



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06862/2019 (V)**

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
Working Remotely by Skype
On 22 April 2021**

**Decision & Reasons Promulgated
On 19 May 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bass of Duncan Lewis Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq of Kurdish ethnicity who comes from Chamchamal. He was born on 12 April 1994. He arrived in the United Kingdom on 21 October 2018 and on that date claimed asylum. The basis of his claim was that there was a blood feud within his family over property inherited by his father and uncles. A cousin had been killed and his father and he and his brothers were blamed. He feared that he would be killed if he returned to Iraq. He also raised, as part of his claim, a fear from Daesh and the PMF in Iraq.
3. On 3 July 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a decision sent on 7 October 2020, the FTT (Judges Osborne and Lloyd-Lawrie) dismissed the appellant's appeal on all grounds. Importantly for the purposes of the present appeal, the FTT made an adverse credibility finding and did not accept that there was a blood feud within the appellant's family and that he would be at risk on return as a result.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal challenging the FTT's adverse credibility finding on essentially five grounds.
6. First, the FTT had been wrong to rely upon inconsistencies in the appellant's evidence as to the identity of his "eldest brother" who had shot at his uncles and had, in effect, initiated the blood feud.
7. Secondly, the FTT was wrong to take into account, what were said to be, inconsistencies in the appellant's evidence as to the age of his cousin when he was killed as part of the blood feud.
8. Thirdly, the FTT had been wrong to take into account inconsistencies in the appellant's evidence as to whether his cousin was killed in 2001 or 2010.
9. Fourthly, the FTT had failed to take into account documentary evidence produced by the appellant in his supplementary bundle relating to the acquisition of the land by the family which was at the core of the claimed blood feud.
10. Finally, the FTT had wrongly applied s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") in taking into account as damaging of the appellant's credibility that he had not claimed asylum in Greece where he had spent a month before travelling on to the UK.

11. Permission to appeal was initially refused by the First-tier Tribunal (Judge Andrew) on 23 October 2020. However, on a renewed application, the Upper Tribunal (UTJ Rimington) granted the appellant permission to appeal on all grounds on 17 November 2020.
12. The appeal was listed at the Cardiff Civil Justice Centre on 22 April 2021 working remotely. The appellant was represented by Mr Bass and the respondent by Mr Walker, both of whom joined the hearing by Skype.
13. Mr Bass relied upon a skeleton argument in support of the grounds of appeal and which he supplemented in his oral submissions. I also heard oral submissions from Mr Walker.

The FTT's Reasons

14. The FTT recognised that the main dispute between the parties was whether the appellant had established he was at risk on return due to a blood feud within his family that had resulted in a cousin "B" being accidentally killed and the appellant's father and he and his brothers being blamed for that killing.
15. The FTT gave its reasons for reaching an adverse credibility finding and rejecting the appellant's claim that there was a blood feud at paras 29 – 33 of its determination. The appellant, although he had originally claimed to fear Daesh and the PMF, did not rely upon that basis for his claim before the FTT (see para 34).
16. The FTT first considered s.8 of the 2004 Act and whether or not the appellant's failure to claim asylum in Greece, a safe third country damaged his credibility. The FTT said this (at para 29):
 - "29. In considering Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, we note that the appellant has not in essence dealt with the criticisms made of him by the respondent for failing to claim asylum in Greece in his witness statement. However, he did so to a point in his screening interview and explained that he wanted to travel to the UK as there 'you can be free other than other countries'. He also confirmed that he had family members in the UK and had spent a month in Greece. The family members point was later corrected by his solicitor who said he did not have any family in the UK. He was silent as to whether or not he had any problems in Greece. In his Asylum Interview he advised that he did not claim asylum in Greece as it is a poor country and it cannot provide a living for its own citizens. We find that the appellant knew that Greece was a safe country and chose not to claim asylum as he wanted to go to the UK. This is supported by the letter submitted as evidence by the Appellant from his brother. He advised in the letter, '[the appellant] always talked about Europe and he was keen to leave this mess'. This suggests that leaving Iraq was always planned by the appellant. We find that this adversely damages the appellant's credibility."
17. The FTT went on to look at the appellant's "credibility overall from both an internal and external perspective". At para 30, the FTT reminded itself that the appellant was a child of 6/7 years old when the alleged dispute

started and that that would “almost certainly hamper his ability to recall events”. The FTT then said this:

“However, we find that this excuses some mistakes on exactly what happened and when. However, we find that the appellant would have known the key facts of the dispute, such as the age of his cousin and would obviously know who his own family members were.”

