Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06849/2019**

THE IMMIGRATION ACTS

Heard at Bradford IAC	**Decision & Reasons Promulgated**
On the 10 August 2022	**On the 13 September 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

M A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K. Smith, Counsel instructed on behalf of the appellant
For the Respondent: Mr M. Diwnycz, Senior Home Office Presenting Officer

Anonymity :
Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:
Anonymity is granted because the facts of the appeal involve a protection claim. and 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Procedural history:

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Turnock (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 24 January 2020.

2. Permission to appeal that decision was sought on behalf of the appellant and on 13 March 2020 permission was granted by FtTJ Keane.

3. In light of the need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules the Upper Tribunal sent to the parties directions stating that the provisional view was that it would in this case be appropriate to determine the following questions without a hearing:

   (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so

   (b) whether that decision should be set aside.

4. Following that direction, written submissions were sent on behalf of the appellant and on behalf of the Secretary of State. Having received those written submissions, UTJ Coker issued a decision under Rule 34 without a hearing on the 19 June 2020.

5. Submissions from the appellant's representative dated 4th June 2021 were issued stating that the error of law decision of UTJ Coker dated 5th June 2020 should be set aside owing to a procedural error because of the misapplication of Rule 34 to decide the matter with a hearing.

6. UTJ Rimington considered that application and issued a decision under Rule 43 as follows:

   (i) **EP (Albania) & Ors (rule 34 decisions; setting aside)** [2021] UKUT 233 (IAC) confirms [70] that an application to set aside a decision must be received by the Tribunal 'no later than one month after the date on which the Upper Tribunal sent notice of the decision to the party". The "JCWI pack" containing Fordham J's judgment and order was sent to all relevant parties in December 2020. This applicant was legally represented and failed to make any application to set aside the decision of Upper Tribunal Judge ("UTJ") Coker until 4th June 2021. There was no application to extend time. I consider this delay to be significant and that the appellant has instructed new solicitors does not adequately explain the lateness of the application.

   (ii) I have nonetheless considered the merits of the application with reference to Rule 43(2)(d) of The Tribunal Procedure (Upper Tribunal) Rules 2008. The appellant, a national of Iraq, was challenging the decision of First-tier Tribunal ("FtT") Judge Tucker dismissing the appellant's international protection claim and was granted permission on 13th March 2020 by the FtT.

(iii) UTJ Coker sent out provisional directions (4th May 2020) requesting the parties' views on the error of law decision being taken on the papers under Rule 34 and submissions on the merits of the error of law decision itself. There were submissions from the appellant's representative in response to the UTJ Coker's direction in relation to the merits of the error of law itself, but no view given in relation to the Rule 34 point.

(iv) Further to **EP (Albania)**, I have scrutinised the Rule 34 decision and have considered whether "*the decision that it was fair to determine the appeal is issue without a hearing was wrong in law*" and thus amounted to a procedural irregularity for the purposes of rule 43. UTJ Coker briefly addressed at [3] of her decision the issue of the paper hearing under Rule 34 and found that she was satisfied that the submissions from the parties and the papers were sufficient' to enable her to take a decision. The test however is 'fairness' rather than "sufficiency" of papers and submissions to make a decision. Her reasoning also appeared to rest on the fact that the appellant had not given views on whether the matter should be decided on the papers. However, that is not determinative. This is an application for international protection and in all the circumstances I consider there to have been a procedural error and that it is in the interests of justice to extend time for the application and to set aside the decision of UTJ Coker.

7. Having set aside the decision of UTJ Coker under Rule 43(2) (d), the appeal was listed for an oral error of law hearing in the Upper Tribunal.

The background:

8. The appellant is a citizen of Iraq. The basis of his claim is set out in the decision letter in the respondent's bundle and summarised in the decision of the FtTJ.

9. The Appellant is a national of Iraq. He claimed to have left Iraq in September 2018 and travelled by various modes of transport, arriving in the UK in October 2018, and claimed asylum on 28 November 2018. On the date of arrival he would have been 17 years of age.

