Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01715/2019

THE IMMIGRATION ACTS

Heard in George House, Edinburgh	**Decision & Reasons Promulgated**
On 27 April 2022	**On 09 June 2022**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

F B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Caskie, instructed by RH & Co Solicitors
For the Respondent: Mr J Mullen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of the First-tier Tribunal, in this case First-tier Tribunal Judge P A Grant-Hutchison, promulgated on 5 June 2019. In that decision the judge dismissed the appellant's appeal against a decision made by the Secretary of State on 1 February 2019 in which she refused his claim for asylum and protection.

2. It is sufficient to record at this stage that although permission to appeal was refused by the First-tier Tribunal and subsequently by the present Tribunal the appellant sought to challenge that by way of an application to

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the Court of Session which was successful, as is recorded in the decision of a panel of the Upper Tribunal sitting at Parliament House, Edinburgh on 4 October 2021 comprising the President, the Vice President of the Tribunal and Lord Matthews in which they found that there was an arguable error in the decision and permission was granted on all grounds.

3. The appellant's case falls into two parts. It is not in dispute that the appellant is a national of Iraq, of Kurdish ethnicity or that like many Kurds he is of Sunni Islamic faith. His case is that he ran a shop and that along with his family they were forced to flee as a result of attacks by Shia militia in October 2017. The family ran away and he was injured to the extent that he was hospitalised for, he says, 40 days. A second aspect to his claim is that he had formed a relationship with a young Kurdish woman who was of the Shia religion and her family refused his request to permit them to marry. He says also that their relationship was a sexual one, that she became pregnant and that she was killed by the family in order to protect their honour and that the girl's family had also threatened his family to the extent that they went into hiding. It is relevant to note at this point that the appellant was not aware of the pregnancy or the murder or that his family had to flee until substantially after he had arrived in the United Kingdom, indeed after his screening interview.

4. The judge did not accept the appellant's account of the attacks on him and his family or that he had been injured to the extent said. Nor did the judge accept the account of the appellant's relationship or that his partner had been murdered or that his family would have to go into hiding. The judge considered also that the appellant would in fact be able to obtain a Civil Status ID card, commonly referred to as a CSID, and that there would not be difficulties in relocating to Iraq either to the IKR or to Baghdad.

5. The challenges to the decision fall into four grounds. The first relates to the findings in respect of the destruction of the appellant's shop and them having to be forced to flee as a result of the actions of the Shia militia. The second relates to the honour crimes and is set out at paragraphs 5 to 10 of the grounds. The third ground is that the reasoning of the judge with regard the flight to Baghdad was insufficient as was (the fourth ground) the reasoning at paragraph 19 of the decision dealing with the risk of serious harm in terms of humanitarian protection. I deal with each of the grounds in turn.

6. Mr Mullen very fairly accepted that there were no findings by the judge in respect of or reference to the material which suggests that at the material time there were widespread attacks by Shia militia against those of Kurdish ethnicity or primarily Sunni in the Kirkuk area. Whilst that is not necessarily sufficient to indicate that there is an error of law in the decision, it is a context that needs to be taken into account when the judge said that he found it implausible that the appellant had left documentation behind him because he was thinking about saving his life. I agree with Mr Caskie's submission that it is difficult to see a more pressing needs that such circumstances and it is, in my view, incumbent

on the judge to explain why in the context of widespread ethnic cleansing attacks by militia it is surprising that somebody left the documentation behind when fleeing for their life.

7. Similarly, I accept that the judge erred in drawing inferences adverse to the appellant from the failure to produce medical evidence, again without considering the context of the hospital located in Kirkuk which the appellant's family would not have been able to travel to and there appeared to be no consideration of how in practical terms it would have been possible to obtain the documentation or for that matter the extent to which it would have been reliable. I therefore find that the grounds set out at paragraphs 2 to 4 of the grounds are made out and accordingly, the findings of the judge insofar as they relate to the appellant's claim to be at risk from the militia involved the making of an error of law and that part of the decision falls to be set aside.

8. Dealing with the second part of the claim, that is relating to the honour claim, Mr Mullen has very fairly conceded it is difficult to see that there is any reasoning at all in the judge's comments at paragraph 15.

9. There is, with due respect to the judge, no real reasoning here. He has not explained why he concluded that a family would have passed on only some information and that they may well not have wanted to pass on information as to where they in fact were lest that information leak out or for that matter put other people at risk if it was thought that they might know where the family were.

10. That, in itself, is sufficient to render unsustainable the judge's findings on this aspect of the appellant's claim.

11. Further, I find that the judge has put impermissible weight on what he found to be a discrepancy between who made the approach to the girl's family. The appellant qualified it in evidence to say it was we, by which he meant his family (rather than he alone) who had approached the girl's family. That is consistent with cultural practices in Iraq amongst Kurds as identified in the CPIN and other material.

12. It is relevant that this appellant is illiterate, and the statement was made in a language with which he was not familiar. It is in all the circumstances not proper to attach that degree of weight to a difference between "I" and "we". Mr Caskie makes a point in that the decision was written very nearly three months after the hearing. That is not of course to indicate that that in itself amounts to an error of law but it is a factor to be borne in mind. It is in the context of this case and a holistic approach to the evidence not proper to attach so much weight to the extent put on it by the judge.

13. Accordingly, for these reasons I am satisfied that the part of the decision relating to the appellant's claimed illicit relationship which resulted in his former partner's murder is also unsafe and falls to be set aside.

14. In the circumstances therefore, whether the remainder of the grounds identify errors of law at are to an extent academic as all the findings which the challenged would have to be remade once findings as to the appellant's credibility and his account of what has happened to him in Iraq are made but in any event, I consider that there is merit in the submission that the reasoning is on the facts of this case even as found inadequate in that there is insufficient attention paid to the material regarding the difficulties that this appellant would face even in returning to the IKR or for that matter to Baghdad.

15. For these reasons I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law and it falls to be set aside. Given also that the findings relate to credibility and to the core of the appellant's protection claim and in light of the fact that there has since this decision been a new country guidance case which will require further evidence to be adduced from the appellant in response to what are now seen as the factors which would indicate difficulties in return, that this appeal should be remitted to the First-tier Tribunal for a fresh finding on all facts and I so order .

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside

2. I remit the appeal to the First-tier Tribunal for it to make a fresh decision on all issues.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant/respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant/respondent, likely to lead members of the public to identify the appellant/respondent. Failure to comply with this order could amount to a contempt of court.

Signed Date 18 May 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul