



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00589/2020

THE IMMIGRATION ACTS

Heard at Manchester CJC (Remote)  
On 12<sup>th</sup> November 2020

Decision & Reasons Promulgated  
On 16<sup>th</sup> November 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

JR  
(anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khan of Counsel, instructed by Parker Rhodes Hickmott

For the Respondent: Mr Bates, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1994. He appeals with permission against the decision of the First-tier Tribunal (Judge Shimmin) to dismiss his appeal on protection and human rights grounds.
2. The basis of the Appellant's claim before the First-tier Tribunal was that he faces a real risk of 'honour' based violence in his home area of Iraq. He claimed to have had a relationship with a married woman (Z) whose family discovered the affair. They raided the Appellant's family home and have declared an intention to kill him.

3. The Tribunal did not believe any of that. In its decision of the 17<sup>th</sup> March 2020 the Tribunal gave several reasons for rejecting the Appellant's account. This appeal is concerned with some of those findings, and whether the Tribunal erred in law in reaching them. I note at the outset that at its §33 the Tribunal said this:

“Whilst individually any one of these credibility points might not, on its own, persuade me that the appellant was an incredible witness, when I consider the various points here and in the reasons for refusal letter cumulatively, I come to the conclusion that the appellant was not credible”.

As a result of this self-direction the Secretary of State has before me been compelled to concede that if any of the grounds are made out, then the decision of the First-tier Tribunal must be set aside, no matter how cogent the remaining reasons for dismissing this claim might have been.

4. In reaching my decision I have taken into account the written submissions of Senior Presenting Officer Mr Bates, and the written submissions of Ms Khan of Counsel, the grounds prepared by Ms Bashow of Counsel and the oral submissions.

### **Discussion and Findings**

5. The first ground is that the Tribunal failed to take material matters into account when it applied section 8 of the Asylum (Treatment of Claimants etc) Act 2004 to the Appellant's case. The Tribunal had found that the Appellant had failed to avail himself of a reasonable opportunity to claim asylum in Italy or France *en route* to the United Kingdom; it found it to be reasonably likely that the agents that the Appellant had engaged would be “very willing to take less risk and have less expense by depositing the appellant in one of these safe countries rather than going through another difficult border”. In her grounds Counsel submits that the Tribunal has failed to take into account the well-established facts that agents place their charges under duress, and that they make more money in getting people to the United Kingdom: see for instance R (on the application of Q and Ors) v Secretary of State for the Home Department [2003] EWCA Civ 364 [at §40] and AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) [at §115].
6. I fully accept that many thousands of migrants who are trafficked across the borders of Europe are at the mercy of the criminal agents who facilitate this trade. The evidence presented in both of the cases referred to by Counsel in her well researched grounds was that migrants can in such situations be subject to pressure, threats and in some cases violence. I agree that it was unduly speculative for the Tribunal to opine that it would be easier for the smugglers to leave their ‘customers’ in Italy or France – there may be many reasons, in individual cases, why they would not do so. I am not however satisfied that this assists the Appellant. The Appellant is a grown man who is fit and well. He was twice fingerprinted by the authorities in safe third countries: on the 25<sup>th</sup> June 2017 in Italy and in France on approximately the 20<sup>th</sup> July 2017. He has nowhere suggested that he was inhibited from claiming at these points by any

kind of intimidation. It follows that he did fail to avail himself of a reasonable opportunity to seek protection and the Judge was fully entitled to apply s8 AI(TC)A 2004 in those circumstances.