10. The factual account given by the appellant is as follows. The appellant grew up in Iraq with his parents and never lived anywhere else other than his home area. He lived a normal life, going to school in the evenings and during the day he stayed at home with his mother who was a housewife.

11. The appellant claimed that he had a girlfriend "K" and they had been together for about 2 months as at 1 September 2018 having met at school. She was a year older than him. The appellant's claim that he was in town when K called him to ask him to meet in the orchard where she was already, to have sex. This was the first time that she suggested this, and he did not immediately think it was a dangerous idea.

12. The appellant claimed that on 1 September 2018 he went to the orchard to meet K which was 6-7 minutes' walk from his house. He claimed that

whilst they were having sex, they heard a shout from a man in a neighbouring orchard, who was filming them on his mobile phone. He shouted, "I am going to tell your father." The appellant said the man was working in the orchard, but he did not recognise him.

13. The appellant claimed that K told in that he had to go and that it would be better of him to leave for her family came to find and kill him.

14. The appellant claimed in his witness statement that he was inside his house for about 90 minutes before he left again to go to his maternal uncle's house. He did not want to stay at home because he was afraid of what his father would do if you found out about what had happened in the orchard. He did not tell his mother he was leaving.

15. The appellant travelled to his uncle's house by taxi and on arrival told him what had happened in the orchard and that his uncle was very worried and told him that he had to leave Iraq otherwise K's family would kill him or "even your own father." The appellant stayed at his uncle's home for 2 nights leaving on 3 September 2018.

16. In a decision letter dated 4 July 2019 the respondent accepted his nationality and Kurdish ethnicity but did not accept that the appellant and K had a physical relationship or that the events had occurred in Iraq as claimed. The decision to set out issues of credibility, implausibility and inconsistent evidence given by the appellant.

17. The Respondent did not consider that the Appellant would face a risk in the event of his return to Iraq and that the Appellant could return to his home area in the KRI and with the assistance if his family could obtain the documents he required to return there.

18. The appellant appealed that decision, and the appeal came before the FtT on 13 December 2019. In a decision promulgated on 24 January 2020 the FtTJ dismissed the appellant's claim on asylum, humanitarian protection grounds and on article 3 grounds. The FtTJ set out that the issue of credibility was "a central part of the analysis of the appellant's claim" and between paragraphs [51-75] set out his factual findings on the appellant's claim and concluded at [75] that he did not find the appellant to be a credible witness and did not accept his claim that he had a sexual relationship with K and that as a result he was a potential victim of an honour crime.

19. Permission to appeal that decision was sought on behalf of the appellant and permission was granted on 13 March 2020 by FtTJ Keane.

<u>The hearing before the Upper Tribunal:</u>

20. Ms Smith, of Counsel appeared on behalf of the appellant. In her oral submissions she relied upon the original written grounds of challenge and the written submission made in response to the respondent's written submissions dated 27 May 2020.

21. Mr Diwnycz confirmed that he relied upon the written submissions issued by the respondent dated 26 May 2020.

22. I am grateful for the oral and written submissions provided for the hearing and confirm that I have taken them into account when addressing the issues raised in the grounds advanced on behalf the appellant.

23. Ms Smith identified that there were 4 grounds of challenge relied upon and helpfully took the Tribunal through those grounds.

Ground 1:

24. It is submitted on behalf of the appellant that the FtTJ made a number of findings that are contrary to decision in HK v SSHD [2006] EWCA Civ 1037.

25. In her oral submissions, Ms Smith submitted the ground one concerned a challenge to the approach to the plausibility of the appellant's account and reliance was placed on paragraphs 29 and 30 of HK.

26. She submitted that the FtTJ did not disclose at paragraph [60] what precautions he would expect a 17 year old child to take during his 1st sexual encounter in an orchard and when describing the precautions the appellant did take as "very basic" the judge was arguably imposing on the appellant a test of what a reasonable person would do rather than a young man experiencing his 1st sexual encounter.

27. In her oral submissions Ms Smith submitted that there was something missing from the decision of the FtTJ as it was not clear what precautions the judge was talking about at paragraph 60 and that paragraph 60 did not flow from paragraph 59.

