Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08584/2018**
PA/08561/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 April 2019	**On 12 April 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

B H A
S H A
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Janjua of counsel, instructed by Aman Solicitors Advocates

For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellants are nationals of Iraq and come from Haji Awa in the Iraqi Kurdistan Region ("IKR"). They left the IKR on 25 November 2017 and arrived in the United Kingdom on 27 December 2017. They applied for asylum the next day on the basis that they were at risk of honour-based violence in the IKR on account of their relationship.

2. It is the Appellants' case that they met in a shop in the IKR in March 2016 and that by June 2016 they had formed a relationship with each other. They continued to telephone each other but kept their relationship a secret due to the cultural norms prevalent in the IKR. Subsequently, in September and October 2017, the 1st Appellant's family visited the 2nd Appellant's family to propose that they marry. However, the 2nd Appellant's family rejected the proposal as they wished her to marry a cousin.

3. It was also their case that the 1st Appellant was attacked by the 2nd Appellant's brother and uncles two days later and, as a consequence, his knee was injured and he required an operation. On 22 November 2017 the Appellants fled to Erbil with the assistance of one of the 1st Appellant's cousins and they entered into an Islamic marriage the next day, prior to fleeing from Iraq. In addition, shortly after they left the IKR, the 1st Appellant's mother was attacked and threatened by the 2nd Appellant's family and had to flee to Erbil.

4. Their applications were refused on 24 June 2018 and they appealed against these decisions on 9 July 2018.

5. Their appeals came before First-tier Tribunal Judge Chapman on 7 August 2018 and he dismissed their appeals in a decision promulgated on 16 August 2018. The Appellants were granted permission to appeal against these decisions by First-tier Tribunal Judge Mailer on 17 September 2018 on the basis that it was arguable that the Judge may have given inadequate reasons for some of his findings, which affected his assessment of the credibility of their claims.

ERROR OF LAW HEARING

6. Counsel for the Appellant submitted that First-tier Tribunal Judge Chapman has not provided sufficient reasoning for his findings of inconsistency in paragraph 48 of his decision. He also drew my attention to a number of inaccuracies in that paragraph. The Home Office Presenting Officer relied on the Rule 24 Response, dated 22 October 2018.

ERROR OF LAW DECISION

7. The Respondent accepted that the Appellants are from the ILR and that "honour-based violence is widespread and common in Iraq, that the laws there against honour-based violence

are not sufficiently implemented or enforced and that their claim raises a potential Convention based fear of persecution". In paragraph 43 of his decision, First-tier Tribunal Judge Chapman accepted that the objective evidence showed that honour-based violence was prevalent in the IKR. In paragraph 44 he also found that the evidence showed that the Kurdish authorities are able but unwilling to promote effective protection to those at risk of honour crimes.

8. In paragraph 46 of the decision, the Judge also found that the Appellants were in a genuine and subsisting relationship and that they were in such a relationship when they left Iraq.

9. In paragraph 50 of his decision, First-tier Tribunal Judge Chapman stated that he had carefully considered all the evidence in the round and referred to the inconsistencies he had previously identified. This was in paragraph 48 of his decision.

10. In paragraph 50 of his decision, he took into account the passage of time since the events in question and the fact that two people may give slightly different versions of events, which may lead to inconsistencies. But he then found that "due to the significance of the events in their lives, [he found] it reasonable to expect that they would recall the events in greater detail and consistency than the Appellants have demonstrated". There was no psychological evidence to show that this was necessarily the case.

11. In paragraph 51of his decision, he also found that, in the context of the inconsistencies identified in paragraph 48, the account given by the Appellants was not credible. However, when assessing the Appellants' evidence he did not consider it in the context of the objective evidence relating to the social and cultural norms for relationships between men and women in the IKR and the prevalence of honour killings. This in itself amounted to an error of law.

12. Furthermore, some of the findings in paragraph 48 of the decision contained assumptions which were not based on any evidence. For example, in sub-paragraph 48 3) he assumed that the 2nd Appellant's mother would have had both a landline and a mobile without having any evidence on which to base this assumption and when the 2nd Appellant had explained in her oral evidence that her mother used her mobile phone as it if was a land line telephone as they did not have a land line. In addition, he assumed that the 2nd Appellant would have to buy new

sim cards for her mother's mobile phone to disguise the fact that she had been using it without taking into account that "missed calls" did not deplete "air time" and that sim cards could be topped up with further credit. In sub-paragraph 48 5) he assumed that the Appellants could have been discovered at the farm/orchard at any time without taking into their own account which was that no one lived at the house on the land and that when they met there their emotions took over.

13. There were also a number of findings which had been made without giving the Appellants the opportunity to meet the case that was being made against them. For example, in reply to question 57 of his asylum interview the 1st Appellant stated that after his marriage proposal was refused he asked his cousin to help them and he agreed to do so. In response to question 58 he explained that there had been sufficient time to then put him on notice of when the 2nd Appellant's parents would not be at home with her.

14. It is also arguable that the inconsistencies noted in 48 1) and 7) could not reasonably be categorised as inconsistencies at all.

15. For all these reasons, I find that the decision reached by First-tier Tribunal Judge Chapman contained errors of law in that he did not take all relevant evidence into account and failed to give adequate reasons for his findings.

DECISION

(1) The Appellant's appeal is allowed.

(2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Chapman or Mailer.

Nadine Finch

Signed Date 10 April 2019
Upper Tribunal Judge Finch