



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002875

First-tier Tribunal No: PA/00592/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 28 November 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**SAMAN MUSA KADER
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aziz on behalf of The UK Law Firm.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 3 October 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Cowx ('the Judge'), promulgated on 25 March 2022, in which the Judge dismissed the appellant's appeal against refusal of his application for international protection and/or leave to remain in the United Kingdom on any other grounds.
2. The appellant's identity as a citizen of Iraq from Ranya, which is in Sulaymaniyah in the IKR in Iraq was not disputed by the Secretary of State.
3. Having considered the documentary and oral evidence the Judge sets out findings of fact from Section 7 of the determination. The Judge's findings can be summarised in the following terms:
 - a. The appellant is not a refugee as he does not have a well-founded fear of persecution. The appellant's claim about risk arising from an affair is untrue as is the narrative about his flight from Iraq.
 - b. The appellant's claim to have had a successful business and no reason to leave Iraq was not accepted, the Judge finding it more likely than not that the appellant left Iraq with his family for economic and opportunity reasons [7.2].

- c. As there is no affair between the appellant and NO, her husband AA did not make threats to kill him, as a result he is not at risk of honour-based violence from this person or from his own father and brothers [7.3].
- d. The appellant's claim to have been able to enter NO's home when she was alone was found to be "unusual". The appellant's claim it was normal for craftsmen to be left alone in the home of a married woman was noted by the Judge at [7.4]. The Judge records the appellant claiming it was not secret he was there, and that AA knew he was there in his absence [7.5].
- e. The appellant's claim that AA discovered he had had sex with AA's wife, when he claimed no one was present, because AA set up a hidden camera in his bedroom which recorded them having sex, was not accepted. The Judge finds that if AA put the camera in because he suspected his wife of infidelity it was unlikely he would permit the appellant to be in the house alone with his wife when he was absent [7.5].
- f. The Judge finds the appellant first mentioned the hidden camera at the hearing which was an on the spot embellishment as the appellant realised how unlikely it was that AA would have discovered the single occasion when his wife was unfaithful with him [7.5].
- g. In light of the country material relating to honour-based violence against women, if the appellant were genuinely at risk of serious harm because of an affair with NO she would be at equal or greater risk. The appellant is in contact with his sister in Erbil and it was not asserted that the sister is not still in contact with her family in Ranya. The Judge finds that had NO been killed or harmed the appellant would have heard about it, but he claims he heard nothing. The Judge finds that if the appellant's story was true such silence would be highly unusual, resulting in inference that silence meant that nothing had happened to NO as the appellant did not have an affair with her [7.6].
- h. The Judge placed little weight by the two threatening Facebook messages as it would not be difficult to create a Facebook account for the purpose of fabricating such messages and the appellant was unable to produce any form of provenance to support the contention the messages are genuinely from AA's clan or family, and it is more likely that the messages were created by the appellant, or for him at his request, to support his claim to have had the affair [7.7].
- i. The Judge did not accept the appellant's narrative about his journey from Iraq to the UK for the reasons set out at [7.8]; finding the account to be both implausible and untrue.
- j. The Judge found it was improbable the appellant would have put his wife and child through the ordeal of a long journey to Europe and then crossing the English Channel in a rubber boat when he could have claimed asylum in Greece, Italy or France. The Judge finds it was always the appellant's intention to get the UK for which he paid the agent a substantial sum of money and that he would have known where he and his family were being taken by the agent [7.9 - 7.10].
- k. The appellant did not leave Iraq because of fear of persecution and has no fear of persecution if returned. He is an economic migrant who intended from the outset to get to the UK for a better life for himself and his family [7.11].
- l. His human rights claim is based on the same factual matrix as the asylum claim and is dismissed for the same reason [8.1].
- m. In relation to documentation the appellant is not a witness of truth, his claim not to have identity documents is not true as his claims lacks credibility [8.2].
- n. The human rights claim is dismissed in full.