28. Reference was also made to paragraph [61] where it was submitted that the judge neglected the fact that the appellant was a virgin who was setting off for his 1st sexual encounter. It is submitted that the appellant can legitimately say that he did not know what was going to happen never having been in that situation before. Ms Smith submitted the judge found the appellant's evidence as to the knowledge of what was to happen unsatisfactory.

29. The 3rd point made in the written grounds relates to paragraph [65] relating to the motives of K. However the judge did not hear evidence from K and the FtTJ did not give any indication of what evidence he relied on when determining how a 17 year old girl caught "in flagrante" would behave. Ms Smith submitted that the judge did not find that it was credible that K would take such a relaxed attitude, but the judge was influenced by his own perspective and not basing his assessment on a 17 year old girl. Therefore there was no evidential basis for that assessment.

30. In summary, Ms Smith submitted that the appellant relied upon the characterisation of the grant of permission that the judge imposed his own

assumptions and that there was an inadequacy of reasoning taking into account the decision of HK.

31. Similarly it was submitted that at paragraph [71] it is unclear on what basis the judge knew what details teenage Kurds exchange with each other during courtship.

Ground 2:

32. The grounds challenge the decision as lacking "cogent reasoning." At paragraph [66] the judge found the appellant's "apparent indifference to the fate of K" to be "wholly inconsistent with the nature of the relationship claimed by the appellant and spoke of their "love relationship". But the judge failed to take into account the appellant's genuinely held subjective fear of death at the hands of K's family and his own. He fled because he was frightened he was going to die.

33. Ms Smith submitted that in relation to paragraph [72] the judge found that it was not credible that the appellant would flee Iraq without at least telling his mother. It is submitted that the finding is irreconcilable with the recognition set out at paragraph [52] of the evidence of negative family attitudes towards those accused of honour crimes.

Ground 3:

34. Ms Smith submitted that this ground related to procedural unfairness or in other words going behind the respondent's concession. She submits that the judge set out at paragraph [70] an inconsistency in the decision letter between paragraphs 42 and 46. Paragraph 42 pointed out a discrepancy in the chronology of the appellant's account that he was fingerprinted in Greece, 3 months before he claims he left Iraq. However the respondent's position at paragraph 46 was that this discrepancy was not damaging to the appellant's credibility under section 8 however the judge went behind that concession and held it as a matter against him.

Ground 4:

35. This ground is a challenge to paragraph [58]. Ms Smith submitted that the judge found the appellant's inability to remember the reason why he was not at school on the day in question to be inconsistent with the significance of the events that occurred which would be memorable to the appellant. However this was a minor detail and an irrelevant consideration to the assessment of credibility.

36. Mr Diwncyz relied upon the respondent's written submissions in response to the grounds of appeal dated 26 May 2020.

37. In that response it is argued that there are no material errors in the FtTJ's decision and that the grounds are predominantly disagreements.

38. In respect of grounds 1,3 and 4, it is asserted that the judges approach to the plausibility of the appellant's actions in both agreeing to meet the girl K for sex in an orchard next to her own father's orchard in broad daylight despite the known personal and cultural risks as well as his alleged indifference to her fate as well as his failure to contact any members of his own family since he left Iraq, was entirely consistent with the relevant jurisprudence. The respondent refers to the case of Y v SSHD [2006] EWCA Civ 1223 and that in both HK and Y the Court of Appeal made plain that judges were not obliged to accept anything asserted by appellant but had to consider issues of plausibility through the spectacles of the social and cultural context of the person in question (see HK at paragraph [30]).

39. At Y, the court said:

> "27. I agree. The decision-maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information it has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in case of HK, and I do not regard Chadwick LJ in the passage referred to are seeking to disagree."

40. It is therefore submitted that the judge carefully considered not only the background evidence about honour crimes (see paragraph 52) but then expressly directed himself to the separate question of whether this appellant and the girl K knew this and took the risk, and this was entirely lawful. The judge also set out the appellant's own allegation of having sex with K into the context of the appellant's own evidence about his knowledge of honour crime (see paragraphs 57) the appellant's previous hiding of the relationship of 54 and the fact that the incident of sex and the orchard was premeditated (see paragraph 56).

