IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002596

First-tier Tribunal No: PA/51254/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AMA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes instructed by Compass Immigration Law
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 17 April 2023

Order Regarding Anonymity

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

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

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Handler ('the Judge'), promulgated following a hearing at Manchester on 31 March 2022, in which the Judge dismissed the appellant's appeal against the refusal of her application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The appellant is a citizen of Iraq born on 20 March 1993 who claimed asylum on the basis she has a well-founded fear of being persecuted by reason of her membership of a particular social group, and that her removal from the UK will breach her rights under ECHR.
3. The appellant was born in Ranya, Sulaymaniyah in the IKR where she lived all her life and is of Kurdish ethnicity. The basis of the appellant's claim is that she worked in a shop with a man who later became her boyfriend and that she fears for her life as an older brother has threatened to kill her because he saw her kissing the man on the occasion when the man attended the appellant's house to propose marriage, in the absence of the appellant's brother.
4. The Judge also notes that since arriving in the UK the appellant has started a relationship with an Iranian national, IIA, who has been granted refugee status, and that they have a child together, L, born on 5 August 2021.
5. The appellant claimed to have no documentation and to face a real risk pursuant to Article 3 ECHR if returned to Baghdad.
6. The Article 8 ECHR claim is based upon alleged insurmountable obstacles to family life continuing outside the UK in light of the risk arising from the factual narrative and because her partner and child are both Iranian nationals.
7. Having considered the documentary and oral evidence the Judge sets out findings of fact from [28] of the decision under challenge. The Judge noted that a number of credibility issues had been raised by the respondent which it was found the appellant had not satisfactorily answered for the reasons set out at [30 (a-l)].
8. The Judge considered the evidence of the appellant's partner at [32] finding a discrepancy in his evidence in relation to whether he and the appellant were married material. The Judge also noted the partner had used his travel document to travel to the IKR previously.
9. In relation to travel documents the Judge writes at [35]:

> 35. I find the appellant's narrative to be incredible to the extent that I do not accept that she does not have her CSID with her in the UK. I find that either she has it with her or for the following reasons she can obtain it before returning to Iraq. It follows from my findings above that I do not accept that the appellant is not in touch with her family. I find that she is in touch with them and if she does not have her CSID with her, I find that her family can send her CSID to her so that she can return in possession of it.

10. The Judge dismissed the appeal as a result of the lack of credibility in the appellant's account.
11. Between [38 – 40] the Judge sets out findings having considered the case in the alternative, as if the appellant's claim was credible, in which case the issue of internal relocation arises.
12. At [42 – 48] the Judge considers Article 8 ECHR, finding at [45] that the appellant cannot satisfy the requirements of the Immigration Rules. In relation to Article 8 ECHR outside the Rules, the Judge finds at [47] the appellant can return to Iraq with IIA and their daughter and that there will be no interference with family life as the family unit will be maintained, and that the best interests of the child are to remain with her parents. As no interference with a protected right had been established the Article 8 claim was dismissed.
13. At [48] the Judge considers the alternative that there will be interference with a protected rights such that Article 8 was engaged but concludes that the decision is proportionate.
14. The appellant sought permission to appeal which was granted by a Designated Judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

The grounds assert the Judge arguably erred in law in reaching her conclusions which:-

- relied in part on a mis-reading of the Preliminary Interview Questionnaire and attaching excessive weight to the replies to interview questions 97 and 98 given through an interpreter
- were based more on speculation than implausibility at paragraphs 30(a), (b) and (e) of her decision
- included arguably inconsistent or inadequately reasoned findings at paragraphs 32 and 34 on the Appellant's introduction to her current partner
- attached excessive weight to a minor inconsistency in the date given by the Appellant for when she fled her home or fled Iraq. The Judge made no reference to taking into account the differences between the Gregorian calendar and the Kurdish/Persian calendar and
- in assessing whether the Appellant would find employment failed adequately to take into account that on return to Iraq she would be responsible for her baby.

Individually, none of these grounds would normally be sufficient to grant permission to appeal but
cumulatively, they are sufficient to amount to more than mere disagreement with the Judge and to
show she arguably erred in law in the manner in which she assessed the evidence.

Permission to appeal is granted and all grounds may be argued.

