



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000693

First-tier Tribunal No: PA/52847/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th November 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

RKA
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Besso, Counsel instructed by Sutovic & Hartigan

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 16 October 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. By my decision promulgated on 15 August 2023 I set aside the decision of the First-tier Tribunal (JFTT Seelhoff) with no findings preserved. I now remake that decision.

Introduction

2. At the start of the hearing, Ms Besso raised the issue of the appellant's vulnerability. Ms Everett agreed that the appellant should be treated as a vulnerable witness and I directed the representatives accordingly. No concerns were raised during the course of the hearing in respect of the appellant's vulnerability and I am satisfied that he was treated appropriately. When considering the evidence and deciding this appeal, I have kept in mind at all times both the medical evidence about how his mental health may affect him and his young (he was 16 when he entered the UK and applied for asylum).
3. In making this decision, I have had regard to all of the written evidence before me, as well as the oral evidence given by the appellant through an interpreter. I am grateful for the clear submissions from both Ms Besso and Ms Everett.
4. The standard of proof in a protection claim is "reasonable degree of likelihood" and this is the standard that I have applied in this decision.
5. The appellant's claim, in brief summary, is that he is a Kurdish citizen of Iraq from a small town in the Sulaymaniyah Governate of the IKR who should be recognised as a refugee in the UK because he faces a risk of being killed in Iraq in a so called "honour killing". His account of why he faces this risk is that he began a relationship with a young woman (Rayan) of a similar age living in the same area. Rayan became pregnant and when her family discovered the relationship they killed her and attacked his home in order to kill him as well. He was not at home when the home was attacked; and upon learning what happened he went to stay with his sister, who made arrangements for him to leave Iraq. He subsequently was told that there was a historical blood feud between the families. The appellant also claims that Rayan's family reported him to the police and that he is subject to an arrest warrant.
6. The appellant also claims that he does not have a national ID document for Iraq and faces a risk of treatment violating article 3 ECHR as a consequence of not having such a document and being unable, within a reasonable period of time following return, to obtain a replacement.
7. A further claim advanced by the appellant is that his removal from the UK would breach article 8 ECHR.
8. For the reasons set out below, I have allowed the appellant's appeal on the basis that his removal from the UK would breach the UK's obligations under the Refugee Convention.

The Respondent's Decision

9. The respondent refused the appellant's asylum application (in a decision dated 1 December 2020).
10. The respondent accepted the appellant is Kurdish and a citizen of Iraq, but not that the appellant had a relationship with Rayan, that there is a historic feud between his and Rayan's family, or that he had any problems in Iraq. The respondent's reasons for not believing the appellant were the following:
 - a. In the substantive asylum interview (conducted on 1 October 2020) the appellant was unable to recall key facts about Rayan: her date of birth, where she lived, or who her family consisted of. In addition, when asked about how often he would exchange letters with her (after he had said

that this was their main form of communication) he answered that he did not know and could not remember exactly.

- b. The appellant's claim to not know anything about Rayan's family because he never asked her was inconsistent with stating that he knew that he had parents and siblings within her household.
- c. Stating in the asylum interview that the relationship continued for 6 months was inconsistent with stating in his witness statement that it continued for over 6 months.
- d. It is not credible that the appellant would have secretly gone to Rayan's house and been intimate with her in that location in the light of his evidence about how the family would react if this was discovered. The appellant's claim to have met with Rayan in public on multiple occasions is also not credible for this reason.
- e. The appellant's statement that he always knew that his and Rayan's families did not get along was inconsistent with stating that he did not know about the blood feud until after Rayan was murdered.
- f. The appellant has been inconsistent about the cause of the dispute between the families; stating both that it is a tribal dispute and that it is a dispute over land.
- g. The appellant's credibility is undermined by the fact that at the substantive asylum interview he did not mention the family feud and this was raised for the first time in his further representations.
- h. The appellant was inconsistent about when the relationship with Rayan began, when his house was attacked, what happened in the attack, and who was responsible for the attack.
- i. The appellant's credibility is undermined by the fact that he failed to claim asylum before arriving in the UK in countries (such as France) through which he travelled.

11. The respondent considered, in the alternative, the appellant's case at its highest, and stated that he could avoid the claimed risk from Rayan's family by relocating internally, either within the IKR or elsewhere in Iraq. With respect to the reasonableness of relocating, it is stated by the respondent that the appellant is a healthy adult Muslim male who speaks Kurdish. It is also stated by the respondent that he will be able to re-document himself.