41. It is submitted that the approach was entirely lawful and that the judge also reminded himself of the appellant's age at the time of the incidents (see paragraph 18) and that some of his actions might have been influenced by instruction from his maternal uncle (see paragraph 66). The judge also directed himself to the general proposition that some part of the claim might be embellished whilst not impacting materially the core of the claim which is consistent with the decision of Uddin v SSHD [2020]EWCA Civ 338 at paragraph 11.

42. The response also cites the decision in SB (Sri Lanka) v Secretary of State for Home Department [2019]EWCA Civ 160 at paragraph 46 and paragraph 45.

43. Dealing with ground 4, it is submitted that there was nothing unlawful in the FtTJ's disposal of the section 8 issue at paragraph 70. It had been argued on behalf of the appellant that the respondent had committed herself to accepting that the appellant should not have the difference over the date of leaving Iraq as compared to the fingerprint evidence of when he was in Greece held against him in the section 8 assessment. The

appellant's grounds contend that this amounted to a concession which also bound the judge in respect of a clear discrepancy in the evidence which suggested that the appellant was simultaneously in Iraq engaging in an inappropriate sexual liaison with a girl from school as well as being in Greece (para 67). However, this does not appear to have been argued before the FtTJ.

44. Furthermore it is submitted that the appellant cannot found an alleged concession in a decision letter where he accepts that the comment at paragraph 46 in respect of section 8 (any submission at the FTT) at odds with the respondent's earlier reliance upon this clear evidential problem at paragraph 42 and thus there was no concession in the first place.

45. In any event, paragraph 46 concerned section 8 of the 2004 Act and related to the automatic provisions of that Act. In other words section 8 would have required the respondent and tribunal to automatically reduce weight to the appellant's overall evidence because of this issue. The respondent's approach to paragraph 46 does not concede that the appellant is credible in this core part of the claim but that the discrepancy would not be held against him so that section 8 of the act would not apply and cause the decision-maker to automatically reduce weight overall.

46. The appellant also relies upon a written response to those submissions dated 27 May 2020.

47. In that document it is submitted that the judge considered the context of the background evidence in how the appellant would act in that context but not provided the necessary flexibility for assessing how others might act. It is submitted that the appellant's account as perfectly plausible as a teenager in a high school relationship. That does not make it so incredible as to be unbelievable and the judge erred in law by imposing such a standard.

48. It is further submitted that the decision correlates recklessness with implausibility. However in the context of the appellant's age, maturity and the situation he found himself in, recklessness is exactly what could be expected of him.

49. As to ground 4 it is submitted that there was a concession made at paragraph 46 of the refusal letter and whilst it was asserted it was not raised by the appellant during the hearing the submissions of the appellant's representative are set out in the decision at paragraph 70. The decision letter acknowledges a discrepancy but concedes at paragraph 46 that it should not be held against the appellant because of his age at the time. Thus by holding it against the appellant the judge erred by going behind the concession.

Discussion:

50. I am grateful for the oral and written submissions provided for the hearing and confirm that I have taken them into account when addressing the issues raised in the grounds advanced on behalf the appellant.

51. In relation to grounds 1, 2 and 4, in essence the argument advanced by Ms Smith is based on the submission that the FtTJ in assessing the credibility of the appellant adopted an improper approach, in that the FtTJ relied on the inherent implausibility of the appellant's account of events on the basis that what may seem implausible to a decision maker in this country may nonetheless be true. She submits that the FtTJ impermissibly imposed his perception of events finding them implausible and thus erred in law.

52. In her oral submissions Ms Smith referred to the decision of HK v Secretary of State for the Home Department [2006] EWCA Civ 1037. The main judgment in that case was given by Neuberger LJ, who at paragraphs 28 and 29 said this:

> "28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of a story, and the story as a whole, have to be considered against available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).
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> 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:
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> > 'In assessing the general human rights information, decision-makers must constantly be on their guard to avoid implicitly recharacterising the nature of the risk based on their own perceptions of reasonability.'"

