Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08394/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination & Reasons Promulgated**
On 29th November 2018	**On 08th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR AMS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle (Counsel), Elder Rahimi Solicitors
For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Brookfield, promulgated on 21st August 2018, following a hearing at Manchester on 10th August 2018. In the determination, the judge dismissed the appeal of the Appellant whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

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The Appellant

2. The Appellant is a male, a citizen or Iraq, and was born on [~] 1994. He arrived in the UK on 2nd July 2017. He appeals against the decision of the First-tier Tribunal Judge Brookfield, promulgated on 21st August 2018, following a hearing at Manchester on 10th August 2018. In the determination, the judge dismissed the appeal of the Appellant.

The Appellant

3. The Appellant is a male, a citizen of Iraq, who was born on 16th May 1994. He appealed against the decision of the Respondent Secretary of State dated 20th June 2018, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

4. The essence of the Appellant's claim is that he has a fear of ill-treatment and persecution on account of being a member of a particular social group. He stands to be accused of an honour crime, which is punishable by death. The basis of the claim is that he met his partner in school in 2013. They developed a relationship. By 2015 he had started a sexual relationship with her and she fell pregnant thereafter. He was forced to flee to Iran. There he contracted an Islamic marriage on 26th August 2015.

5. He returned back to Iraq in February 2016, without the knowledge of his in-laws. In March 2017 his partner's family could not accept that their daughter had eloped and her father, brother and two paternal uncles fired at the Appellant's parents' house. Because the house was shot at, the parents started to look for the Appellant to kill him. This was because he had brought shame on them.

6. On 19th May 2017 he fled Iraq. He now fears that if he is to return to Iraq he would be killed by his family and his wife's family because he had eloped.

The Judge's Findings

7. The judge did not believe the Appellant's account. She was not satisfied that the Appellant had begun a secret relationship with his wife in March 2015 bearing in mind that there was a risk attached to such liaisons which it was not conceivable that the Appellant would entertain. The judge rejected any account that he and his partner were engaged in an illicit relationship. Such relationships were in any event forbidden in Iraq (see paragraph 10(ii)).

8. The judge also did not accept that the Appellant had engaged in a sexual relationship with his partner outside marriage. She held that the parties were married and that they engaged in sex thereafter, following which the partner became pregnant (see paragraph 10(iii)). Consideration was also

given to the fact that the Appellant and his wife went to Iran and then returned back to Iraq.

9. The judge held that there had been ample opportunity for the respective families to take reprisals against them had this been a realistic possibility (paragraph 10(v)). Moreover, the Appellant's child was then born in a hospital (paragraph 10(vi)). The judge also did not find it credible that the Appellant had been assisted by his aunt, in whose house he had allegedly had sex with his partner, and who subsequently enjoined the Appellant to escape in order to save his life.

10. Finally, the judge noted that the Appellant had travelled through a number of European countries without claiming asylum.

Grounds of Application

11. The grounds of application state that the judge was wrong to have comprehensively disbelieved the Appellant. For example, it was said (at paragraph 10(ii)) that the Appellant would not have embarked on an elicit relationship with his partner in Iraq, bearing in mind their knowledge of the risks involved, but such a conclusion was perverse, because by its very nature victims of honour killings are people who are engaged in such illicit relationships.

12. In the same way, it was said that the Appellant's aunt would not have assisted the couple, but this too was perverse, because it was not unusual for a close relative or a friend to assist a couple in this situation. Similarly, the suggestion (at paragraph 10(iii)) that the Appellant and his partner engaged in premarital sex was not believable, was also perverse because the fact that honour killings occurred on this basis must mean that premarital sex does take place in precisely these circumstances.

13. Criticism was also made of the judge's determination on the basis that she had held that the Appellant had been unable to produce a marriage certificate, but this ignores the fact that this was a religious ceremony that the Appellant had undergone with his partner in Iran, for which marriage certificates are not normally issued. The grounds further go on to say that the suggestion that the Appellant and his partner were able to return, apparently safely, to Iraq from Iran, was misconceived in its suggestion that there was no risk to this couple, because when they did return this was without the knowledge of their respective families.

14. Moreover, it was said that the suggestion that the Appellant and his partner were able to flee through Sulaimaniyah Airport, and therefore were not at risk, ignores the fact that when they did so, they were doing so without their family's knowledge, but if they were to return from the UK now, they would be returning on an international flight, and it was very likely that their families in the IKR would know about their return.

15. The judge's determination was also criticised for disbelieving the account that the couple had destroyed their CSID cards at Sulaimaniyah Airport. This overlooks the fact that both the Appellant and his partner were individually interviewed and separately from each other, and both gave identical accounts in considerable detail as to how they had destroyed their CSID cards.