12. The respondent also considered whether removal would breach either articles 3 or 8 of the ECHR. With respect to article 8, the respondent's position in the refusal decision is that the appellant was unable to meet any of the routes to leave under the Immigration Rules and there were not exceptional circumstances. With respect to article 3, the respondent considered the appellant's claims about having a poor memory and mental health problems, and concluded that the threshold for article 3 (medical claims) was not met.

Evidence Concerning The Appellant's Health

13. The appellant relies on reports by consultant psychiatrist Dr Singh regarding his mental health. The most recent report is dated 20 September 2023. This report follows an in-person interview with the appellant on 6 September 2023 (with an interpreter attending via video link).

14. Dr Singh states that the appellant has adjustment disorder with the following clinical features present: subjective distress and emotional disturbance, with symptoms of depression and anxiety in response to a stressful situation. Dr Singh expresses the view that the appellant is not feigning or exaggerating his symptoms.
15. Dr Singh observed that at the time of the examination the appellant was not receiving any treatment for his mental health and recommended that he should receive psychological therapies such as cognitive behavioural therapy. Medication for the appellant's sleep disturbance was also recommended.
16. Dr Singh stated that at the time of examination the suicide risk was low but in the event of the appellant facing the prospect of removal from the UK it is likely he would experience a deterioration in his mental health and the risk of suicide and self-harm would increase. He also states that the prospect of removal would increase the appellant's symptoms including the potential development of a depressive disorder; and being in an environment that triggers memories about past negative experiences might contribute towards further psychological problems.

The Appellant's Written Evidence

17. The appellant's evidence is set out in four statements. These are dated 22 January 2019, 28 September 2020, 14 October 2020, and 24 June 2021. Ms Besso confirmed that the appellant relied on all of them. The statements set out the appellant's account, which I have summarised above in paragraph 5.
18. In the most recent statement the appellant responds to several of the points raised in the respondent's decision of 1 December 2020. He states that he never said that he did not know where Rayan lived; rather, he stated that he said that he did not know the distance between the houses. With respect to Rayan's date of birth, the appellant states that he knows she was born in 2004 but does not know her birthday. He states that birthdays are not important in his culture. He denies saying that he did not know who Rayan's family consists of; rather, he states that he did not know their names or how many family members there are. He states that he was young and they did not talk about how many siblings they have. He contends that he was clear about how often he exchanged letters with Rayan, which was once a week or once every few weeks.
19. The appellant states that he has been consistent about the length of the relationship; that it was 6 months or a little over 6 months in duration. He states that he always gave an approximate time frame.
20. With respect to meeting in public, he states that he explained that they would take precautions and were as secretive as possible. With respect to going to her house, he states that he did this just once and they were young and reckless in love. He further states that he has corroborated the relationship by providing pictures of him and Rayan together.
21. With respect to the family feud, he states that prior to the attack his knowledge was vague, and as he was young he did not know much about it. He was just aware that his family talked about the families not getting along. He did not know anything specific until he was told by his sister after the attack on his home. It was then that he was told about the land dispute and killings in the

past. He states that it is not an inconsistency to describe the dispute as a tribal dispute as well as a land dispute, because it is both.

22. The appellant claims that his family have had to relocate to avoid Rayan's family, and he does not know where they are or if they are safe. He states that he would not be safe on return. He also says he has no way of finding his family.

23. With respect to identification documents, he says that he has no knowledge about this, of ever having such a document.

The Appellant's Oral Evidence before JFTT Seelhoff

24. It is necessary to consider the appellant's oral evidence before JFTT Seelhoff as Ms Everett stated that she relied on this. She clarified that she was relying on the evidence the appellant gave and not on the judge's findings (which have not been preserved). In summary, the evidence of the appellant before Judge Seelhoff, as summarised by Judge Seelhoff in paragraphs 17-31 of his decision, was as follows:

- a. The appellant stated that the last time he had contact with his family was more than a year ago when he spoke to his brother who had retrieved his old phone and sent a photograph of the appellant with Rayan. The appellant struggled to remember dates and when things occurred; he was not able to give details as to how often he had had contact with his family since coming to the UK and was only able to say "very little".
- b. The appellant stated that he had one brother and two sisters in Iraq. He did not know whether any of the family were living because they will not talk to him and ignore his messages. He was unable to explain how far the town where his sister lives is from his hometown and just said it was a car journey. He could not remember the journey he took from his hometown to his sister's town in August 2018 although he later said it was by bus. He was unable to say whether or not he travelled with anyone else when he fled to his sister's home. The appellant stated that his sister wanted him out of the country safely but wanted nothing to do with him after that.
- c. The appellant said that he could not remember where he had left his phone and was having problems remembering things that happened in the past. He stated that his family do not want to talk to him which he finds distressing. The appellant said he could not remember if he had been carrying a phone with him when he left Iraq, but insisted that he did not carry identity documents.
- d. The appellant stated that Rayan lived in the same street as him but he did not know how many doors away. He stated that he had never asked her how many siblings she has. He could not remember what time of day he went to Rayan's house or how long the relationship had lasted. He said that he could not remember previous occasions visiting house because his brain was not working because it was very stressful.

The Appellant's Oral Evidence at the Hearing

25. The appellant was asked only a very few questions by Ms Everett. She asked when he was last in touch with family and his response was that he spoke to his brother by telephone about 6 months ago. Ms Everett asked the appellant if he

thought his brother could help him obtain identification documents and the appellant responded by saying no. The appellant added that his brother does not want to speak to him any more and no one in his family would help him.

Evidence Concerning Identity Documents

26. An issue raised at the error of law hearing was whether the appellant, as an involuntary returnee, could be returned directly to the IKR rather than to Baghdad. In my error of law decision I gave directions to the respondent requiring her to provide evidence on whether there can be enforced removal to the IKR.

27. Ms Everett, on the day of the hearing, provided a witness statement dated 4 January 2023 from a Country Manager employed by the respondent who stated:

Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraq Kurdistan region... Between 30/9/2020 and 5/10/2022 the Home Office successfully enforced removal of 8 Iraqi nationals to Erbil and 9 to Sulaymaniyah. There were no flights between the UK in Iraq from 17/03/20 22 March 2021 due to the Covid pandemic

Submissions by Ms Everett

28. Ms Everett made brief submissions. She stated that reliance was placed on the refusal letter of 1 December 2020 and that the credibility challenge was maintained. She stated that she relied, in addition, on the record of proceedings in JFTT Seelhoff's decision (at paragraphs 17 - 31 of his decision). She submitted that the appellant's oral evidence before JFTT Seelhoff demonstrates that his account has changed over time and that the inconsistencies in his account cannot be explained by the medical evidence.

29. Ms Everett accepted that the Country Manager evidence she adduced about returns to Iraq is not entirely clear and stated that she accepted that it is insufficient to warrant a departure from SA (*Removal destination; Iraq; undertakings*) Iraq [2022] UKUT 00037 (IAC), where it was found that enforced removal was only possible, at that time, to Baghdad International Airport because the authorities of the IKR would only accept voluntary returnees. She argued that the appellant would be able to be re-documented in Baghdad (or earlier, before travelling to Iraq) because his family could send him his documents, or bring them to him in Baghdad. She submitted that as the appellant's family assisted him in leaving Iraq it is reasonable to proceed on the basis that they would assist him on return; and no reliance can be placed on the appellant's evidence on this issue given his account is so lacking in credibility.

Submissions by Ms Besso

30. Ms Besso argued that, applying the lower standard and a holistic assessment - and recognising the appellant's age when the events occurred (and the time that has elapsed since them) - the appellant had given a credible account. She submitted that the criticisms of the appellant's evidence by the respondent in the refusal decision need to be considered with caution as the respondent did not treat the appellant as a vulnerable witness or take appropriate account of the fact that he was a child. She also submitted that the appellant, in his witness statement, had addressed many of the points made by the respondent.

31. Ms Besso argued that the appellant's account is consistent with objective and expert evidence about honour crimes in Iraq. She also highlighted that Dr Singh

expressed the view that there was no indication of malingering or feigning by the appellant.