18. Then in paras 31 - 33, the FTT considered the evidence concerning the age of his cousin at the time the appellant claimed he was killed in the dispute and when that occurred, together with evidence concerning which of his brothers - “S” or “A” - was instrumental in the circumstances that led to that killing. The FTT said this:

“31. The appellant in his Preliminary Information Questionnaire stated that the cousin was killed in 2010 but was silent as to the age of the cousin. In the appellant’s Asylum Interview at question 9 he stated ‘... I had a blood feud regarding land, one of my cousins was killed and because of that they hated my father, as I was always going with my dad to the land therefore they hated me and they tried to kill me twice and they shot at me twice, that was in 2010 when we fled and we went to Daquq ...’. At question 35 the appellant confirmed that the blood feud began in the spring of 2000. At question 37 the appellant said in answer to a question as to what the name was of the cousin who was killed [“B”] [where was he killed] in Chamchamal [what date did this happen] I was about 6 or 7 years old [which uncle killed him] “R” [which uncle’s son was this] “A” [who started the shooting] initially it was my brother, he was 21 years old at the time as he did not accept the situation, therefore he shot at one of my uncles and then that uncle shot at one of my cousins as he thought it was him who shot him [he killed him] yes [how old was this cousin at the time] 16 or 17 years old.’ The appellant in his answer to question 40 confirmed that his eldest brother was called “A” and that his brother “S” was born in 1987. The appellant’s solicitors sent a list of corrections on 05 February 2019 but this did not include any of the above details.

32. When moving on to consider the appellant’s witness statement, he was clear that the killing of his cousin occurred around 2001 and that the appellant was himself targeted as he was the same age and looked very similar to “B”. He stated at paragraph 8 ‘traditionally blood feuds in Iraq targets the eldest child of the father; however, my brother, “S”, was married to a woman with very well-connected political family members’. This suggests that the appellant’s elder brother was therefore “S”, not, as claimed in the Asylum Interview, a man named “A”. The appellant submitted a letter from his brother “S” which, by way of second sentence reads, ‘the fact that I am the older brother and I also look after his family more than my grandmother [] who passed away in [2000]’. This again leads us to find that “S” was the older brother, not “A”. The appellant, in cross-examination, stated again that he was the same age as the cousin who died. It was clarified with him how old his cousin was and he said, ‘we both born 1994 and he died in 2001 and I do not know if that makes him 7 years’. It was put to

him that he had said that his cousin was 16 or 17 in his Asylum Interview and he denied that he had stated that and said that he was killed in 2001 and was the same age as him.

33. We find that it is damaging of the appellant's credibility that the date upon which the killing of his cousin takes place changes from 2010 to 2001. We note that the form was not completed by the appellant but by his Solicitor and the point was not put to him, however, he clearly stated at one point during the Asylum Interview that his cousin was killed in 2010. We find that the appellant may have mis-stated the years and that this error alone does not completely undermine the appellant's case as he later stated the date of 2001 in the Asylum Interview. Thereafter he was consistent as to the year. However, we find it wholly incredible that the appellant will be mistaken about the age of his cousin when he died and the name of his eldest brother. The appellant mentions "A" as shooting during the 2001 dispute and expressly states that he is his eldest brother. He then refers to "S" as being his elder brother and by the use of language, in his witness statement, we find that he was meaning that he was the eldest brother. We find that the letter from "S" confirms that he is indeed the eldest brother. We find that the appellant simply would not have made a mistake about either who was his elder brother or what the age was of the cousin when he was killed. We find that the mistake in age of 16/17 which is almost an adult to 7, a very young child, to be fundamental and find that it is not a mistake that can be explained away, for example, by someone guessing an age. The appellant later claimed to clearly know the age of his cousin by being able to give his year of birth and claiming that the reason that he was targeted, not his other brothers, was due to his being the same age as his cousin who was killed. We find that either of these errors would, alone, fundamentally undermine the appellant's credibility. We find that the reason the appellant is not credible is that the blood feud did not occur and that he was not a victim or intended victim of any blood feud. We find that he simply would not have erred on these key and basic details if he had been telling the truth. We find that errors as to dates would have been understandable when looking at matters in the round."