16. On 14th September 2018, permission to appeal was granted on the basis of the grounds. Additionally, it was also stated that the judge appears to have inverted the standard of proof in at least two respects. First, the final sentence of paragraph 10(iii) is to the effect that, "I find it is reasonably likely that the Appellant and his wife were married when they engaged in sex and when she became pregnant", but this requires the Respondent to prove that this is indeed the case, and the judge cannot simply invert the standard of proof onto the Appellant. At another place also, it was said (at paragraph 10(xi)) that "it seems to me that a couple fleeing for their lives in Iraq, would be anxious to claim asylum in this first safe country they reached and would not be intent on reaching a particular country before claiming asylum". This, the grant of permission concluded, also involved an inverted standard of proof, because this was a scenario that applied pretty much to every asylum claim, given that most entrants to the UK had travelled through other countries, and it would not just be said that the claim was lacking in credibility because of this method of travel alone.

Submissions

17. At the hearing before me on 29th November 2018, Mr Gayle submitted that the judge had erred in comprehensively disbelieving the Appellant, and had come to mistaken conclusions as to fact. Furthermore, there was an additional feature now, in that the latest CPIN report of October 2018 makes it clear (at paragraph 5.6) that the Iraqi government has now stopped issuing CSID cards, and that what happens is that an Iraqi national card is issued, but this does require quite a lot of detail to be provided, which the Appellant would not be able to provide, so that he would be without any ID card at all upon return.

18. Mr Gayle also submitted that the latest country guidance case of **AAH (Iran) [2018]**, which was handed down in June 2018, makes it clear that if someone had family support in the IKR, then they were returnable there. In the instant case, however, there was not only no such family support, but both families were clearly hostile to the Appellant and his partner, on account of their having committed an 'honour crime', and in these circumstances, not only did they not have a CSID card, but they would not have any family support either.

19. Mr Gayle additionally also went onto submit that the judge had erred in stating that the Appellant and his partner could return back to the IKR from the UK, given that they had done exactly that, when returning from Iran, on the basis that, "there was no credible evidence before me to

indicate his or his wife's family would be aware that the Appellant and his wife had returned to the IKR from the UK" (see paragraph 10(viii).

20. This was misconceived, because the Appellant would now be coming on an international flight, and the chances of both families finding about the arrival was considerably greater on a flight returning from the UK, than would be the case when they returned from Iran, especially since the evidence was that on that occasion the family members on both sides did not know of their arrival.

21. For his part, Mr Bates submitted that he would have to accept that there were factual errors in the way that the judge had come to her conclusion. Nevertheless, IFA was available to the parties. If that was the case, then there was no material error.

22. The parties have been able to return back to Sulaimaniyah for a year and had never been located by their family members. This could clearly be done again. If that was right then there would be no error.

Error of Law

23. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. First, for the reasons that Mr Gayle has submitted, which have been well set out in a clear and structured format in the Grounds of Appeal, the factual findings made by the judge were made in error. For example, it is not logical to stay that one would not embark upon an elicit sexual relationship, given the risk on account of 'honour killings', when the objective evidence does make it clear that honour killings happen in precisely those circumstances. After, all, the parties in this case had known each other since their school days.

24. It is also equally not clear why the judge disbelieved the account that the parties met at their aunt's house for sexual relations, and that it was the aunt who then attempted to take them to a place of safety by asking them to flee, because close family members often come to such assistance. The requirement of there being no marriage certificate is also wrongly posited by the Judge because this does not apply to a religious marriage, especially one that would have been undertaken in Iran. The parties wanted to formalise their relationship through a marriage ceremony, and took steps to do so, and if this is so this only adds to their credibility insofar as the relationship itself is concerned.

25. Second, that leaves the question of internal relocation. It is not possible to decide this question if the factual conclusions arrived at are in themselves flawed, particularly given that the feasibility of return is now in a state of flux, following the announcement that the Iraqi government is no longer issuing CSID cards, and a Iraqi national ID card would have to be procured, with details being provided. It is not clear why the judge rejected the

evidence, given by the parties independently of each other, that they have destroyed their CSID cards at Sulaimaniyah Airport.

26. Given the error, the matter will need to be looked at entirely anew again by another judge. Therefore, I have remade my decision on the basis of the findings of the original judge, the evidence before her, and the submissions I have heard today. I am allowing this appeal to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Brookfield.

Notice of Decision

27. The decision of the First-tier Tribunal involved the making of an error on a point of law, such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Brookfield, pursuant to Practice Statement 7.2(b), because the nature or extent of any judicial fact-finding which is necessary in order for the decision and the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

28. An anonymity order is made.

29. This appeal is allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Juss 4th January 2019