4. The appellant sought permission to appeal claiming the Judge erred in law because he left out account evidence that should have been taken into account, that the Judge erred in law because he erred in relation to an important matter as the appellant had said in his interview in reply to question 83 that AA had set up the camera in the bedroom, that the Judge erred in law in not finding the appellant's account of his journey from Iraq to the UK credible.
5. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Grubb on 16 January 2023, the operative part of the grant being in the following terms:
 2. The grounds contend that the judge erred in law in reaching his adverse credibility finding: (1) by not reaching any findings on the supporting (albeit written evidence) of the appellant's wife and sister; (2) by wrongly failing to have regard to the fact that the appellant had prior to the hearing in his asylum interview referred to the presence of a camera (para 7.5); and (3) by irrationally doubting the appellant's claim that the people smuggler left the appellant in the UK rather than in a country closer to Iraq (para 7.8).
 3. Grounds (1) and (2) are arguable. Ground (2) is an arguable mistake of fact on the evidence. Although the evidence was only written, it is arguable the judge failed properly to assess the family's supporting evidence. I would not exclude consideration of Ground (3) although standing alone it would not have warranted a grant of permission. 4. For these reasons, permission to appeal is granted.
6. The Secretary of State opposed the appeal in a Rule 24 response dated 23 February 2023, the operative part of which is in the following terms:
 2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
 3. The grounds assert that the judge failed to take into account the evidence of the appellant's wife and sister. On a fair reading of the determination this ground is not made out. At para 3.3 the judge specifically states that they are considering all of the evidence. Failure to mention a particular item of evidence does not mean that it was not considered or amount to an error of law. Furthermore, 7.2 the judge makes clear that he is considering the evidence of the appellant and his wife. In this particular case it was the evidence of the appellant that was at the core of the claim and it is clear that, while they took the other evidence into account, this is the reason that the judge expresses their findings in that context.
 4. With respect to the issue of the evidence regarding the camera, this formed only a small part of the reasoning of the FTT and the Secretary of State considers that, even if the judge was in error on this point, it would not have made a material difference to the outcome.
 5. The respondent invites the Tribunal to uphold the decision of the First Tier.

Discussion and analysis.

7. I find no material error in claim the Judge failed to consider all the evidence with the required degree of anxious scrutiny or left out of account evidence he should have taken into account. The Judge analyses the appellant's evidence and claim to have had an affair which is at the core of his appeal. The alleged risk on return arose from an affair he claims to have had with another woman, NO. The Judge specifically records taking into account the evidence both written and oral of the appellant's wife who attended the hearing and the written evidence of the appellant's sister in the form of a witness statement who remains in Iraq. I find no merit in the assertion the Judge erred because more was required in relation to that evidence.