53. The respondent has cited the decision in Y v SSHD [2006] EWCA Civ 1223 as also relevant to the issues under discussion. In that decision the Court of Appeal stated:

> 25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our

> own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:
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> > "'An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case, but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done."
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> 26. None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the Awala case by Lord Brodie at paragraph 24 when he said this:
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> > "… the tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole".
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> He then added a little later:
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> > "… while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible".
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> 27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case of HK, and I do not regard Chadwick LJ in the passage referred to as seeking to disagree."

54. On a careful reading of the FtTJ's decision and having done so in the light of the decisions cited by both parties, the decision of the FtTJ does not

disclose any error of approach relating to the issue of credibility. To the contrary, the FtTJ's approach to the issue of credibility and implausibility is consistent with the legal authorities cited above. The FtTJ was plainly aware of the appellant's age and took that into account (see paragraph [16]) and at [49] properly directed himself that the assessment of credibility should be undertaken by considering the details and specificity of the claim; whether it was internally consistent and coherent to a reasonable degree; consistent to the specific and general country information and consistent with the other evidence (to a reasonable degree) and plausible. Additionally the FtTJ properly directed himself at [56] when assessing credibility by stating that whilst a witness may seek to exaggerate or embellish their claim nevertheless the core of the account given may be true.

55. The decisions cited above make it plain that when considering the issues of credibility and implausibility they should be reached rationally so that a decision-maker is entitled to draw on their own common sense and to identify what is or what is not plausible. Those authorities also demonstrate that a decision-maker should "look through spectacles provided by the information he has about the conditions in the country in question." This is the approach adopted by the FtTJ at paragraph [17] where the FtTJ set out the relevant country information relating to honour crimes in Iraq (see CPIN and the extracts set out).

56. On any reading of the decision, that country evidence formed the backdrop of the factual findings that the FtTJ went on to make. At paragraph [52] the judge set out the relevant points from that country information finding that a number of points had emerged. Firstly, the killings of those accused of honour crimes occurs with a degree of regularity within the IKR, the victim is more often a woman, but men are also potential victims and the potential consequences of committing an honour crime in the IKR are well known. The judge went on to state "it follows therefore that notwithstanding the well-known consequences individuals nevertheless become involved in relationships which are considered to be "honour crimes" by some sections of the community. There is therefore nothing inherently implausible about a couple being involved in a sexual relationship which would put them at risk. The judge identified "the issue is whether the appellant and K became involved in such relationship."

57. The FtTJ considered the evidence from the appellant concerning the relationship set out at paragraphs [52 – 54]. Notably that the appellant had not told anyone about the relationship because it was not acceptable. He confirmed that he had K not seen each other outside of school apart from the day in the orchard and that this was because he was in fear of being discovered in a relationship and that they had not previously discussed having had a physical relationship.

58. The FtTJ considered the appellant's account of K having telephoned the appellant and suggested that they meet in her family orchard for the

purposes of having sex in the light of the country evidence known about honour crimes and then considered whether the appellant's account was plausible and credible.

59. There is no error of approach in the FtTJ's assessment of the evidence at paragraphs [56 – 75] as the grounds contend. The FtTJ considered the background evidence concerning honour crimes and considered the appellant's account in the light of that evidence.

60. In particular the judge set out the appellant's account of having sex with K in the orchard in the context of the appellant's own evidence about his knowledge of honour crimes (see paragraphs 54 and 57) having previously hidden the relationship (paragraph 53) and that having not previously having discussed having a physical relationship) (at 55) the appellant's account was that she telephoned him to meeting her family orchard for the purposes of having physical sex (see paragraph 55). The FtTJ found that in the light of the country materials he had read, K must have known the considerable risk she was taking embarking on that course of action; she was suggesting namely sex in her family orchard during broad daylight in a location which was not isolated, and that the appellant was also aware of the risk having stated that it would lead to his life being in danger (see paragraphs 56 and 57).

