Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08583/2019

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	Decision & Reasons Promulgated
On 6 January 2022	On 4 February 2022

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

CKA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Jaquiss, instructed by Wimbledon Solicitors (Merton Rd)
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. He appealed to the First-tier Tribunal against the respondent's decision on 24 August 2019 refusing his claim for asylum and humanitarian protection and under Article 8 of the European Convention on Human Rights.

2. There had been an earlier appeal against that decision which was set aside by the Upper Tribunal on 8 December 2020 and remitted for a full rehearing. This appeal is against the decision made after that rehearing.

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3. The essence of the appellant's claim is that he had met a girl, S, in October 2016, and the relationship with her developed. He asked, in person and with his family, on two or three occasions for her hand in marriage and was refused. She became pregnant by the appellant, and her family found out and killed her and then went to the appellant's house and killed one of his brothers and injured his other brother and threatened to kill the appellant. The appellant claimed to be in fear of her family and as a consequence that he faced a real risk of serious ill-treatment on return to Iraq.

4. The judge did not find the appellant's evidence to be credible. He noted that there was no requirement for corroboration of the appellant's evidence. He observed, however, that there was no evidence of the death of S, there was no evidence of the death of the appellant's brother, there was no evidence from the brother who was said to have been injured, such as hospital records, and there was no evidence from any of his multiple family members who lived in the same town as him. The judge also observed that there were two significant contradictions in the appellant's account: who gave whom the telephone number, the appellant having at different times said that the girl gave him her number and that he gave her his number, and how many proposals of marriage there were.

5. The judge went on to say that the most significant discrepancy was about the proposals of marriage. In the substantive interview the appellant had said that S was stopped from going to school after the second proposal but his witness statement referred to a third proposal. He could not understand why the substantive interview referred to only two. The judge considered that these were important events in life most unlikely to be forgotten. He set out the timing of the three proposals as referred to in the witness statement and concluded that what was said there was significantly different from the account of the substantive interview. Accordingly, the judge said, the account was not reasonably likely to be true.

6. He went on to say that if it were true that the appellant had got S pregnant and she had been killed by her family, it was not established that he was at risk. The judge noted that "honour" killings in Kurdish families are infrequent and those of men are more unusual. He considered that the complete absence of any information about the asserted death of one brother and injury to another was very damaging to credibility. The appellant had said that he spoke with his mother until three months after his arrival in the United Kingdom and he had ample opportunity to obtain that evidence. There must, at the very least, have been a funeral for the brother, if the account were true.

7. In any event, there was no evidence that S's family had any reach throughout Iraq such that they would find the appellant if he relocated internally, as the judge found he could.

8. He did not accept that the appellant was now unable to contact any of his many relations in the town. His evidence was that there were no postal addresses, so he could not send letters, and the one telephone number he had was now defunct and he had lost his friend's number. He had not heard of the Red Cross or Red Crescent and the judge considered that plainly, he had made no effort to find his family and could do so if he tried. He observed that there were multiple websites to try as well as official channels and none of these had been tried by the appellant.

9. The judge had been asked to treat the appellant as a vulnerable witness. He did not find that he was a vulnerable witness but considered that in any event, his cross-examination had been conducted in a way that would have been appropriate for a vulnerable witness.

10. The appellant accepted that his passport was at home with his parents and there was no reason why they could not meet him in Baghdad with it on his arrival there. As a consequence, he had no problems with the documentation.

11. As regards internal relocation, the judge referred to AAH [2018] UKUT 212 (IAC) as the most recent authority, and set out the headnote containing the guidance in that case. Though the case focussed on return to the IKR, he considered that there were points of general application. The appellant lived in the Salah-a-Din governorate, which was immediately to the north of Baghdad and there would seem to be no reason why the appellant could not be met by a family member in Baghdad. If he did not want to return to Salah-a-Din, then he had the rest of Iraq to choose from including the IKR. There was no reason why internal relocation was overly harsh.