Discussion

19. I will deal first with the credibility points relating to the evidence and then s.8 of the 2004 Act.
20. On behalf of the appellant, Mr Bass submitted that the FTT had misunderstood the appellant's evidence about which of his "eldest" or "elder" brothers had initiated the events that led to the death of his cousin. In his asylum interview (at question 40), the appellant had said that it was his brother, "A" whom he referred to as his "oldest brother". Mr Bass submitted that the FTT had misunderstood the appellant's evidence in his witness statement that it was "S" who was the brother who had initiated the incident. At para 8 of that statement the appellant said this:

“Traditionally blood feuds in Iraq target the eldest child of the father; however, my brother, “S”, was married to a woman with very well-connected political family members. In the circumstances I think that my uncles realised that targeting him would be too risky and dangerous [for] themselves.”

21. Here, the appellant refers to “S” as his eldest brother. However, the sense of para 8 is that, despite “S” being his eldest brother the family did not target him and it was not “S” who initiated the events which the appellant relied upon and in question 40 of his interview said was initiated by his brother “A”. However, the FTT identifies an inconsistency in the appellant’s account as to which brother – “the eldest” – initiated the incident. As Mr Bass pointed out, the appellant’s evidence was that he had five brothers of which one brother (together with also a sister) were younger than him. In other words, his evidence was that he had four older brothers. To read into, and juxtapose, the appellant’s evidence in his asylum interview and witness statement as giving rise to an inconsistency as to which of his brothers is his eldest brother whom he, it is said, was claiming had initiated the incidents is, in my judgment, unreasonable and identifies an inconsistency that is not truly present. It requires confidence that the questions and answers correctly identified the difference between an “older” or “elder” brother – on the one hand – and the “oldest” or “eldest” brother – on the other hand. Both “S” and “A” were elder or older brothers even if “S” was the eldest. The precision with which the FTT analyses the appellant’s evidence is not reflected in its own use of language in para 33 when it states that the appellant referred to “S” as being his “elder” brother. The FTT offers no reason why it takes the view that by saying that “S” was his “elder” brother the appellant meant his “eldest” brother. In fact, the appellant in para 6 speaks of his “older” brother not by name as being the person who “fired at my uncle first” and then refers to “S” as being the “eldest child” of his father, namely his eldest brother. At no point does he say that “S” was the “older brother” who fired upon his uncle first. Indeed, his witness statement, if subject to close linguistic analysis, clearly differentiates between an “older brother” and his “eldest brother” who is “S”. It is worth noting that the appellant refers to his brother “S” on a number of occasions in his asylum interview at questions 40, 41 and 42. At no point does he suggest that “S” was the brother who initiated the incident. The appellant’s evidence, when he names a brother is always that it was “A”. As I have said, the FTT’s reliance on the fact that in question 40 he refers to “A” as being his “oldest brother” relies upon a linguistic and grammatical usage of the comparative and superlative adjectives that is not reasonably warranted, not least given that the appellant was giving his evidence through an interpreter.
22. The points about when his cousin was killed and what age his cousin was at the time, resulted in the FTT accepting that the appellant may have mistakenly said that his cousin was killed in 2010 when, throughout the remainder of his evidence, he had said it was 2001. However, the appellant had, if that were the case, mis-stated his cousin’s age as being

16/17 rather than 6/7 years old which was a mistake that he could not explain. The FTT did not expressly reject the appellant's explanation that he had never said in his asylum interview that his cousin was "16 or 17". Rather, the FTT stated in para 33 that this was a fundamental mistake which even a 7 year old, such as the appellant, could not make by confusing his cousin's age. Mr Bass submitted that the FTT did not explain why it was prepared to accept, as a mistake, that the appellant said at one point that his cousin was killed in 2010 but not that mistakenly said that his cousin was 16 or 17 at the date of the incident. He pointed out that the appellant had consistently said that the incident occurred in 2001. Further, he had consistently said that his cousin was the same age as him and, indeed, that was why he had been targeted in revenge for the killing of his cousin.

