IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002391
PA/52270/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 March 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

MF (IRAQ)

(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Cole
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 11 March 2024

DECISION AND REASONS

1. At an initial hearing on 15 January 2024, Upper Tribunal Judge Bruce and I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. Our reasons are set out below in our reserved decision:

The Appellant is a national of Iraq born in 2003. He appeals with permission against the decision of the First-tier Tribunal (Judge Hillis) dated the 22nd May 2023 to dismiss his appeal on protection and human rights claims.

Background and the Basis of Claim

The Appellant is a Kurd, originally from Halabja but who grew up in Sulaymaniyah. He is part of a large family, many of whom feature in his case. Since we have made an order for anonymity, which compliments those made by other tribunals, we shall identify those individuals by reference to their relationship with the Appellant: Father, Mother, Sister 1, Sister 2 etc.

Father and Mother were the first of the family to arrive in the UK. Father claimed asylum and Mother was treated as his dependent. Father explained that before he left Iraq he had, over a number of years, received threats from unknown persons; he had also been physically attacked. The reason for that hostility was however a mystery to him. The Respondent could find no evidence of ongoing risk, and so refused the claim. Father appealed and in April 2019 his appeal came before the First-tier Tribunal (Judge Mensah) who agreed that in the absence of a reason for the feared harm, she could not say that there would be a real risk of any harm in the future.

On the 2nd July 2019 the Appellant, then aged 15, arrived in the UK with elder Sister 1 and elder Sister 2. They all sought protection. They were interviewed separately, and the Appellant, as a minor, was also asked to complete a questionnaire. They each explained that they had fled the IKR because the violence against the family had continued after their parents' departure. In particular, in December 2018 shots had been fired at the new house that they had moved to, causing them to fear for their lives. The Appellant sets the particulars of his account out in a witness statement dated the 13th January 2020. He explained that he had been living in that new house with Brother 1, Sister 1 and Sister 2. The morning after the shooting Brother 1 took the Appellant to the home of Sister 3, who was married and living with her husband somewhere else in Sulaymaniyah. After a few days there the Appellant was taken to the home of Sister 4, who was also married and lived in the city. When he arrived he saw Sister 1. It was clear to him that she had been beaten up. The Appellant's elder brother and uncle decided that they all had to leave the IKR and arrangements were made accordingly.

It is not known to us precisely what Sister 1 and Sister 2 told the Home Office. What we do know is that they were both granted refugee status. The Appellant's claim was however refused. By a letter dated the 25th April 2022 the Respondent noted that the claim was founded on the same facts as those advanced in 2018 by Father and Mother, and their claims had failed. The Appellant had not been able to say why the family had been targeted and they had been found not to be at risk.

At some point after the siblings' arrival in the UK, Sister 1 decided – through the intervention of others - to tell her father something that she had been hiding from him. This information illuminated the reason for the misfortunes suffered by the family. She revealed that she had been the object of the unwanted attentions of a high ranking PUK official in the IKR. He had coerced her, under threat of violence and harm to her family, into having a sexual relationship with him. Out of shame and fear she had hidden this from her father over a number of years. Other matters, which we need not set out here, were also revealed by Sister 2.

This new information changed everything. Father and Mother filed further submissions which they asked the Respondent to treat as 'fresh claims' for protection, and when on the 25th April 2022 the Appellant's appeal came before First-tier Tribunal Judge Hillis, he was able to call his sisters as witnesses to provide valuable context to his claim.

Judge Hillis noted the decision of Judge Mensah in respect of Father and Mother. He found it "significant" that neither of them were called to give evidence in the appeal, and that the family had evidently retained contact throughout. He

inferred from the evidence given in that appeal that Father had wanted his unmarried children to join him and his wife in the UK. He then says this:

> "27. Judge Mensah rejected the Appellant's parents' claim that his father was attacked and nearly killed and that they would be in danger on return to the IKR. I note here that although this is not a *Devaseelan* situation the inconsistencies between the two accounts are, in my judgment, significant.
>
> 28. The Appellant's account now is that his father was assaulted by either or both of the people mentioned in his sisters' witness statements. As their applications for protection were granted at first instance, I am not in possession of which aspects of their accounts in their interviews was accepted by the Respondent. I do, however, take into account that they were both granted Indefinite Leave to Remain in the UK.
>
> 29. The Appellant now claims that he has relatively recently been informed by his sisters, following their successful applications for asylum, of the basis of their claims (see the documents in the 177-page supplementary bundle). It is in my judgment, significant that the Appellant, on his own account, states he was told by his sisters that the basis of their claims was nothing to do with him.
>
> 30. I conclude on the evidence taken as a whole that the Appellant has failed to show, to the low standard required, that he would potentially be a victim of an honour crime at the hands of the people his sisters have been found to have been persecuted by in the IKR and that they would face a risk of persecution on return. I conclude, on the evidence taken as a whole that the Appellant, in the knowledge that his parents' accounts were not believed by Judge Mensah and that his account which was originally substantially based on their claim, was not believed, has sought to falsely adopt his sisters' accounts and claim that he is at risk on return as a result".

