Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00173/2019**

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 30th September 2019	**On 2nd January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MHAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bachu of Counsel
For the Respondent: Mr D Mills, A Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Chapman which was promulgated on 20th March 2019. The Appellant was granted permission to appeal by First-tier Tribunal Judge Keane by way of a decision dated 7th May 2019.

2. I considered various documents in respect of this case including provision of copies of the Appellant's bundle which was provided at the time to First-tier Tribunal Judge Chapman and a skeleton argument drafted by Ms Bachu dated today. I also heard oral submissions from both advocates.

3. The Appellant was represented by experienced immigration and asylum solicitors at the hearing at the First-tier but thereafter he drafted grounds

of appeal to the Tribunal against the refusal of the decision by himself. A summary of those grounds say in part as follows:

> *"First of all I am very unhappy about the law decision the reason for that when I did the screen interview I had received all the statement which I gave into makes sure if I satisfied if I had to sign it and send it back. However I did some correction then before you receive it. You send me the refusal letter and that make me to ask also I really want to ask at the court unfortunately I did not have the chance to mention it. Secondly I feel you have mixed my case and there is a lot of misunderstanding regarding my case. Also I am sure that I have explained every single steps regarding my particular situation during this four years. For instance I have been asked the same questions during screen and asylum interview and I did answer the same thing only a little bit extra information. I was asked about my passport at the asylum interview and I mentioned it was in Turkey even though at screen interview I was asked the same question and I did answer same thing but only I added that at the moment my passport has been posted to Finland. Thirdly I totally agree that I got refused letter from other country and the reason I came here was only to protect my life until Finland decided to send me back to Iraq which is very dangerous place for me to live. In conclusion I really unexpected for this decision it made me shocked when person disagreed with this decision."*

4. The grant of permission by Judge Keane says in part as follows:

> "The Appellant applied in-time for permission to appeal against the decision of Judge of the First-tier Tribunal Chapman promulgated on 20th March 2019 in which the judge dismissed the appeal on asylum, humanitarian protection, and human rights Articles 2, 3 and 8 grounds…It was contended in the grounds that the judge should not be afforded weight to discrepancies which ought to be discerned if remarks had been made by the Appellant in the screening interview compared with remarks made by him at an asylum interview. The factual basis of the complaint was not established certainly at paragraph 38 of his decision the judge remarked that there was a significant inconsistency of the two sources that also compared with each other but the judge went on to decline to afford weight to such a matter, and then importantly Judge Keane went on to say "as the Appellant personally prepared the grounds I have considered the judge's decision in order to ascertain whether there was a strong and arguable error or errors of law but for which the outcome of the appeal might have been different". The judge found that the Appellant had not given a credible account of events for reasons mentioned at paragraphs 39, 40 and 41 of his decision. At paragraph 39 the judge relied on eleven discrete concerns. Such concerns were arguably to be construed as concerns with a plausibility of the Appellant's claim. They did not reflect the assessment of the evidence which in essence was an assessment of credibility. At paragraph 40 of his decision the judge remarked that there were

> several examples why the Appellant's account was incoherent, inconsistent or simply not credible. It was incumbent upon the judge to give reasons for supporting such dramatic findings and the judge arguably did not do so either at paragraph 40 of his decision or elsewhere in his decision. At paragraph 41 of his decision the judge remarked that the Appellant had shown that he is prepared to adapt and change his account and he feels it is appropriate to do so and when it serves its own purpose. In fairness to the judge the judge supported such a finding by remarking upon two considerations made in a late edition to the Appellant's account of his parents having disowned him and his response is to seek some professionals when asked about photographs of Z. To fasten upon merely two facets of the evidence was arguably an uncertain foundation so does the finding as important as the finding that the Appellant was prepared to adapt and change his account when he felt it appropriate to do so and when it served his own purpose. Overall the judge argues he failed to any or any adequate reasons to support his finding as to the Appellant's credibility. The judge's decision disclosed an arguable error of law or errors but for which the outcome of the appeal might have been different. The application for permission is granted"

5. In her helpful skeleton argument Ms Bachu sets out the background to the appeal and she says that when granting permission Judge Keane had noted that it was arguable what was a failure to give reasons and she says in accordance with **Durueke** (**PTA: AZ applied, proper approach) [2019] UK 00197 (IAC)** that this is arguably a **Robinson** obvious point and/or one which has a strong possibility of success and she says applying **AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 0024 (IAC)** I should find that there is an error of law.

