise. The tribunal was, clearly it seems to me, taking an adverse credibility point with respect to the pursuing of an asylum claim in a false name and, notwithstanding any subsequent compliance, it was entitled to do that.

14. The tribunal also took an adverse credibility point against the claimant as a result of his being able to leave Iraq using his own documentation notwithstanding his claim that he was, by then, of adverse interest to the authorities. The tribunal set out its reasoning as to that at paragraphs 44 and 45 of its written reasons. That reasoning has not been the subject of any specific challenge either.

15. Mr Sills argued that if the tribunal had considered the evidence "in the round" which it was required to do, then the error it is accepted it made must have been one which impacted upon its overall credibility assessment. He further pointed out that the tribunal had not indicated what matters, in its credibility assessment, it thought might be of particular importance so that, in effect, it had not demonstrated that the admitted (by Ms Groves) error it made was not in relation to what it had regarded itself as a significant point with respect to credibility.

16. Insofar as Mr Sills argument is one to the effect that the impugning of a single point with respect to a credibility assessment would always or normally result in that credibility assessment being unsafe as a matter of law, I would disagree. What is needed, in my view, is an overall

consideration of the credibility assessment, in circumstances such as this, to see whether it would have been the same without a particular discredited point. In my judgment this credibility assessment would have inevitably remained the same. The unchallenged or barely challenged points regarding the claimant's ability to depart Iraq through normal immigration channels and his having demonstrated through previous conduct that he is prepared to mislead in making immigration applications, seem to me to be persuasive ones. I do not at all discount the possibility that sometimes, the discrediting of a single credibility point will render the overall assessment unsafe. That will depend upon the circumstances and the detail of the assessment. In my judgment, though, this is clearly not such a case. The tribunal took a number of points which had not been discredited, some unchallenged and some unsuccessfully challenged, and taken an overall view I have concluded that its credibility assessment remains sound.

17. In the circumstances I have concluded that the decision of the tribunal did not involve an error of law, or, at least not a material one. It follows that I must dismiss the claimant's appeal.

### **Decision**

The claimant's appeal to the Upper Tribunal is dismissed.

Anonymity is not directed.

Signed:

Dated: 3 September 2019

Upper Tribunal Judge Hemingway

### **To the respondent Fee award**

I have dismissed the appeal and therefore there can be no fee award.

Signed:

Dated: 3 September 2019

Upper Tribunal Judge Hemingway