



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/09286/2019**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 16<sup>th</sup> October 2020**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> November 2020**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**DM**

(Anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Brown, instructed by Legal Justice Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. By a decision dated 12 March 2020 the Upper Tribunal set aside, by agreement, a determination of the First-tier Tribunal which dismissed the appellant's appeal.
2. Preserved findings are those relating to the appellants identity as a Kurdish citizen of Iraq born on 12 March 1993, his immigration history, and home area of Sulaymaniyah in the IKR.

## **Background**

3. The core of the appellant's claim is that he began a relationship with his paternal cousin [I] in 2014. They intended to marry. One of his uncles, [K], one of [I's] sisters and two of his friends were aware of the relationship and raised no objection on the basis they intended to marry.
4. The appellant told his family about the relationship with [I] in order that he could ask [I's] family for her hand in marriage.
5. When asked [I's] father did not approve the relationship or give his consent. The appellant stated he asked twice for [I's] hand but was refused on both occasions. The appellant stated this was because [I's] father and family members are involved with the KDP whereas his father is not political. A feud ensued in which his father sided with [I's] father and disowned the appellant.
6. On 20 July 2018 [I] married another person. The appellant stated in his evidence this was when his problem began as [I's] sister told him it has been discovered that [I] was not a virgin. The appellant was told that [I] had made a full disclosure of their relationship. The appellant was told that [I] had been killed by her own father as a result of bringing dishonour to the family, who was now looking to kill him as he was the cause of the dishonour.
7. The appellant was sent to a village by his maternal uncle where he remained until arrangements were made for him to leave Iraq. The appellant stated his mother forced the uncle to assist him. The uncle paid for the journey to the UK. The appellant flew from Sulaymaniyah airport in August 2018 to Turkey. Whilst there the appellant received a telephone call from [I's] sister advising him the family were aware of his location, as a result of which he travelled to Addis Ababa, Luanda, Paris and then to the UK.
8. The appellant claims that if he is returned to Iraq he will be killed by [I's] family or his own father.
9. The respondent's HO Minute Sheet dated 20 November 2018 records the appellant arriving from Paris and presenting a Bulgarian passport in his identity with a substituted bio-date page. A search of his luggage discovered papers indicating he had claimed asylum in Turkey in August 2018. The salient details arising from the Port Screening interview are said to be:
  - The appellant had no medical issues.
  - The appellant was a former shop keeper, was unmarried, and had no children.
  - The appellant claimed to have left Iraq on 18/08/18, been in Turkey until 31/10/18, then flown to Addis Ababa, then travelled to Luanda, Angola. The appellant then travelled to Paris five days before arriving in the UK but claimed not to have known he was in France and stating he had not claimed asylum there because he was controlled by an agent.
  - He had given his own IRQ passport to an agent in Turkey and travelled on the forged BGR passport since then. Claimed not to

have any details of his facilitators but had been sent his multiple ticket details by WhatsApp messages to his Turkish mobile phone.

- He was claiming asylum on the basis that he had been in a relationship with his cousin. When her parents and his parents had found out in July, a family feud had developed, and he had been told by a maternal uncle to leave and not come back as they would kill him.
10. The appellant has provided evidence in support of his claim which includes a number of photographs as well as his asylum interview and response to lengthy cross examination undertaken by Mr Diwnycz.
  11. The appellant claimed that the woman appearing with him in one of the photographs (No.9) is the cousin with whom he had the relationship who is also the same person appearing in a wedding dress in photographs [11, 12, 13, and 15] standing with a person dressed in a suit who is not the appellant, who it is claimed is the man [I] married.
  12. Whilst it is not disputed the person dressed as the groom is not the appellant, a cornerstone of his claim is that the female in the wedding dress is his cousin, [I], who was subsequently killed when it was discovered she was not a virgin and confessed to an intimate relationship with the appellant.
  13. It is not the role of a judge to act as a facial recognition expert and despite these photographs having been in the possession of the Secretary of State for some time, as they were the same photographs used before the First-tier Tribunal, there is no indication of any report having been commissioned by the respondent to confirm whether the person in the photograph of the woman in a wedding dress is the same person in the photograph the appellant claimed is his cousin. There appear to be similarities in their facial structures although the fact one appears in full wedding day make up and the other in less, is also an issue.
  14. Although Mr Diwnycz undertook a lengthy cross-examination of the appellant regarding the dates the photographs were taken and how they had been obtained, and in particular in relation to the nature of the vehicle the appellant claimed he had been travelling in with the woman concern with particular reference to photographs [7] which appeared to be a right-hand drive vehicle whereas in Iraq they drive on the left, he was unable to produce anything through his line of questioning sufficient to undermine the appellant's claim in relation to the photographs. In particular, although photograph [7] could be interpreted as Mr Diwnycz suggested the difficulty is that some photographs taken on mobile telephones reverse the image which may be an explanation for why the picture appears as it did.
  15. For the links in the chain of causation in this appeal to be met it requires a finding that not only was the appellant in the relationship with his cousin as claimed, but for the claims that it was discovered [I] was not a virgin on her wedding night which led to her being confronted, the eventual confession of her relationship with the appellant, the claimed killing of [I] as a result of honour, giving rise to the direct threat to the appellant, to be made out.