23. In his submissions, Mr Walker acknowledged that there was a lot of confusion concerning the age of the appellant's cousin and the relevant dates of 2001 and 2010. Mr Walker accepted that there was supporting evidence, in the land documents contained within the appellant's supplementary bundle, which supported the events as having occurred around 2001. That was shortly after the land was transferred to the appellant's father and uncles and which, it was said, led to a dispute, the killing of the appellant's cousin and the resulting blood feud. That point blends into the third point relied upon by Mr Bass, namely that the FTT failed to take into account that documentary evidence as being consistent with the appellant's claim.
24. I agree with Mr Walker that there was considerable confusion, not least in the FTT's reasoning relating to the evidence concerning the age of the appellant's cousin and whether the events occurred in 2001 or 2010. In giving the benefit of the doubt to the appellant in relation to his making a mistake in saying that his cousin was killed in 2010, the FTT gave no reasons why they did not give the same benefit of doubt, and implicitly rejected, the appellant's explanation that he had not in fact said that his cousin was 16 or 17 at the time of his death. The FTT failed to grapple with the whole of the evidence which, in large measure supported the appellant's claim that a land transaction occurred in 2000 and which the appellant then relied upon as creating a blood feud dating from 2001. Further, the FTT did not take that latter evidence, set out in the appellant's supplementary bundle together with the witness statement of "S" into account in assessing the consistency of the appellant's account, despite the inconsistencies identified by the FTT, in reaching its finding that the appellant was not to be believed. Although Mr Walker did not go so far as to concede that the appellant should succeed in this appeal because of the FTT's treatment of the evidence concerning the age of the appellant's cousin and whether he was killed in 2001 or 2010, he did recognise that there were difficulties with the FTT's approach.
25. The FTT essentially only relied upon two aspects of the evidence to support its adverse credibility finding - other than s.8 of the 2004 Act. At para 30, the FTT said that: "We find that the appellant would have known

the key facts of the dispute, such as the age of his cousin and would obviously know who his own family members were". For the reasons I have given, the FTT's approach to both of those issues was unsatisfactory.

26. Even if the FTT was entitled to take into account as "damaging" the appellant's credibility that he did not claim asylum in Greece applying s.8 of the 2004 Act, without these additional reasons, s.8 could not on its own sustain an adverse credibility finding.
27. I do not accept Mr Bass' submission that the FTT erred in law simply by considering s.8 of the 2004 Act at the outset of its reasoning. Nothing in the relevant case law of M (Section 8: judges process) Iran [2005] UKAIT 00116 and JT (Cameroon) v SSHD [2008] EWCA Civ 878 – to which he referred in paras 21 and 22 of his skeleton argument – prohibited the FTT from considering s.8 initially. Given that the FTT properly considered the appellant's explanation for his behaviour, namely not claiming asylum in Greece, and also properly only had regard to the behaviour as "potentially" damaging the appellant's credibility, the FTT would not, in that regard, fall into error.
28. There is, however, merit in Mr Bass' submission that the FTT did not in fact engage with the appellant's explanation why he did not claim asylum which included that he was under the control of a smuggler and there were difficulties (see questions 85 – 87 of the asylum interview) and that he had no opportunity to claim asylum in Greece. Also, the FTT's reliance upon the evidence from the appellant's brother that the appellant "always talked about Europe and he was keen to leave this mess" (page 33 of the supplementary bundle) did not refer to the context of that statement namely that he was talking about the impact upon the appellant of ISIS taking control in their home area.
29. I have considerable reservations about the FTT's consideration of s.8 in para 29 of its determination and, if it were necessary, would conclude that it failed properly to grapple with the evidence concerning the appellant's explanation why he did not claim asylum in Greece. But, even if the FTT did not fall into error, as I have said, its finding in para 29 in respect of s.8 cannot alone sustain an adverse credibility finding once its reasoning and findings in paras 31 – 33 fall away.
30. For these reasons, I am satisfied that the First-tier Tribunal materially erred in law in reaching its adverse credibility finding. Its decision cannot stand and is set aside.

Decision

31. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. Its decision cannot stand and is set aside.

32. Both representatives acknowledged that if the FTT's credibility finding could not stand, the proper disposal of the appeal was to remit it to the First-tier Tribunal for a *de novo* rehearing. I agree. Having regard to the nature and extent of fact-finding, and para 7.2 of the Senior President's Practice Statement, the appeal is remitted to the First-tier Tribunal for a *de novo* rehearing (not before Judges Osborne or Lloyd-Lawrie). No findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
7 May 2021