Discussion and analysis

15. In relation to Ground 1 Mr Holmes focused upon the Judge's finding at [30 (b)]. In [30] the Judge sets out matters found to materially undermine the appellant's claim. In [30 (b)] the Judge writes:

> b. The respondent says it is not clear why H did not ask for the appellant's hand in marriage when M discovered their relationship with reference to the appellant having said that she and H had planned for H to speak to M a week after the incident happened. The appellant says H said that he wanted to ask for her hand and said he was not ready and she did not know what he meant by that. She says she cannot explain why H did it this way but M did not give a chance for them to respond and got angry straight away. She says that this is what she said in her main asylum interview (AIR). The respondent says that the appellant gave inconsistent answers to two consecutive questions in the AIR in this respect (AIR978 and 98). I find merit in that submission. The appellant's evidence is not clear through her preliminary interview questionnaire (PIQ), AIR and witness statement about whether H called ahead of arriving with the ring or not. This emphasizes the point in the paragraph above because if H had called ahead it could reasonably be expected that the appellant would have told him to wait until he could speak to M. It could reasonably be expected that the appellant would have been able to provide a consistent account of this core aspect of her narrative and I find her failure to do so to be materially undermining of her credibility.

16. Mr Holmes referred to the reasons for refusal letter at [33] in which it is written:

> 33. You claim that Hawkar just "showed up at your door" and handed you the ring you said that you didn't want anyone to see him at the door so you let him in the house (AIR 97). This is inconsistent with your claim that you Hawkar contacted you and said that he will come and hand you the ring giving you the opportunity to refuse since you knew the risk involved (AIR 98).

17. Questions 97 and 98 of the appellant's asylum interview are recorded in the following terms:

97. Question (required)

Why did you invite him to your home knowing the risks involved.

97. Response (required)

I couldn't make myself to reject his request. He said I will just come there and handed me a ring. I didn't want any one to see him at the door so I let him in.

98. Question (required)

Why do you think he would take the risk of coming to your home considering the risk to you?

98. Response (required)

Actually, we didn't expect at all that my brother arrive home. He contacted me I will come there and only hand the ring to you. I didn't want people see us talking at the door so I let him in . Then the matter went further , we kissed, in each others arms and then my brother arrived. My brother was supposed to arrive in 2 hours time.

18. It is asserted the Secretary of State interpreted the appellant's replies to the questions incorrectly at [30], that such replies do not appear anywhere else in the asylum interview, that there was no inconsistency in the replies, and that the Judge was wrong to find there was. It was submitted the appellant on three occasions answered questions with no inconsistency being recorded as found by the Judge.
19. In relation to Ground 2, it is argued the Judge failed in using the plausibility of the account to reject significant portions of the appellant's evidence by reference to [30 (a), (b) and (e) of the decision. It is submitted the Judge failed to make any reference to the guidance provided in HK v Secretary of State of the Home Department [2006] EWCA Civ 1037 relating to the dangers of deploying inherent probability to reject an otherwise cogent narrative. Mr Holmes argued that the Judge's findings are unsafe as a result of this, that the Judge rejected the appellant's evidence on grounds that were not available, and that there was nothing unbelievable about the appellant's case.
20. Ground 3 refers to [32] of the decision arguing the Judge's finding IIA's evidence about the start of the relationship with the appellant was neutral or not material could be not reconciled with the finding at [34] in which the Judge did not accept the narrative about her introduction to or start of a relationship with IIA was credible. Mr Holmes submitted that the approach of the Judge was perverse, and that it was not open to the Judge to give positive weight to one aspect of the evidence but to later give negative weight later on the same point. The Judge is also criticised for making what is said to be irrational or inadequately reasoned finding and concluding the appellant's solicitor's statement that the appellant fled at the beginning of December 2019 was inconsistent, when the actual date of the fleeing was approximately 17 December 2019. It was submitted the evidence could not be categorised as found by the Judge.
21. The challenge to the alternative finding in Ground 4 asserts the Judge failed to consider the case as a whole, especially the fact the appellant would be

returning as a wife and child, and that there had been insufficient analysis of the reasonableness of internal relocation.