32. With respect to the evidence that was given by the appellant in the First-tier Tribunal that Ms Everett sought to rely on, she argued that it was broadly consistent with the evidence given previously by the appellant and does not undermine the core of his claim. She also submitted that inconsistencies not put to the appellant should not be held against him.
33. She argued that internal relocation within the IKR is not a relevant alternative, as the appellant could not avoid Rayan's family within the IKR. She also contended that internal relocation would not be reasonable (either in the IKR or elsewhere in Iraq) given the appellant's medical issues, and that he would be without family and would be returning to a country he left as a child.
34. With respect to re-documentation, Ms Besso argued that the appellant has been consistent about his family not wanting to speak to him (let alone assist him), and therefore it was not the case that they would send him his existing CSID or travel to Baghdad to give it to him. She submitted that in order to obtain new identification (which would be a biometric document called an INID, due to CSIDs being phased out) the appellant would need to personally attend at a local Civil Status Affairs office in Sulaymaniyah, which would require him to travel overland to Sulaymaniyah from Baghdad; and the extant country guidance makes clear cannot be done without a real risk of treatment violating article 3 ECHR: *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC)*.

Findings of Fact

35. Dr Singh's evidence was unchallenged and therefore I find as a fact that the appellant suffers from adjustment disorder and that his mental health is likely to deteriorate if he is returned to Iraq.
36. In the decision dated 1 December 2020 the respondent identified several aspects of the appellant's account that were inconsistent or implausible. However, the appellant addressed these points, at least to some extent, in his witness evidence. Without the potentially inconsistent and implausible points raised in the refusal decision being put to the appellant (or the appellant being asked any questions about them), it is difficult to evaluate whether what he says in his most recent witness statement, in an attempt to refute the respondent's points, withstands scrutiny. A similar difficulty arises with the evidence recorded in the decision of JFTT Seelhoff that Ms Everett relies on. There are parts of the appellant's oral evidence, as recorded in paragraphs 17-31 of JFTT Seelhoff's decision (which are summarised above), that seem, on their face, to be inconsistent and/or implausible when considered in the light of the other evidence the appellant has given. However, without these points being put to the appellant, which was not done at the hearing before me, it is difficult to form a view on how much weight they should be given. I am unable to rely on the view formed by JFTT Seelhoff because his findings were not preserved.
37. In the absence of adverse points being put to the appellant (or him being asked any questions about them), and considering together all of the evidence, including in particular that the appellant's account is not inconsistent with objective evidence about honour killing amongst Kurds and in his written

witness evidence he has given a detailed account that, on its face, addresses many of the adverse points raised by the respondent, I am satisfied, to a reasonable degree of likelihood, that the appellant has given an account of events in Iraq that is broadly true. I therefore accept, and find as a fact, that there is a reasonable degree of likelihood that (a) the appellant faces a risk from Rayan's family who are strongly motivated to kill him; (b) the appellant's family have relocated in order to avoid being harmed by Rayan's family; and (c) due to their anger towards him at causing these problems for the family, the appellant's family in Iraq no longer wish to communicate with him.

38. Given Ms Everett's acceptance that the evidence before me did not establish that the appellant could, as an involuntary returnee, be returned to the IKR, I find as a fact that the position is unchanged since SA and the appellant will be returned to Baghdad.
39. Given my findings above on the credibility of the appellant's account, I find as a fact that the appellant's family will not send or deliver to him his CSID (if, indeed, they even have it) and the appellant will need to obtain a replacement identification document. This will need to be an INID due to the CSID being phased out; and because this is a biometric card, the appellant will need to attend in person at his local Civil Status Affairs office in Sulaymaniyah. In order to do this, he will need to travel overland to Sulaymaniyah from Baghdad (as he would need to have documentation, which he does not have, to take an internal flight).

The Appellant's Claim to be a Refugee.

40. The first question to address is whether the persecution that the appellant claims to fear is for a Refugee Convention Reason. This was not in dispute. The respondent accepted in the decision of 1 December 2020 that the appellant's claim to be a potential victim of an honour crime means that he falls within a Particular Social Group and therefore that his claim engages a Refugee Convention reason.
41. The second question is whether the appellant has a subjective fear of persecution in his home area. In the light of my finding of fact that the appellant has given a truthful account about Rayan's family seeking to kill him (having already killed Rayan) and his family relocating because of their fear of Rayan's family, I accept that the appellant has a genuinely held fear of harm that is sufficiently serious to amount to persecution.
42. The third question to ask is whether the appellant's fear is well-founded. Given the findings that Rayan was killed and that the appellant's family has fled, I am satisfied that the appellant's fear of Rayan's family is well founded.
43. The fourth question to address is whether there is sufficient state protection available. The appellant relies on the respondent's CPIN on Iraq: Honour Crimes (March 2021). In her skeleton argument dated 16 October 2023, Ms Besso cites paragraphs 2.5.6 of the CPIN, where it is stated that the authorities in Iraq and the IKR cannot be considered as willing and able to provide effective protection to those at risk from honour crimes. No arguments to the contrary were advanced before me on behalf of the respondent. Accordingly, I find that the appellant will not be able to access adequate state protection from the authorities in his local area.