16. The First-tier Tribunal's determination stands as a record of the evidence given even though the eventual findings have been set aside. In that it was written:

"50. It is submitted that the Appellant has been unclear about how it was discovered that I was no longer a virgin. The Appellant was asked about this in cross examination. The Appellant was clear that he was not present when this was discovered. It appears from the evidence that this was discovered by I's new husband on their wedding night. Ms Bashow made clear submissions on this point. She made reference to custom and culture in this regard, referring to the expectation of blood after consummation of the marriage on the wedding night. Custom often requiring the bed clothing to be produced as evidence. The event is significant in such culture. Mr Mullarkey made reference to the fact that I's new husband himself would have been experienced and so questioned how he himself would have been aware of the fact that I was not a virgin. As Ms Bashow notes however, given the significance of this, is not implausible that I's husband would have known what to expect. The Appellant could not have been clearer in his evidence that he was not there and could only make presumption about the discovery. I do not find that this undermines the Appellant's credibility."

17. There was nothing before the Upper Tribunal to cast doubt upon the submissions made to the First-tier Tribunal in relation to the cultural aspects of the practice on the morning after the wedding night referred to before First-tier Tribunal Judge Turner. There has been ample opportunity to produce rebuttal evidence, but none was forthcoming.
18. It has not been shown to be implausible that in accordance with tradition if blood is absent on the sheets after the wedding night suspicion will have been raised, leading to questions being asked of [I].
19. The appellant's evidence that the photographs show him with [I] in proximity to each other that are supportive of the contention of a romantic involvement between them, to the lower standard applicable in an asylum appeal, has not been undermined by Mr Diwnycz.
20. The photograph produced by the appellant of persons he claims to be adult male family members, who he states are of a particular political leaning, is supported by the fact they appear to be holding up a finger with black ink on the end ordinarily indicative of a person who has voted. In this appeal it was stated this related to the vote relating to Kurdish independence which is plausible in the circumstances.
21. The appellant also claimed in his evidence that [I's] sister, named Barez O. Maroof, had warned him that the family were aware of his whereabouts in Turkey. Evidence of this warning was provided in the respondent's bundle. A message sent on 14 October 2018 is clearly noted as being from Barez O. Maroof with there being a further note of a missed call from 'Barez'. Nothing was raised in relation to this during the course of cross-examination nor has been any evidence been adduced to undermine the appellant's claim in relation to this aspect of the evidence which further corroborates the appellant's account.
22. Having assessed the evidence as a whole with the required degree of anxious scrutiny I find, to the lower standard applicable in an asylum

appeal, that the appellant has established that his claim to have been involved in a sexual relationship with [I], that the relationship was discovered as a result of [I] confessing after her wedding night, resulting in [I] being killed for offended family honour, and the appellant being targeted as result of his role in tarnishing the honour of the family, is made out.

23. The appellant claimed that he would not have the support of his father on return which was a claim not subject to challenge by way of detail cross-examination from Mr Diwncyz. There is nothing to undermine the appellant's claim in this respect.
24. It was not suggested the appellant could return to Baghdad and live there safely in light of the findings made the Upper Tribunal in SMO, KSP & IM [2019] UKUT 400.
25. In relation to return to his home area, or elsewhere in the IKR, the appellant faces a real risk at the hands of his relatives as a result of the above findings. Mr Brown relied upon country information concerning the risk faced by a male who is the subject of an honour killing in Iraq. It was not made out the appellant would have the protection of the authorities and the only way he could avoid being the subject of an honour killing would be to go into hiding or flee the country, as he did. The report by the Danish Immigration Services, Fact Finding Mission to Erbil, Honour crimes against men in Kurdistan region of Iraq and the availability of protection; clearly supports the appellant's contention that even if he was able to return to the IKR he will face a real risk as the family seeking him would be likely to pursue him and that it would not be an option for the appellant to go into hiding for an extended period of time.
26. I find on the facts of this case there is no sufficiency of protection available to the appellant who will face a real risk of serious harm in the IKR of being the victim of an honour killing for whom no reasonable internal relocation option exists, for the reasons stated. On that basis the appeal must be allowed.

## **Decision**

27. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

28. I continue the anonymity order made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed  
Upper Tribunal Judge Hanson.

Dated the 16 November 2020