22. As with any appeal it is necessary to consider the evidence and the decision as a whole.

23. Paragraph [33] forms part of the reasons for refusal letter in which the decision-maker was considering the claim to be at risk of an honour killing due to a love relationship which was not accepted by the decision-maker. The decision-maker analyses the replies given by the appellant in the preliminary information questionnaire and asylum interview together with country material. Specific reference is made from [31] to the answers given in the asylum interview. The appellant was asked about the relationship and matters relevant to the same and the alleged reaction of her brother, in relation to which a number of inconsistencies are said to have arisen. There is also reference to inconsistencies at [34], [35], the claim was found to be speculative at [39] on the facts, and at [41] decision-maker found evidence regarding dates inconsistent with her leaving Iraq to arrive in the UK. The concerns of the decision-maker were therefore beyond the answers given in reply to questions 97 and 98.

24. The Judge does not say that only for the reasons set out in the reasons for refusal letter the appeal is dismissed, as that in itself may amount to legal error. The Judge records the issues concerning credibility and plausibility raised in the reasons for refusal letter, but the specific conclusion is that the evidence before the Judge, both documentary and oral, did not satisfactorily answer the concerns that had been raised. That is a specific finding in the first section of [30] and is a finding reasonably available to the Judge having considered the evidence holistically with the required degree of anxious scrutiny. The Judge sets out the specific examples at (a) – (i), some of which are challenged in the grounds seeking permission to appeal. Some of those matters relate specifically to the evidence given by the appellant in relation to the alleged visit to the house and reaction of her brother, some in relation to other matters, such as the finding was not credible the appellant, as an educated young woman, would not know which airport she flew from given the amount of signage and announcements at the airport, see (j).

25. The Judge also considered the evidence of the appellant's partner IIA which did not form part of the original asylum interview. The reason the Judge found his evidence regarding the identity of the restaurant he and the appellant first ate at in the UK and the approximate time when the appellant's parents died consistent with that of the appellant to be a neutral factor at [32], is because it was not significant as it was accepted the appellant and IIA are in a genuine subsisting relationship. It must be noted, however, in the same paragraph the Judge did find it significant that IIA had said he was married in his application for indefinite leave to remain yet in his oral evidence claimed he was not married to the appellant. In this paragraph the Judge also found it significant that IIA had used a travel document to travel to the IKR.

26. That is said by the appellant to be inconsistent with the finding at [34] in which the Judge writes:

> 34. When looking at matters in the round, such are the credibility and plausibility issues with the appellant's narrative, that I do not accept that narrative about her introduction to and start of relationship with IIA is credible. I do not accept that the appellant had contact with IIA for the first time in the UK. It is notable, as confirmed by both the appellant and IIA in cross examination, that neither of them considered obtaining a supportive statement from the woman they say introduced them and through whom they communicated at first and IIA confirmed that he had not considered obtaining a supportive statement from Ali, his friend with whom he says

> he first went to the hostel where the appellant was staying. However, even if the appellant and IIA did meet as they have described, the issues set out above remain and this does not help the appellant.

27. There is no perversity in the Judge's finding as it is clear that the Judge was referring to two separate matters. At [32] the evidence of IIA was about the restaurant in the UK, where he and the appellant met, at [34] about when the relationship started which would have predated their meeting together in a restaurant. The specific finding that it was not accepted that the appellant had contact with IIA for the first time in the UK in light of the adverse credibility and plausibility concerns and lack of supportive evidence. The Judge recognises, in the alternative, that even if the appellant and IIA did meet as they have described that did not assist the appellant in establishing the credibility of the claim in light of the other issues of concern to the Judge. Therefore even if Mr Holmes was able to persuade me that the primary finding in [34] is perverse, the alternative finding does not assist the appellant in establishing material legal error in any event.
28. The Judge draws together the threads of the concerns arising from the evidence at [33] where it is written:

> 33. It may be the case that one or more of the above points when considered individually does not cause significant harm to the appellant's case. Further, I would not expect an appellant always to provide a fully consistent account and there can be good reasons for inconsistencies. However, when looked at in the round I find the appellant's narrative regarding what happened in Iraq and in respect of her leaving Iraq to be characterised by very material internal and external inconsistencies for which there is no reasonable explanation as set out above. As a consequence I find that there is no reasonable likelihood that the Appellant's narrative is true. The nature and extent of those inconsistencies and other issues set out above is such that I find the appellant has fabricated her narrative.