44. The fifth question to consider is whether the appellant can locate internally, either within the IKR or elsewhere in Iraq.
45. The expert evidence of Dr Ghobadi, relied on by the appellant and unchallenged before me, is that the appellant cannot safely relocate within the IKR because Rayan's family are likely to be able to track him down given, in particular, the requirement to inform security forces in the previous and new place when a person relocates. Accordingly, I find that internal relocation within the IKR is not viable for the appellant.
46. It is not reasonably likely that the appellant would face a risk from Rayan's family outside of the IKR, for example in Baghdad. However, he can only be expected to relocate outside the IKR if it would not be unduly harsh for him to do so: *Januzi v SSHD* [2006] UKHL 5. I am satisfied that relocation to a location outside of the IKR would be unduly harsh for the appellant due to a combination of factors, considered cumulatively. These are: (a) the appellant does not speak Arabic, (b) he is from a minority community and would suffer some degree of discrimination as a consequence, (c) he has some (although not severe) mental health problems which would make life more difficult than it otherwise would be; and (d) he would not have any family (even extended family) support in the location to which he would relocate.
47. The significance of the absence of family support or a support network, when considering internal relocation, is made clear in paragraphs 24-25 of the headnote to *SMO*, and is the most significant of the factors I have identified in paragraph 46 above. Indeed, if I had found that the appellant would have family support in the location to which he would relocate, I would not be persuaded that internal relocation would be unduly harsh. This is because, in my view, the evidence indicates that the appellant is an able bodied male practising a mainstream religion in Iraq whose mental health problems are relatively moderate. In these circumstances, it would not be unreasonable or unduly harsh for him to relocate to a location in Iraq, even outside the IKR, so long as he would have some family support. However, as I have found that he would not have any such support, I am satisfied that the evidence establishes that internal relocation outside the IKR would be unduly harsh.
48. As internal relocation within the IKR would not be safe and internal relocation outside of the IKR would be unduly harsh, internal relocation is not an option. I therefore allow the appeal on the basis that the removal of the appellant from the UK would breach the UK's obligations under the Refugee Convention.

Article 3 ECHR

49. I have concluded that the appellant is entitled to protection as a refugee as he would face a risk of persecution in his home area and cannot be expected to relocate to avoid that risk. I have reached this conclusion irrespective of whether he has a (or can obtain a replacement) national identity card (either a CSID or INID). It is therefore not necessary for me to address the issues arising in respect of obtaining a replacement CSID or INID. However, for completeness, I will address this issue as it is relevant to whether removal would violate article 3 ECHR.
50. My starting point is that, in the light of my findings of fact, the appellant will not be able to rely on his family to provide him with his existing CSID and therefore he will need to obtain a replacement identity document.

51. The evidence of Dr Ghobbi, which was not disputed, is that in the appellant's local area CSIDs have been replaced by INIDs. *SMO* makes clear that in order to obtain an INID a person must attend in person at his local Civil Affairs Office. This means that the appellant would need to travel to his local Civil Affairs Office (which is in the IKR) from the place to which is returned in Iraq in order to obtain an INID. It was common ground before me that, as an involuntary returnee, the appellant would be returned to Baghdad. He would therefore need to travel between Baghdad and the IKR without a national identity document.

52. It is explained in *SMO* that people without identity documentation are not able to take an internal flight. Therefore, the appellant would need to travel overland from Baghdad to the IKR. *SMO* makes clear that this cannot be done without a real risk of encountering treatment and conditions that are contrary to article 3 ECHR. Accordingly, if I am wrong in respect of the appellant's claim to be a refugee his appeal still succeeds on the basis that his removal would be unlawful under s6 of the Human Rights Act 1998. For the avoidance of doubt, I would not have reached this conclusion on Article 3 if the appellant could be removed direct to the IKR.

Notice of Decision.

I allow the appeal on the basis that removal of the appellant from the UK would breach the UK's obligations under the Refugee Convention.

D. Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
27 October 2023