On that basis the Appellant's appeal was dismissed. Before we turn to address the grounds of appeal, it is appropriate that we complete our chronological overview of the family's progress so far. On the 20th December 2022 the Respondent determined that the further submissions made by the Appellant's parents had amounted to fresh protection claims, albeit ones that fell to be refused. This gave rise to a fresh right of appeal, and on the 2nd October 2023, some months after the decision of Judge Hillis, a panel of the First-tier Tribunal (Judges Monaghan and Bashir) allowed those linked protection claims, finding *inter alia* that the new information provided by Sister 1 was credible and cogent, and that there had been good reason for her not having previously told her father the truth:

> 25. We find it plausible that the daughter would tell her mother, but not her father of the sexual abuse and violence she suffered at the hands of AK, for several reasons; the general nature of mother/ daughter relationships where it is common for a daughter to discuss and confide in a mother; and in this case by the cultural implications of Kurdish society, where we find it is also plausible that a daughter would not disclose or discuss such intimate matters to her father for reasons of shame, embarrassment or honour that she might feel.
>
> 26. The Appellant was not aware of the full basis of his daughters claim for asylum, which we find plausible and entirely consistent with the culture and tradition. The Appellant and both his daughters were consistent in their oral evidence regarding the circumstances in which he

> was informed; the appellant's solicitors requested his daughters' asylum files following which he encouraged them to speak to their father. As a result of the Solicitors advice and persuasion, AS spoke to her mother who told the Appellant. Their oral evidence and witness statements were consistent regarding this point, additionally at question 86 of AIR (Asylum Interview Record) where she told the Immigration Officer, her father, question 88 (51) 'not told'. Given the Respondent has accepted the Appellant's daughters' claim for asylum, we find the additional information 'fills in the missing gaps' in his claim and makes it plausible. At question 90 of AIR she also confirms that "not told mother".

Father and Mother have both now been recognised as refugees.

Error of Law

The grounds of appeal are dated the 20th June 2023. We need not set them out in detail since before us Mr McVeety accepted on behalf of the Respondent that two at least were made out.

The first error was the Tribunal's apparent misunderstanding of what the case actually was. We note that the decision does not contain the chronology that we have summarised above, and it is possible that the Tribunal was confused about the order in which events had unfolded. At its paragraph 27 the Tribunal says that the "inconsistencies between the two accounts are, in my judgment, significant". The decision does not identify what those inconsistencies, nor indeed what the two accounts are, but we infer from the references to Judge Mensah's decision that the Tribunal has in mind the difference between Judge Mensah's decision ('no one understands why they are being persecuted') and the case now put ('we all now know the reason'). The second ground accepted as being made out by Mr McVeety is that the decision is flawed for a lack of clear reasoned findings. The Tribunal finds a number of matters to be "significant", and appears to draw some adverse inference from them, but does not say in terms that the evidence is rejected, or if it is, why. The parties accordingly invited us to set the decision of Judge Hillis aside and to remake the decision in the appeal.

Decisions and Directions

The decision of the First-tier Tribunal is set aside by consent.

Since the Appellant arrived in the UK and claimed asylum, his Father, Mother, Sister 1 and Sister 2 have all been recognised as refugees on the basis of the same factual matrix that he now advances. In light of that Mr McVeety agreed that it would be appropriate for the Respondent to review the case at this stage. He indicated that he would be referring the matter back to casework for that to be done. With that in mind we were satisfied that it would be in the interests of justice for the remaking to be adjourned until the Respondent has had an opportunity to consider his position. The matter will be listed before Judge Bruce, Judge Lane or possibly the same panel, on a date to be notified but it will not be before the 26th February 2024.

We have made an order for anonymity in this ongoing protection appeal.

2. At the resumed hearing, Mr Diwnycz, who appeared for the Secretary of State, told me that it had not been possible for the respondent to review the appellant's case (see paragraph [14] of the error of law decision). The appellant attended court but did not give evidence. The hearing proceeded by way of submissions only.

3. Mr Diwnycz offered no submissions. He relied on the Secretary of State's refusal letter.

4. Mr Cole appeared for the appellant. He submitted that, given that the appellant's parents and two of his sisters have now been granted asylum in the United Kingdom as detailed in the error of law decision, it should follow that the appellant, whose claim relies on exactly the same factual matrix as his other family members, would also be at real risk from the same individual (AK) as a member of a particular social group, namely his family.

5. The appellant's father's successful appeal to the First-tier Tribunal was heard by a panel consisting of Judges Monaghan and Bashir. That panel resolved apparent discrepancies between the accounts of the father and his daughters. It conclusively found that the father of the appellant was at real risk on return to Iraq from AK, who had sexually abused the father's daughter. At [28], the panel wrote:

> We find it follows that the Appellant is at risk of harm from AK, who is a powerful PUK member, upon return to Iraq. AK is capable of again targeting the appellant to find out the whereabouts of AS. Therefore, we find that the appellant has a well-founded fear of persecution in Iraq from a powerful member of the PUK therefore he cannot seek the protection of the authorities.

6. I accept that the appellant's account (he left Iraq as a child) is accurate and truthful. I find that the risk which his father has been found by the First-tier Tribunal to face on return and which I have highlighted above in the passage quoted from the First-tier Tribunal's decision will confront the appellant also. I find that AK is both willing and able to find the appellant on his return to his home area and that there is a real risk that he would interrogate the appellant and be likely to ill treat him in order to find out the whereabouts of his sister; that threat exists, in my opinion, notwithstanding that the sister has fled to the United Kingdom. For the same reasons given by the First-tier Tribunal in respect of the appellant's father, I find that the option of internal flight is not available to the appellant. In consequence, I find that the appellant's appeal on asylum and Article 3 ECHR succeeds.

7. Mr Cole also submitted that the appellant cannot return safely to Iraq because he does not have the necessary identity documents. I accept that his CSID was surrendered to the agent who assisted the appellant's

passage to the United Kingdom, that it is not possible to re-document from abroad and that for the appellant to re-document himself once in Iraq would expose him to a real risk of harm (see *SMO, KSP and IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400). For this additional reason, therefore, the appeal should be allowed.

Notice of Decision

I have remade the decision. The appeal against the decision of the Secretary of State dated 25 April 2022 is allowed on asylum and human rights (Article 3 ECHR) grounds.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 11 March 2024