8. The key point that arises in relation to that evidence is that other than confirming that the parties had left Iraq, and how they came to the UK, of which the appellant's wife and sister will have some direct personal knowledge, the source of the information contained in their evidence that the appellant had had an affair with NO, had been threatened as a result leading to the need for them to flee Iraq, only came from the appellant himself. The Judge was therefore arguably entitled to focus upon that key point of the evidence.
9. Ground 2 concerning the camera is made out in terms of there being a mistake of fact on the face of it. In his asylum interview the appellant was asked at Q.83 "How was the affair discovered" to which he replied: "He put a CCTV camera. I guess he suspected something prior to that day". If the Judge was referring to the difference between the answer giving in the asylum interview, which was brief, and further detail provided in his oral evidence, such differences are understandable. The issue, however, is not necessarily whether a mistake in fact was made as it appears on a reading of the determination that it was in relation to when the appellant mentioned the existence of the camera, but whether that mistake was material to the decision to dismiss the appeal. I find it is not.
10. One of the key points noted by the Judge related to the credibility of the appellant's claim to have been left in the house of another man with his wife, alone. The appellant claimed in response to the Judge's question that workmen in Iraq are often left alone in such a situation, but this appears to be contrary to the teachings of Islam.
11. Islamic scholars unanimously agree that it is impermissible for a man other than her husband to be alone with a non-mahran (a woman to whom a male is permitted to marry according to Islamic law). The basis for such a position is said to be the saheeh hadeeth (authentic narration) that "no man should be alone with the woman unless there is a mahram (male relative whom she could never marry) with her.
12. It is accepted that a woman might be permitted to allow a man other than her husband to enter the house when he is not present as long as two conditions are met:
 - a. Her husband should give them permission to do so, and
 - b. there should be no khalwah (i.e. she should not be alone with him); rather there should be a mahram with her such as her father or brother, or anyone for whom it is permanently forbidden to marry her.
13. In the case where an individual does not have a mahram with her, but there is another woman with her, khalwah may be avoided but it is not permissible for a woman to put herself in such a situation unless the woman is trustworthy and the man who is with them in that place is also trustworthy and there is no fear that he could overpower the two women.
14. No arguable legal error is made out of the Judge's findings in relation to the lack of credibility in the appellant's claim that he was able to enter the house of NO, whose husband is a prominent politician within the IKR, with there being no third party present in accordance with Islamic law.
15. I also find that the evidence relating to the existence of a camera supports the Judge's concerns regarding the credibility of the claim. At [7.5] the Judge makes the point that if NO's husbands suspected her of being disloyal which must have related to a suspicion of a sexual relationship, is otherwise why would the cameras be in the bedroom, which would bring dishonour to the family if such occurred, the appellant would not have been allowed to enter the home when AA's wife was alone.

16. Mr Aziz and his submissions referred to the difference between the more conservative Islamic societies where the Koran is interpreted more strictly and more liberal societies where such requirements may not be enforced or practised. While such a submission may, on a general basis, be true, the country information available before the Judge, to which the Judge referred, and to which Tribunals encounter in many cases involving alleged honour killings or risk arising from a breach of honour, indicates that the IKR is not a liberal environment such that the teachings of Islam, in relation to whether a man and another woman's husband should be permitted to enter the house when the husband is not present, are likely to be overlooked. There was no evidence before the Judge to suggest it will. I find the Judge's findings that this in particular casts doubt upon the credibility of the claim are within the range of those reasonably open to the Judge on the evidence.
17. Another point noted by the Judge is the lack of any evidence of any harm to NO. Extra-marital relationships or relationships entered into without the approval of a family can bring dishonour upon one or both of the families. It is the appellant's case that AA is a powerful tribal leader. The appellant's evidence is this person has photographic evidence of him having an extramarital relationship, involving sexual intercourse, with his wife. The appellant's evidence is that as a result he had been threatened with harm sufficient to entitle him to a grant of international protection. The appellant's evidence is that his father and other family members are aware of what has occurred, indicating that news of the same is not restricted to NO's immediate family. That, in the relevant society, will have brought dishonour to the family of AA. The country information referred to by the Judge shows that females in particular who bring dishonour on their family are likely to be killed, yet as noted by the Judge, there was no evidence of anything happening to NO. The Judge's observations have not been shown to be outside the range of those reasonably opened to him on this point.
18. The challenge in the grounds to the Judge's findings in relation to the appellant's journey to the UK, and the practice of the agents in facilitating illegal entry, relate to matters that occurred after the alleged event giving rise to the claim for international protection and are not, themselves, relevant to the issue of whether the appellant's claim to have been involved in an affair with NO is credible or not.
19. Having given careful consideration to all aspects of this appeal, including submissions of Mr Aziz, I find the appellant has failed to establish arguable legal error material to the decision to dismiss the appeal in the findings of the Judge.
20. The Judge clearly considered the evidence with the required degree of anxious scrutiny. The Judge made clear findings upon the relevant issues which are supported by adequate reasons. The appellant has failed to establish that the Judge's findings are outside the range of those reasonably open to the Judge on the evidence.

Notice of Decision

21. No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 October 2023