6. There is detailed reference in the skeleton argument to paragraph 39 of Judge Chapman's findings that the judge had taken an incorrect approach to issues and credibility and the proper approach was that identified by the Court of Appeal in **HK v Secretary of State for the Home Department [2006] EWCA Civ 1037** and there is further reference to updates to this in terms of duty to give reasons the more recent case of **SB (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ** where Lord Justice Green noted at paragraph 44:

> "An Appellate Court needs to be able to satisfy itself that the fact-finder has at least identified the most relevant piece of evidence and giving sufficient reasons…for accepting or rejecting it."

7. There is also reference to the decision of the Upper Tribunal **MM (UPDS risk on return) DRC CG [2007] UKAIT 00023** whereby it is submitted and said that where an aspect of an account is inherently unlikely it does not necessarily follow that it is true. That is, as I say, a helpful reminder of the position in relation to the assessment of whether a claim is incredible or plausible, unreliable or the like.

8. In her oral submissions Ms Bachu who said all she possibly can on behalf of the Appellant had explained with great care and skills that the judge made considerable errors the judge had conflated plausibility with credibility. Ms Bachu took me through the eleven subparagraphs at paragraph 39 of the judge's decision. She also took me to pages 47 and 57 of the original Appellant's bundle which is background material, firstly from the Immigration Refugee Board of Canada honour based violence in Kurdistan from 2016 and secondly the Danish Immigration Service Honour Crimes Against Men in Kurdistan from 2010. A short summary of those documents is as follows: At page 47 that honour based violence is common, more prevalent in Iraqi Kurdistan."

9. At page 57 that illegitimate section of relationships or offences that are dealt with according to Kurdish tradition and Islam principles. An offence against a family's honour is serious and conflicts can mainly arise between the two families directly involved in some cases other families could be involved depending on the linkage of those families to the client.

10. Ms Bachu rhetorically asked how does one deal with these aspects that plausibility needs to be assessed in its entirety. Further there was an absence of an explanation in relation to paragraph 13 and in subparagraph 6. Judge Keane when granting permission noted reliance on incoherence at paragraph 40. Ultimately when looking at the entirety of the account the judge had clearly made errors. It was clear from **MA (Somalia)** that inherent implausibility does not mean that the claim is untrue. The judge had failed to grapple with the basis of the refusal. The judge had failed in following in line with **MK (Pakistan)** to give reasons and **SB (Sri Lanka)** required there to be a duty required and said that there was a duty to give reasons. It was submitted that the decision was unsafe and that the matter ought to be remitted to the First-tier Tribunal with no preserved findings.

11. Mr Mills in his submission said that although there is reliance on the case of **Durueke** that case did not assist the Appellant because what Judge Keane has done is precisely what the Upper Tribunal in **Durueke** were saying should not occur. What one had here was an extension of one statement from Judge Keane that he would have allowed the appeal but that is not sufficient. Mr Mills referred to **HK** that it will be potentially dangerous to reject an appeal alone in respect of one aspect of cultural context.

12. Mr Mills took me to paragraph 39 subparagraphs (1), (2) and he said he also possibly relied on (3) of the judge's decision, but in any event he said if one read that in full it was clear that the judge was well aware of the cultural context and cultural background. In relation to paragraph 39 subparagraph (6) this was not raised before it was raised for the first time in oral submissions today. There was additional reasoning apart from paragraph 39 and paragraphs 40 and 41. Indeed the judge later went on to deal with Section 8 issues. This was an Appellant who had claimed asylum in Finland, his brother lived there, the Appellant's claim for asylum had failed in Finland and it was thereafter that the Appellant had come to

the United Kingdom and had sought asylum here. As I understood Mr Mills' submissions if it was not for lapse in the paperwork, the Dublin Convention would have applied in this case so that removal would have taken place.

13. Ms Bachu in her response said that the case law and the legal position applied. Judge Keane had identified what he thought were arguable material errors of the law. The test was met. Insofar as paragraphs 39 subparagraphs (1), (2) and (3) were concerned those may well be plausibility aspects but they went to the core of the Appellant's account. That needed to be assessed with the entire claim as was put forward. This in any event was that paragraph 39(1) was at odds with the objective evidence in the circumstances here in Iraq. Relationships do occur outside marriage. There was no reason why the evidence was disregarded. The objective evidence supported that these relationships do occur and that paragraph 39(2) says similar arguments of these concerns affect the credibility finding which were made.