7. The second ground is that the Tribunal misunderstood, or made mistakes of fact, as to the evidence. At its §31 the Tribunal found that if the Appellant cared for Z, he would have taken her with him with he fled. In fact the evidence, in both the asylum interview and at the hearing, was that the Appellant had tried to take Z with him: he had pulled at her hand and tried to get her to come but she was in state of shock and couldn't move.
8. I am not satisfied that any error of fact or misunderstanding has arisen. It is apparent from the face of the decision that the First-tier Tribunal knew what the evidence was: it is set out at §30. The point is that the Tribunal rejected that evidence as not credible: "Both he and [Z] would be well aware of the fatal consequences that [Z] would face. If he cared for her, and she for him, he would have taken her with him". Whilst Ms Khan wisely reframed this ground as a failure to engage with the Appellant's evidence rather than an error of fact, I do not find ground two to be made out. The point that the Tribunal makes is that the Appellant would not - where his lover is facing an 'honour' killing - have simply left her because she was in shock. That was a finding open to it on the evidence.
9. Third, the Tribunal is said to have erred in its approach to the identity of Z's father. At its §26 the Tribunal concludes "the appellant was not able to give any relevant information about her father's position as a high ranking official". As a matter of fact, it was wrong to say that the Appellant had provided no information at all: he had at his asylum interview provided details when asked. He had given the man's full name, identified the district where he works, said where the PUK offices are there and explained his role within the organisation. The question posed was whether any of that was, as the First-tier Tribunal put it, "relevant". It is hard to know what the Tribunal meant here. All of that was plainly relevant to the Appellant's claim that this man exists, and is a PUK official in his neighbourhood of Darbandikhan. It may, as Mr Bates points out, have fallen short of establishing that he was regarded in the locality as "famous and wealthy" but it is hard to say that it was not *relevant* to the Appellant's claim, which presumably rested on the connection to the PUK rather than how well known he was. I am satisfied that this ground is made out. I should add that the reasoning on this matter contains a further error: at §27 the Tribunal properly directs itself that it is legally impermissible to require corroboration in asylum claims, before going on to draw adverse inference from the lack of corroborative evidence. It is one thing for a lack of evidence to mean that a claimant cannot discharge the burden of proof: it is another to hold, as here, that his "credibility is damaged" because of a failure to do so.
10. Finally, the Appellant submits that the Tribunal applied too high and standard of proof/acted irrationally in requiring him to provide an exact timeline. The Tribunal held at its §23 that the Appellant had failed to provide a "reasonable

and credible” timeline of when he met Z, how often they met, and when he proposed marriage to her. It rejected, without reasons, the Appellant’s explanation that he cannot remember the dates with any greater precision. The very well-drawn grounds point to scientific research, the Appellant’s own evidence and caselaw to submit that it is unrealistic to expect applicants to be able to give the precise dates and times for events in their lives. The Appellant himself had never claimed to have a precise recall of the dates. He had explained at his asylum interview that the dates he was giving were approximations. This, it is submitted, is entirely consistent with what is known about the limits and variations in human memory. The interview took place in October 2019, the hearing in March 2020, and the Appellant was being asked to give the dates for events that took place in March 2016.

11. I am satisfied that this ground is made out. The weight to be attached to evidence such as dates should always be assessed with caution, particularly where, as here, the events narrated allegedly happened some time ago and there were no particular events to act as ‘pegs’ pinning down the memory – the evidence did not for instance concern a particular demonstration or anniversary. Rather the Appellant was recounting informal encounters between him and a customer in his shop spread over a period of some months. Absent any particular reason for him to have committed to memory the dates that Z appeared in his shop, it is difficult to see why his evidence was not “reasonable or credible”.

### **Conclusion**

12. There are, as identified in the Respondent’s refusal letter and Mr Bates’ submissions, significant credibility problems for the Appellant. It remains the case however that his evidence must be assessed on the lower standard of proof in a manner compatible with the jurisprudence on asylum claims. Had the Tribunal said nothing at all about the chronology, or Z’s father, this is a decision that would have survived. But the errors having been established, it follows from the Tribunal’s paragraph 33 that it now falls to be remade by a judge other than Judge Shimmin.

### **Decisions**

13. The determination of the First-tier Tribunal contains material error of law and it is set aside.
14. The decision is to be remade in the First-tier Tribunal.
15. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Upper Tribunal Judge Bruce  
12<sup>th</sup> November 2020