



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003516

First-tier Tribunal No: PA/55427/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

29th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Rasti Ali MOHAMMED
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk of Counsel, instructed by Jackson Lees
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 24 November 2023

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Chowdhury dated 30 June 2023 dismissing an appeal against a decision of the Respondent dated 11 November 2022 refusing a protection claim.
2. The Appellant is a citizen of Iraq born on 9 March 1995. His immigration history and the background to his protection claim are set out in the documents on file, and further referenced in the Decision of the First-tier Tribunal as is necessary or incidental. It is unnecessary to repeat the full details here. Suffice presently to note that the Appellant's protection claim was based on a fear of his maternal uncle arising from a relationship that the Appellant had had with his cousin (i.e. the maternal uncle's daughter). This relationship is said to have involved extramarital sex, two proposals of

marriage rejected by the uncle, and an elopement. In this latter regard it is the Appellant's case that he fled Iraq with his cousin, but they had become separated whilst travelling between Turkey and Greece and he did not know of her whereabouts thereafter. The Appellant claims to be in fear of his life by reason of his uncle's pursuit of the restoration of family 'honour', and to have been disowned by his own family; in this latter regard he has also expressed a fear of his own father by reason of dishonouring the family.

3. The Respondent did not accept the Appellant's narrative account, and otherwise considered there would be no risk in returning to Iraq. The application for protection was refused accordingly.
4. The Appellant appealed to the IAC.
5. The appeal was dismissed for reasons set out in the 'Decision and Reasons' of First-tier Tribunal Judge Chowdhury signed on 30 June 2023.
6. The Appellant applied for permission to appeal to the Upper Tribunal, which was initially refused by First-tier Tribunal Judge Boyes on 4 August 2023. However, upon renewal permission was granted by Upper Tribunal Judge S Smith on 4 October 2023.
7. The Respondent has filed a Rule 24 response dated 18 October 2023 resisting the challenge to the decision of the First-tier Tribunal.

Consideration of the 'error of law' challenge

8. Paragraph 2 of the grant or permission to appeal is in these terms:

"Ground 4 is the strongest of the grounds. It is arguable that the judge made a mistake of fact at para. 65 when stating that the appellant did not mention his claimed relationship with his cousin at the screening interview. However, at question 4.1, the appellant is recorded as having done so. Since the judge ascribed significance to the appellant's alleged failure to mention that core feature of his claim at the screening interview, this ground is arguable."
9. Section 4.1 of the screening interview invites the applicant to state briefly all the reasons why he cannot return to his home country. The Appellant offered the following:

"If I return I will be killed. I've been threatened. I had an illicit relationship with my cousin. Her father is strong believer in Islam and threatened to kill me. I was threatened 15 or 20 days before I left. My uncle told my mother he was going to kill me."

10. Paragraph 65 of the Decision states:

“This is a man who claims to have fled Iraq because of persecution with his lover to Turkey. This was his reason for leaving the country and yet fails to mention at the first opportunity given to him any partner. This was a woman that he had repeatedly asked her family for her hand in marriage and had faced severe consequences as a result. He claims that it was his intention to marry her. I find it incredible that he chose not to mention her at the screening interview.”
11. I am satisfied that the factual misconception at paragraph 65 is so fundamental as to amount to an error of law.
12. In my judgement it is manifest from this passage that the Judge gave significant adverse weight to her perception that the Appellant had not mentioned his cousin at the screening interview.
13. Whilst it is to be noted that the Judge otherwise provided detailed and well-reasoned reasons in respect of other matters that undermined the Appellant’s overall credibility - see in particular paragraphs 56-59 and 61 - I am not persuaded that the weight of these other reasons renders the factual misconception displayed at paragraph 65 immaterial. The tone is one of significant incredulity, and it is not possible to separate out such tone from the ‘in the round’ assessment required in a protection claim.
14. For the avoidance of any doubt, I have considered the Respondent’s submissions in this regard. It is submitted that paragraph 65, following on as it does from paragraph 64, is in substance an expression of incredulity at the Appellant not providing more detail about his relationship with his cousin at the screening interview, which in turn flows into paragraph 66 where emphasis is placed on the absence of any reference in the screening interview to leaving Iraq in the company of his cousin.
15. At paragraph 64 the Judge notes *“As an aside”* that question 1.18 of the screening interview invited confirmation of details of any dependents in the asylum claim, and question 1.19 asked for details of a spouse or partner not included in the claim. I do not accept that either such question could accurately have been answered by reference to the Appellant’s cousin: she was not a dependent on his claim; they were not otherwise married or in a relationship akin to marriage. There is no omission here adverse to the Appellant’s case.
16. In this context it is to be noted that the Respondent raised no issue in the RFRL or the Respondent’s Review as to the deficiency of the answers at the screening interview by reference to either question 1.18 or 1.19. Moreover the Rule 24 response acknowledges in the context of addressing

a different ground of challenge that it is *“accepted that it may not have been appropriate for the Appellant to be expected to reveal his partner’s information in response to question 1.18 of the screening interview”* (Rule 24 response at paragraph 11).

17. In the circumstances paragraph 65 – which in any event does not read as a mere aside – does not read as a continuation of paragraph 64: it is a new point.
18. Even if there is some substance to the reasoning at paragraph 66, it does not in any way correct the error at paragraph 65. Further, I am not otherwise persuaded that it permits an interpretation of the words *“he chose not to mention her at the screening interview”* to mean in substance ‘he chose not to give more particulars about leaving the country with her at the screening interview’.
19. The error of law is such that in my judgement the decision of the First-tier Tribunal must be set aside. In the circumstances I do not propose to address the remaining grounds of appeal.
20. Because the error of law undermines the evaluation of the Appellant’s credibility and his narrative account, it is necessary that the appeal be reheard with all issues at large. The appropriate forum, as was common ground between the parties in such an event, is the first Tier Tribunal. Standard Directions will likely suffice – but I leave this as a matter to be determined by the First-tier Tribunal in its own case management.

Notice of Decision

21. The decision of the First-tier Tribunal contained a material error of law and is set aside.
22. The decision in the appeal is to be remade before the First-tier Tribunal with all issues at large, by any Judge other than First-tier Tribunal Judge Chowdhury or First-tier Tribunal Judge Boyes.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

21 February 2024