29. The appellant asserts that the Judge erred in applying a plausibility test to the evidence such that no weight can be placed upon the Judge's overall conclusions.
30. It is not an error for the Judge not to make any reference to HK as judges in specialist Tribunals are assumed to know and apply the relevant law. A reading of the determination as a whole does not support the finding that the basis on which the Judge found the claim lacked credibility was solely on the basis of plausibility. In relation to the assessment of discrepancies in the evidence, the Court of Appeal in AK v Secretary of State the Home Department [2006] EWCA Civ 1182 found that if a judge found the discrepancy was such as to call the appellant's veracity into question, he would not normally be required to do more than say so. Often it will be obvious without explanation why discrepancy does or does not have an impact on appellant's credibility. Where it is not obvious the judge will have to explain what would otherwise be a surprising conclusion. The more surprising it would appear to an objective reader why discrepancy should or should not be regarded as significant, the more necessary it will be for an explanation to be provided. This is the approach adopted by the Judge in the current appeal, in which consideration was given to what are termed as identified discrepancies which the Judge did not find to have been satisfactorily explained by the appellant in the evidence. The Judge gives reasons for the findings and why the discrepancies have the effect of undermining the appellant's account.

31. In relation to the issue of plausibility the appellant places reliance on the decision of the Court of Appeal in HK. No specific paragraph of that judgement is referred to in the grounds seeking permission to appeal.
32. The lead judgement was given by Lord Justice Neuberger who at [1] wrote:

> 1. This appeal, which has been conspicuously well argued on both sides, highlights the very difficult task faced by Immigration Judges when they are called upon to make findings of fact, in circumstances where there is no direct factual evidence other than that given by the appellant himself, and a lack of background information or of general experience upon which the Judges can safely rely. The appeal also throws sharply into focus the difficult question of when it is appropriate for this court, which can only interfere with a decision of an Immigration Judge or the Asylum and Immigration Tribunal ("the Tribunal") on a point of law, to remit a decision which ultimately turns on questions of fact.

33. In HK it was recognised by the Court of Appeal that the judge in that case made findings of primary fact or drew inferences from such findings as the reasons to dismiss the appeal. The issue of inherent probability is considered at [28 – 30] where it is written:

> 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 the story, and the story as a whole, have to be considered against the 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 guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
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> 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala –v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by…Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

34. There is merit in Mr Tan’s argument that the process undertaken by the Judge in assessing the evidence is precisely that set out in the second sentence of [28].
35. There are also a number of other cases dealing with the issue of implausibility. In Gulnaz Esen v Secretary State for the Own Department [2006] CSIH 23 the Court of Sessions said that Adjudicators are entitled to draw inferences of implausibility when assessing credibility and to draw on their common sense

and ability to identify what was or was not credible, as long as it was based on hard evidence. A reading of the determination in the current appeal indicates this is the approach adopted by the Judge.

36. In a later case of HA v Secretary of State for the Home Department [2007] CSIH 65 the Court of Sessions said that the bare assertion of incredibility or implausibility may amount to an error of law but that is not the situation that exists in the current appeal under consideration. The Judge identifies the issues of concern, sets out the consequence of such concerns, and provides adequate reasons in support thereof. No legal error is made out by reference to HK or otherwise in relation to this ground.
37. Having reviewed the evidence with the required degree of anxious scrutiny, I find this is an appeal in which the Judge considered the evidence cumulatively, has set out findings supported by adequate reasons, which have not been shown to be outside the range of those reasonably open to the Judge on the evidence.
38. The weight to be given to the evidence was a matter for the Judge. It is not made out the appellant has established material legal error that would warrant a different decision being made. On that basis is not appropriate for the Upper Tribunal to interfere any further in relation to this appeal.
39. As the Judge's primary finding stands the assessment of the evidence in the alternative, by reference to internal flight, is obiter, which does not require further assessment, although the assertion the Judge did not adequately assess the reasonableness of internal flight does seem to be contrary to the findings at [38 – 41].

Notice of Decision

40. No material legal error has been made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 April 2023