12. There was no case law to state that any part of Iraq was now an Article 15(c) area. Plainly, things were not good in Salah-a-Din for returnees, many of whom lived in conditions of high severity, as the judge put it, and there were many of them. However, he did not consider that it was necessary to form a judgment about whether the area as a whole might have conditions so bad that humanitarian protection was needed for unsupported returnees. He would be in no worse position than any of his family. There was no evidence to show that his mental health was affected to any significant extent. As a consequence, the appeal was dismissed.

13. The appellant sought and was granted permission to appeal to the Upper Tribunal, by a Judge of the Upper Tribunal, following refusal by a First-tier Judge. All the grounds were arguable.

14. In her submissions Ms Jaquiss relied on and developed the points made in the grounds.

15. She argued that the credibility findings were irrational and inadequately reasoned as had been referred to in the grant of permission. The judge

had taken no further the point he had mentioned as to who gave whom the telephone number but relied on the discrepancy in terms of number of marriage proposals. She argued that the reasoning was inadequate and there was a lack of anxious scrutiny. There were issues as to risk on return but the main difficulty was the credibility findings. The judge had not commented on such matters as the relationship and the pregnancy and the killing. It was right to argue as the Secretary of State did in her Rule 24 response that the issues that concerned the judge were not peripheral, but they were less peripheral than some aspects of the claim. However, there was a lack of findings with regard to the rest of the appellant's account.

16. As regards ground 2, the judge had relied on the wrong country guidance in that in fact the relevant country guidance at the time was SMO [2019] UKUT 400 (IAC) and relocation would be to Baghdad and not to the IKR. As regards ground 3, the judge had failed to make any or any proper findings on Article 3. There was only the brief reference at paragraph 68 of the decision. This was inadequate with regard to the issue of necessary documentation. These were the main points upon which Ms Jaquiss relied.

17. In his submissions Mr Tufan argued that the discrepancies highlighted by the judge were clearly there and he was entitled to treat them as determinative. There was a major issue as to the number of proposals and the timing of events. The issue as to the telephone numbers was also a discrepancy.

18. At paragraph 62 the judge had referred to a lack of evidence and there did not need to be corroborative documentation but the appellant was in contact with his family and could have provided and had not done so.

19. As regards the country guidance, it was the case that SMO was in existence at the time, but it had upheld AAH, at paragraph 425, apart from the factual error as regards direct flights and the findings otherwise with regard to internal relocation were not significantly different. It was not irrational for the judge to conclude that the appellant's family could meet him at the airport as they did not live that far from Baghdad. As the judge found, the appellant was in contact with his family, the documents were still at home, and they could be provided when they met. The issue of vulnerability had been clearly considered. It was also open to the judge to find that Article 15(c) was not engaged.

20. By way of reply, Ms Jaquiss argued that the judge had made no findings on the rest of the account and in respect to more key matters such as the relationship and the pregnancy. The wrong country guidance had been considered. The judge had materially erred in law.

21. I reserved my decision.

22. I think there is force in the argument that the judge erred materially as regards the credibility findings. In essence, though he referred to other matters, he founded his adverse credibility finding on the discrepancy as to the number of marriage proposals. He said nothing about the other elements of the claim such as how the couple met and the course of the relationship, the pregnancy of S and the killings. In my view, the judge erred in failing to consider matters in the round and factoring his adverse findings on credibility and the absence of pieces of evidence into the overall credibility assessment and as a consequence materially erred.

23. The error of law argued for in respect of country guidance is made out first in the sense that the judge relied on the wrong case and secondly that as a consequence, he focussed on the feasibility of return to the IKR, where he considered that the appellant could relocate to. As is argued at ground 2, it was accepted in SMO that external support is necessary for relocation to Baghdad to be reasonable in all cases and that the appellant lacks external support as there defined. This is a matter that will have to be addressed further at a rehearing.

Notice of Decision

The appeal is allowed to the extent set out above.

Direction Regarding Anonymity – Rule 14 of 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 or any member of his family. 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 Date 25 January 2022

Upper Tribunal Judge Allen