14. Insofar as 39(6) is concerned this was the procedural fairness aspect and Ms Bachu said this was a **Robinson** obvious point. She apologised for the lateness of it but there were two-fold aspects. Firstly if reasons were given as to how the Appellant had left Iraq and secondly how you arrange to do so and this was not factored into this particular finding. There was procedural unfairness in making adverse findings against the Appellant in the absence of asking him.

15. Insofar as paragraph 39(5) was concerned this related to the Appellant leaving Iraq but leaving his partner behind. There was no consideration of the analysis as to the necessity for the Appellant to leave with a risk now that he faces as I understood this submission. Ultimately in relation to the other matters, for example the passport issued, the Appellant had dealt with that within his grounds of appeal.

16. I turn then to consider my judgment. That requires me to deal with care the decision of First-tier Tribunal Judge Chapman's. Paragraph 39 has already been referred to at some length but it is worth summarising it again. Importantly, the judge noted at the beginning of that quote "I have then gone to consider the Appellant's evidence very carefully because I find that I have significant difficulties in accepting his account as credible for the following reasons". This was just after the judge had said that there were significant inconsistencies between the Appellant's claim at the screening interview and at his asylum interview but the judge ultimately said at the end of paragraph 38 that he was going to disregard the differences between the accounts given at the two interviews and that they would not feature in his overall conclusions.

17. In my judgment it is quite clear the judge was being as fair as he possibly could in relation to the assessment of the evidence. That was the correct, fair and lawful approach in my judgment. It showed a balanced and even-handed approach. The judge then summarised over eleven

subparagraphs the following reasons why he did not find the Appellant's account credible:

(1) He did not find it credible that the relationship with Z took place as claimed and he referred to the cultural nuance i.e. that she was from a strict Kurdish family.

(2) He did not find credible that Z would visit the Appellant's shop and that she would close it whilst they spent time together without someone spotting what was happening informing Z's family and this was according to the Appellant a family that could locate him wherever he might go in Iraq but they did not know about their daughter right under their noses.

(3) That there would be the photographs taken in the way that were suggested.

(4) That Z's mother could have noticed that Z was pregnant when the pregnancy was only twelve weeks simply by looking at Z.

(5) This deals with whether or not the Appellant would simply leave the country the next day.

(6) How the Appellant managed to afford and arrange his exit from Iraq so quickly; and

(7) There is a lack of expression of emotions by Z having been killed.

(8) In relation to photographs and how these came to be destroyed.

(9) References to the Appellant's passport and the agent from Finland.

(10) That there had been two claims for asylum and that it was not credible that he had no intention of going to Finland and this is where the Appellant had ended up.

(11) That the Appellant claimed to be disowned by his parents.

18. Additional to those eleven findings the judge also said at paragraph 40 that there were aspects which he the judge found to be incoherent, inconsistent and simply not credible and this of course was after the judge had made those other findings. At 41 the judge noted there were even further aspects there was a late edition to his account of his parents having disowned him as an example of that and the other was in relation to the responses to seek some questions he was asked about in relation to photographs of Z.

19. The judge also comprehensively after all those other findings as is required by the law dealt with Section 8 matters the judge concluded he simply could not ignore that there had been a previous failed claim for asylum in Finland where the Appellant had lived for some period of years.

20. The judge also fully and comprehensively dealt with the humanitarian protection aspects of the claim particularly taking into account the decisions in **AA (Iraq) [2015] UKUT 00544** and **AAH (Iraqi Kurds – internal relocation) [2018]**. Indeed there is no appeal before me in respect of the latter aspects but I do note that the judge dealt with those at length. He dealt correctly with those aspects of the claim.

21. I return then to the appeal itself. In my judgment, in view of the comprehensive decision of the judge then if it was only the grounds of appeal that I had to consider then I would have concluded that the appeal was hopeless and that there would be no basis to set aside the decision of the judge.