61. It was therefore open to the FtTJ to find that the events he claimed to have happened were "highly significant" and "would be memorable to the appellant" and that his claimed inability to recall the reason why it was not a school day was not consistent with his claim as to what had happened (see paragraph 58). Contrary to ground 4, that was not an irrelevant consideration and whilst the grounds refer to this as a minor detail, it was open to the judge to consider this in the round and alongside the other credibility points adverse to the appellant's account.

62. The other findings challenged in the grounds when read in the context of the evidence are no more than a disagreement with those factual findings.

63. Paragraph 59, 60 and 61 relate to the circumstances of the meeting with K. The FtTJ was entitled to consider the evidence given as to the circumstances in which the appellant met K. This was an orchard in daylight in a place owned by her family members that was not isolated and in public. Against that background and in light of the country information as to the considerable risks to both K and the appellant it was open to the judge to make the finding he made at paragraph 60. The judge found that the appellant's evidence in answer to the question "if you knew you were meeting to sex why go there and risk being caught? Which was "I do not know what is gonna happen, if I knew I would not go there," to be inconsistent with the level of risk identified in the country information and the appellant's own evidence.

64. Whilst Ms Smith referred to an omission at paragraph 59, and reflected in paragraph 60, that is not made out. At paragraph 60 the judge was plainly referring to the evidence given by the appellant and recorded at paragraph 59 that K had phoned him to say that nobody was there and "I did not know anything, so I went there". The judge found that although she may not have seen anyone there would be nothing to prevent someone subsequently attending. It was not the judge imposing on the appellant the test of what a reasonable person would do but the judge considering the appellant's evidence in the context of the documented risks in the country materials and against which the judge did not find his account to be plausible or credible.

65. The grounds challenge paragraph 61 asserting that the judge failed to take into account that the appellant was setting off to his 1st sexual encounter and therefore legitimately could say he did not know was going to happen. However there is no error in the finding made that the appellant had given inconsistent and confused evidence about the meeting with K. The judge identified that the appellant said he did not know what was going to happen and that if he had known he would not have gone (relying on question 94 of the interview) which the judge found to be inconsistent with his earlier evidence that K was clear about the purpose of the meeting, i.e. for physical sex.

66. The grounds seek to challenge paragraph 65 as to the attitude taken by K. The judge stated, "I do not find it credible that K would take such a relaxed attitude be so unconcerned about the risk to her."

67. There is no speculation on the part of the FtTJ as the grounds assert. Paragraph 65 should be read in conjunction with the earlier paragraphs set out at [62 – 64]. At [62], the judge recorded the appellant's account that they were having sex when they realised they were being filmed by a man who told K that he would show the picture to her father. The judge found "there was a considerable threat to her safety in light of the country information however according to the appellant K's main concern was for the appellant who she told to leave because of the risk to him."

68. At paragraph [63] the judge recorded the evidence that K had told the appellant to leave because he would be killed but when the appellant was asked "that does not explain why she did not leave with you, especially if she can also be exposed , can you explain that? The appellant's response was also set out as follows "she told me she is gonna have a chat with the family, but she asked me to leave." The judge recorded at paragraph 64 the appellant's evidence that he could not explain why K did not run away at the same time.

69. Given the country evidence referred to by the judge at paragraph 62 and that there would be considerable risks to her safety, having noted that honour crimes are overwhelmingly perpetrated by male family members against female relatives, that can take the form of murder and other violence and the transgressions of honour are seen as unforgivable, the

judge's finding at paragraph 65 that he was not satisfied that it was credible that K would have such a relaxed attitude and be unconcerned about the risk was not credible as it was inconsistent with the country materials known about the repercussions to women involved in honour crimes.

70. There was also no lack of reasoning in the finding made at paragraph 66. The judge was entitled to take into account that the appellant's indifference to the fate of K was wholly inconsistent with the nature of the relationship. Given that he was receiving support from his uncle, it was open to the judge to find that his inaction was not credible.

71. Other adverse credibility findings were made which were open to the judge on the evidence. Despite the appellant's account of the relationship, the judge found the appellant's inability to know anything about K, that he did not know her birthday, did not know where she lived, or what family did or knew anything about her family was not credible if he was in such a relationship.

