Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11021/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 1 May 2019	**On 15 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MS C A K M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms H. Masih, counsel instructed by Braitch Solicitors
For the Respondent: Ms H. Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq from the IKR, born on 16 June 1976. She arrived in the United Kingdom on 17 December 2017, with her two children and claimed asylum on 16 March 2018, on the basis that she feared an honour killing from her brothers. This is because her husband subjected her to domestic violence and they separated in February 2017. He subsequently did not get in contact with her or their two children, now approximately 10 and 15 years of age. The Appellant then had a relationship with somebody that she met at the university that she attended and this

was discovered by another student who informed the Appellant's in-laws, who in turn informed her family. On 26 November 2017 two of her brothers came to her home and assaulted her due to the rumours, which she denied. On 3 December 2017, the Appellant received a phone call from her sister-in-law informing her that her brothers had been asking at the university about the rumours and that they were intending to find her and kill her. Her sister in law also stated that she had seen video footage of the man, [F], with whom the Appellant had been having a relationship, entering her home. The Appellant then contacted her sister who asked her husband to collect the Appellant from university and her sister was asked to look after the Appellant's children. She and the children were then taken to his brother's house where they stayed in hiding for three days before fleeing from Iraq.

2. The Respondent refused the Appellant's asylum application in a decision dated 31 August 2018. The Appellant appealed against that decision and her appeal came before Judge of the First-tier Tribunal Fowell for hearing on 4 December 2018. In a decision and reasons promulgated on 11 December 2018 the judge dismissed the appeal.

3. Permission to appeal was sought, in time, on the basis that the judge had erred materially in law: firstly, in that the approach to credibility was too narrow, failed to take account of all the relevant matters, and in particular in approaching the credibility assessment through the matters outlined in Article 4 of the QD, the judge had essentially elevated those matters to mandatory requirements which if not met meant that the Appellant's account fell to be rejected as incredible but this was clearly not the correct approach and there was no duty of corroboration in order to establish a credible asylum claim. Reference was made to the judgment of Lord Justice Sedley in Karanakaran [2000] Imm AR 271. It was submitted that it was striking that the consistency of the Appellant's account had not been called into question, nor the basic fit between her account and the objective material. The judge had failed to assess the explanations provided by the Appellant and from the point of view of her cultural background. In particular, the Appellant had stated that to contact her female relatives in Iraq would place them at risk and if she told her mother where she was, that might be too burdensome for her mother, not so much because she might tell her sons but because it would place her mother in a situation where in having contact with the Appellant and knowledge of her whereabouts, she may be seem as colluding with someone who has transgressed key social norms and potentially place her in a category of also having breached those social norms. This was not considered by the judge in dismissing the Appellant's appeal.

4. The second ground of appeal asserted that the judge had erred at [30] in relying on new and untested information as to the feasibility of return to Iraq because this departed from the country guidance decision in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) and thirdly, that the judge had further erred in considering the Appellant's return to Iraqi Kurdistan to be feasible in the absence of any findings as to family support, bearing in mind that the Appellant is a single woman and cannot safely be returned absent such support *cf* AAH.

5. Permission to appeal was granted by First-tier Tribunal Judge Bird in a decision dated 7 January 2019 on the basis that:

> *"It is arguable that in seeking corroboration of the Appellant's account the judge sought to put a higher burden of proof on the Appellant in requiring the Appellant to corroborate her claim. The judge is required to consider whether the Appellant's evidence as a whole stands up to scrutiny against the objective evidence produced. Further the judge has failed to give adequate reasons for seeking to distinguish the country guidance in the case of AAH. An arguable error of law has been made".*

Hearing

6. At the hearing before the Upper Tribunal there was no Rule 24 response, however Ms Aboni indicated she was opposing the appeal. Ms Masih on behalf of the Appellant sought to rely on the grounds of appeal which she summarised in the following manner: one, that the judge had made flawed credibility findings; secondly, the judge erred in seeking corroboration in that this placed too high a burden of proof on the Appellant; and thirdly, that he erred in seeking to distinguish the country guidance decision in AAH. She also sought to rely on a point raised in [10] of the grounds of appeal in respect of the feasibility of return bearing in mind the Appellant's evidence as to family and family support in the IKR.

7. Ms Masih went through the grounds of appeal stating that the judge's approach to credibility was too narrow, that rather than assess credibility in the round the judge appears to have taken the approach that only the factors set out in Article 4 of QD are the benchmark at [19] of his decision. Ms Masih submitted whilst this was not necessarily wrong in itself, when one looks at [20] it is clear that the judge focuses on the issue of corroboration and what further effort the Appellant could have made to support her account. However, the Article 4 factors were not the beginning and end of the assessment and the judge had erred in treating those matters as a benchmark for assessing credibility. She submitted this was an erroneous approach as there is no duty of corroboration and that the judge had erred at [20] and [22] in requiring this. She submitted that, in so doing, the judge had placed a higher burden of proof on the Appellant. The judge focused on plausibility and states at [26] that these are the main points of concern, however this is not correct. What the judge should have done was approach credibility and the assessment of evidence in the round and matters capable of bearing on the credibility assessment, for example the consistency in the Appellant's account, were not considered.

8. Ms Masih submitted when one looks at the screening interview, asylum interview and the oral evidence these were all consistent but were not called into question, nor was the fact that the Appellant's account was generally corroborated by the background country evidence, e.g. the fact she was subjected to domestic violence from her husband and the fact that honour killings were a key feature. Ms Masih submitted that the judge placed weight on the fact the Appellant's brother-in-law was willing to help and take steps outside the usual cultural norms contrary to her brother's approach. She submitted there were always exceptions to prevailing

cultural norms. The Appellant's oral evidence was that the reason he assisted was to prevent her children becoming orphans and this was simply not considered by the judge. This point had not arisen in the interview as the Appellant was not asked about this.

9. The judge further failed to investigate the Appellant's evidence and consider it from the point of view of the Appellant's very different cultural context. In particular, the Appellant's explanation as to why she did not inform her mother about her whereabouts was because she was concerned it would be too burdensome for her mother and she did not wish to place her mother or other female relatives in an invidious situation because they could then be perceived as also going against cultural norms. This is neither considered nor factored in by the judge in his assessment of the plausibility and credibility of the Appellant's account. It was not simply as a risk of her being tracked down in the UK. Ms Masih submitted that this infected his credibility assessment.

10. In relation to ground 3, the judge relied on Annexes A and B to the CPIN October 2008 in respect of Iraq and internal relocation, Annex A being a letter from the Iraqi Ambassador to the UK dated 5 September 2018, and Annex B is a letter from the Iraqi Embassy of the UK dated 2 October 2018. Ms Masih took issue with the judge's interpretation of this evidence. Firstly, neither letter states that *laissez passers* are no longer confiscated, and secondly that in any event, this evidence does represent a departure from the country guidance decision in AAH (op cit) and the judge failed to provide cogent reasons or very strong grounds to justify departing from the country guidance simply on the basis of these letters. This was clearly a material error of law in light of the decision in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 at [67]. Ms Masih submitted that the judge had further erred at [29] in failing to assess the feasibility of the Appellant's return in the absence of findings as to whether or not she could access family support given that she is a single woman and thus could not be safely returned in light of the country guidance in AAH.

11. In her submissions, Ms Aboni asserted that the judge had directed himself appropriately and gave adequate consideration to the credibility issues in the case. Whilst the First-tier Tribunal Judge appears to have relied on the absence of corroborative evidence, he found that there was potentially such evidence, that the Appellant was in a position to obtain it but had failed to do so. Ms Aboni submitted that the judge had given adequate reasons for finding the Appellant's account lacked credibility.

12. With regard to the issue of return, Ms Aboni submitted it was open to the judge to attach weight to the letters attached to the CPIN and it was open to the Appellant to return to Baghdad and make an onward journey to the IKR. In any event, Ms Aboni submitted the Appellant could now return directly to the IKR. As regards to whether she has family to return to, the judge found there was family in the IKR, there was no error as to the Appellant's circumstances on return, and her ability to travel from Baghdad to the IKR was no longer in issue as she could return directly.

13. In reply, Ms Masih submitted that the explanations given by the Appellant in respect of the fact she had not obtained corroborative evidence were not taken into consideration by the judge as part of his assessment and this is simply one factor in relation to credibility, nor the fact her account was consistent with the background information. In respect of the feasibility of return she submitted that it is not permissible to go behind the country guidance decision in AAH without cogent evidence to do so.

Findings and Reasons

14. I find material errors of law in the decision of First-tier Tribunal Judge Fowell. I announced my decision at the hearing and now give my reasons.

15. It is apparent from the manner in which the judge approached the appeal at [19] through to [28] that the judge's focus was very much on the criteria set out in Article 4 of the QD, *viz*:

    (a) whether the applicant has made a genuine effort to substantiate her application;

    (b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

    (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

    (d) the applicant has applied for international protection at the earliest time, unless the applicant can demonstrate good reason for not having done so; and

    (e) the general credibility of the applicant has been established.

16. Whilst these criteria are a useful checklist, they do not represent a mandatory and exclusive approach to an asylum appeal, which still requires a judge to look at all the evidence in the round and to assess credibility to the lower standard of proof *cf.* Karanakaran [2000] Imm AR 271 per Lord Justice Sedley at [16] and [18]-[19].

17. The judge relied heavily on the absence of documentary support. I find there is merit in the assertions in the ground of appeal that the judge did not balance that absence of evidence against, or assess along with the consistency between the accounts provided by the Appellant in her screening interview, asylum interview and oral evidence, nor the explanation that she provided as to why it is she did not seek to obtain corroborative evidence, which was through fear of jeopardising the position of her mother and sister in the IKR. Whilst at [25] the judge asserted the Appellant had not given a satisfactory explanation for the lack of evidence, it is clear that that evidence was given but does not appear to have been taken into account by the judge. I find this is sufficient to cast doubt on the safety of the judge's assessment of the Appellant's credibility and to render those findings unsafe.

18. I further find that the judge erred in departing from the country guidance decision in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) on the basis of two letters appended to the most recent CPIN, see [10] above. In light of the judgment of their Lordships in the Court of Appeal in SG [2012] EWCA Civ 940 at [67] this is not permissible, unless or until the decision in *AAH (Iraqi Kurds)* set aside on appeal or replaced by a subsequent Country Guidance determination.

19. Whilst the judge asserted at [31] that "*the ambassador to the UK is in a position to know the current position and so that in my view amounts to the cogent evidence necessary to depart from what was expressed to be a temporary situation in AAH*", I find the judge has not provided any further reasons or explanation for departing in its entirety from the country guidance decision. I find, contrary to the judge's findings, that two letters without more cannot provide sufficient justification for departing from that guidance in the absence of further analysis or guidance from the Upper Tribunal or the higher Courts.

Decision

20. For those reasons I find material errors of law in the decision of First-tier Tribunal Judge Fowell. I set that decision aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal.

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 her or any member of her 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 *Rebecca Chapman* Date 13 May 2019

Deputy Upper Tribunal Judge Chapman