22. It is necessary in this case though to consider the grant of permission to appeal by Judge Keane. I am reminded by Mr Mills of the reach of the Upper Tribunal's decision in **Durueke**. Mr Mills reminds me that any hesitation that I might myself have as to whether or not permission would have been granted in the way that it has I nonetheless have to go on to consider whether sufficient merit has been shown in respect of the grounds now enumerated before me with the assistance of the grant of permission to appeal by Judge Keane.

23. In short, what is submitted on behalf of the Appellant is that there were **Robinson** obvious points showing errors of law in the decision of Judge Chapman and that there was the conflation of plausibility with credibility. Having considered matters carefully, in my judgment I conclude that there is no material error of law. In my judgment it is important to note that nowhere was Judge Chapman saying that relationships outside marriage do not occur in Iraq. Indeed I take judicial notice of the fact that relationships outside marriage take place, I am sure in absolutely every country. Whether such relationships are outlawed or not. It is a fact of life that such relationships outside of marriage occur.

24. In my judgment nowhere from within the background material can the Appellant gain assistance from any of the documentation that I have referred to. Pages 47 to 57 of the background material which had been brought to my attention says no more than that there are these problems with the way in which relationships outside marriage are dealt with, those problems being that there are honour killings and that the legislation seeks to outlaw such relationships. So in my judgment the background material certainly does not support the Appellant. I obviously accept that the regime and society in Iraq does not approve of relationships outside of marriage and indeed goes as far as to kill persons who engage in such activities, but that is not the point of the ground of appeal.

25. It is also important to look to what paragraph 39 of the judge's decision actually says. The judge explains that he was aware of the cultural nuance in terms of the way in which the family honour aspects arise but he did not find it credible that this relationship could possibly have occurred in the way in which the Appellant himself had described along

with all of the other aspects of the Appellant's claim and all the other findings which were made against him.

26. In my judgment the judge was quite entitled to come to those decisions. Just as he was for example to say at paragraph 39(4) that he concluded it unlikely that Z's pregnancy would be showing after just twelve weeks of being pregnant. There was nothing wrong with that finding and there is no basis for me to go behind it. The judge was quite entitled to say as he did at 39(6) that there was a lack of an explanation as to how the Appellant was able to arrange his exit from Iraq so quickly. I of course appreciate that now it has been said that this was a matter which should have been specifically put to the Appellant. In my judgment this goes nowhere near being a **Robinson** obvious point. It is not something which is so difficult to have imagined was relevant as not to have been fully and clearly explained by the Appellant himself in any event. in my judgment it is quite clearly that the opposite applies. Namely that if the Appellant's case was that he had to flee in urgent and emergency circumstances then it was incumbent upon him to explain how it was that he was able to do so. This was after all, his home and life in Iraq.

27. Insofar as the Section 8 matters are concerned in my judgment the judge was quite entitled to conclude that a person who had fled Iraq to go and live in a country where his brother was living and where this Appellant then claimed asylum there but where this Appellant failed in his asylum claim there are all highly pertinent matter. The judge was entitled to note it was only after that failed attempt that the Appellant then left the third country to come to the UK. The judge was entitled to conclude that these were all matters capable of damaging the claim itself and the judge quite properly dealt with the Section 8 matters after having made the findings at paragraph 39 in those eleven paragraphs and then at paragraph 40 and 41. This was yet another reason which supported the judge's conclusions.

28. Reminding myself of the Court of Appeal's decision in **R (Iran)** I have to consider that there is an error of law in the judge's decision. I conclude that there is simply no basis upon which it can be said that there is any material error of law in Judge Chapman's decision, even when looking at it with the helpful assistance which Judge Keane provides within his decision when granting permission to appeal. There is no incoherence in the judge's decision. It is

29. Therefore in my judgment I conclude that despite the careful and detailed submissions of Ms Bachu who has said all that she possibly can on behalf of the Appellant, the appeal against the decision of Judge Chapman is dismissed. Therefore the First-tier Tribunal's decision stands.

Notice of Decision

There is no error of law in the decision of the First-tier Tribunal. Therefore the decision of the First-tier Tribunal stands and the Appellant's appeal remains dismissed on all grounds.

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: A Mahmood Date. 30 09 2019

Deputy Upper Tribunal Judge Mahmood

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed: A Mahmood Date; 30 09 19

Deputy Upper Tribunal Judge Mahmood