72. At paragraph 72 the judge rejected the appellant's evidence regarding events after the meeting with K. The appellant's evidence was that he went home but did not tell his mother he was leaving. The judge did not find that to be credible or to be consistent. The appellant claimed that he was at home for 90 minutes, but the judge found that in his oral evidence he claimed to have been in the house for 5 minutes. The judge also did not find it credible that he would go home and not tell his mother he was leaving given that she was present in the house, nor did she believe that it was credible that he would leave his mobile phone in the house the inference being that this would be the only form of contact given that he was leaving Iraq.

73. The finding of fact at paragraph [74] was also open to the judge to make on the evidence. His account of not being in contact with his family was not credible given the assistance given to him by his maternal uncle and that it was reasonably likely that in the circumstances in which he left he would wish to reassure family members who had helped him that he was well.

74. Having stood back and considered those factual findings in the light of the evidence in the country materials cited by the FtTJ, the grounds are no more than a disagreement with those findings of fact and do not demonstrate any arguable error of law in the FtTJ's assessment of the evidence.

75. Dealing with ground 3, it is submitted that the judge was procedurally unfair by not accepting the concession made in the decision letter. Having considered paragraphs 67 – 70 which deal with that issue, I do not think that there was a concession in the way described in the grounds or one that would necessarily bind the FtTJ.

76. The respondent in the decision letter did not accept that the appellant given a credible and consistent account as to events in Iraq. At paragraph 42 of the decision letter it recorded their Home Office records which showed that he had been encountered in Greece on 4 June 2018 3 months before he claimed to have left Iraq and that the respondent considered his account to be "internally inconsistent and implausible".

77. The decision letter went on to state at paragraph 44 that "when considering all the evidence in the round, it is considered that you have been vague, evasive, internally inconsistent and implausible and as a result the material fact is rejected."

78. Paragraphs 45 and 46 concern the "section 8 consideration". It is in this context that paragraph 46 of the decision letter considers his assertion that he left Iraq shortly after the incident on 1 September 2008 but that Home Office records showed that he was encountered by the authorities in Greece on 4 June 2018 3 months before he claimed to have left Iraq for the 1st time. It is stated "however given your age at this time it is considered that this will not be held against you. It is considered that your behaviour is not want to which section 8 (2) of the Asylum and Immigration (treatment of claimants, et cetera) Act 2004 applies".

79. The decision letter set out that the respondent did not accept that the appellant had given a credible and consistent account of events in Iraq as set out above. This was the issue that the FtTJ had to decide on the evidence and having the advantage of assessing that evidence in accordance with all the material presented. It was open to the FtTJ to consider what the appellant's legal representative referred to as " the discord between paragraph 42 and 46 of the decision letter". The FtTJ properly noted the inconsistency of approach by the respondent. The point made by the judge at paragraph 70 was that the mistake as to the date (of events) was of a different nature. Between paragraph 67 and 69 the judge set out the appellant's evidence on this issue noting that on a number of occasions the appellant gave the date of the meeting of 1 September 2018 (see [67]) but rejected his account finding that as the events in the orchard were "highly memorable" and that the inconsistency in not recalling such a highly memorable occasion undermined the appellant's credibility. This did not cause any unfairness to the appellant as it is clear from the decision that the appellant gave evidence about the discrepancy, and the appellant's advocate was able to make submissions on that point.

80. Even if it could be said that the FtTJ should not have taken that point against him as set out at paragraph 70, it was only one point in a number of issues found to be adverse to the appellant.

81. For those reasons, it has not been demonstrated that the FtTJ misdirected himself in law in respect of the plausibility of the appellant's account or that the judge made findings which were contrary to the authority of HK (as cited). The judge gave adequate and sustainable evidence-based

reasons for reaching his overall assessment of credibility and plausibility and did so in the light of the background evidence.

Decision

82. The decision of the First.-tier Tribunal did not involve the making of an error on a point of law; the decision of the FtTJ shall stand.

Rule 14: 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. 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 Upper Tribunal Judge Reeds
Dated : 22 August 2022