IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002710
First-tier Tribunal No: PA/51616/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NRK
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Georget, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 25 September 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant was born on 1 December 1981 in Qaladzia in the Kurdish region of Iraq (KRI) and is a national of Iraq of Kurdish ethnicity. She arrived in the UK on 17 May 2016 with her husband and three children and claimed asylum the same day. Her claim was refused on 15 November 2016 and she appealed against that decision. Her appeal was dismissed on 15 September 2017 and she became appeal rights exhausted on 7 February 2018. On 24 October 2018 the appellant lodged further submissions which were refused with a right of appeal on 19 June 2019. She appealed against that decision and her appeal was dismissed on 6 November 2019. The appellant then made further submissions on 29 March 2022 which were again refused

with a right of appeal on 8 December 2022. The appellant's appeal was dismissed on 12 April 2024 and it is that decision which has given rise to these proceedings.

3. The appellant claims to be at risk on return to Iraq because she dishonoured her family by refusing to marry her cousin and by running away to marry her husband. She claims that her father was a high ranking member within the PUK. She claims that when she turned 18 her family arranged for her to marry her cousin MK who was 16 years older than her and already had a wife and a family. She claims that MK attacked her because she did not want to marry him, in May 1999, June 1999 and again in December 1999 when he shot her in the face. She survived the shooting which went through both cheeks and smashed her teeth, and had to have four operations on her face. She met her husband after the first attack and ran away with him after her final operation, in 2005, to a village where they lived for five years without difficulty. They married and had a child in 2007. They fled to Iran in 2010 when shots were fired at the house where they were staying but returned to the village in Iraq in 2012 for two weeks when she gave birth to her second child. Her third child was born in Iran in 2014. In 2016 the appellant was told that there was an unfamiliar person sighted in the village who may be from Etela'at and so the family then left Iran and travelled to the UK.

4. The respondent, in refusing the appellant's claim on 15 November 2016, did not accept her account of being forced to marry her cousin. The appellant's appeal was heard by First-tier tribunal Judge Boylan-Kemp on 18 August 2017 and was dismissed on 15 September 2017. Judge Boylan-Kemp accepted that the appellant had suffered a significant facial trauma but did not accept that it had been caused in the manner claimed by the appellant and did not accept her account credible in any respect. The judge did not give any weight to two witnesses who had testified as to the appellant's father position within the PUK and did not accept the appellant's account of her father's influence or interest in her. The judge found that the appellant had been sent to the UK to access medical treatment and that it was likely that her family had assisted her in making the journey to the Uk and in gathering evidence and witnesses for her claim. The judge concluded that the appellant was at no risk on return to Iraq on the basis claimed, that she and her husband could access their CSID cards with the help of their family in Iraq, and that the removal of the family would not breach their human rights.

5. The appellant maintained her claim in her further submissions which were refused by the respondent on the same basis. The appellant's appeal against that second decision came before First-tier Tribunal Judge Fox on 8 October 2019 and was dismissed in a decision promulgated on 8 November 2019. Judge Fox found that there were no new circumstances which justified departing from the previous decision of the First-tier Tribunal. The appellant was relying, before Judge Fox, upon a recent visit she had made to the Iraqi Embassy and to her lack of success in being able to redocument herself. Judge Fox did not accept that the appellant had genuinely cooperated with the Iraqi Embassy to facilitate her return to Iraq. He found that the appellant had not provided a reliable account of her circumstances and that she had sought to mislead the Tribunal to create the appearance of barriers to the re-documentation process. He found no reason to depart from the previous decision and he accordingly dismissed the appellant's appeal on all grounds.

6. In the refusal decision for the appellant's most recent submissions, dated 8 December 2022, the respondent maintained her conclusion that the appellant's claim was not credible and rejected her claim to be at risk on return on the basis of her Kurdish ethnicity and her Sunni Muslim religion. It was not accepted that the appellant

was at any risk on return under Article 15(c) or Article 15(b) of the Qualification Directive on the basis of the general security and humanitarian situation in Iraq. The respondent maintained her position that the appellant would be able to obtain her CSID card through her relatives in Iraq and considered that her removal to Iraq would not breach her human rights. The respondent considered the appellant's family members, noting that she had a fourth child born in the UK on 8 March 2021, and concluded that they could also return to Iraq with the appellant.

7. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Hena on 23 February 2024. Judge Hena noted that the appellant was maintaining the same account of being at risk of an honour killing because of her refusal to marry her cousin and of being shot by her cousin. She noted that there was new evidence, namely medical evidence as well as the new country guidance in SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110, and evidence from a witness, a friend of the appellant's husband. Judge Hena did not accept the claim made by the appellant to be at risk from Shia militias in Iraq due to being a Sunni Kurd. She accepted, from the new evidence from the witness, that the appellant's father was a local leader in his town, but she otherwise rejected the appellant's claim and concluded that the appellant had been shot by accident and that she was not estranged from her family. Judge Hena had regard to a psychiatric report prepared in regard to the appellant's mental health and concluded that the appellant's symptoms of trauma, referred to in the report, were explained by the accidental shooting, and further that she would be able to access treatment for her mental health issues in Iraq. With regard to documentation, the judge found there to be no reason to depart from the findings of the previous Tribunals and that the appellant could access her ID documentation from her family in Iraq.

8. The appellant sought permission to appeal to the Upper Tribunal against Judge Hena's decision on three grounds. Firstly, that the judge had failed to consider s117B(6) and the question of reasonableness in relation to the children being expected to leave the UK, given that by the date of the hearing they had been in the UK for more than 7 years; secondly, that the judge had erred by not giving full weight to the evidence of the witness about the appellant running away with his friend; and thirdly, with reference to SMO, that the judge had failed to consider the issue of documentation in relation to the children and particular the youngest child who was born in the UK.

9. Permission was refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal on a renewed application and the matter then came before me for a hearing. Both parties made submissions and those submissions are addressed below.

Analysis

10. The first ground addressed by Mr Georget was the challenge to the judge's findings on the evidence of the witness, the friend of the appellant's husband. He submitted that the judge had not given a sustainable reason at [33] for finding that the evidence of the witness was implausible, given her finding at [32], that there was no reason not to find his evidence credible and that she accepted that the appellant's father was a local leader. Having made that finding, it was problematic, Mr Georget submitted, that the judge at [33] found implausible his account of the shooting of the appellant being an act of revenge. Mr Georget submitted that such a finding was without any support from the country evidence but rather was contrary to the country evidence which specifically referred to honour killings often being passed off by family as an accident.

11.Having read [32] and [33] several times, I have to agree with Mr Georget that the judge's approach to the evidence of the witness, and her findings on that evidence, are problematic. The judge's findings in those paragraphs are difficult to comprehend. It is not clear to what extent she accepted the evidence of the witness and to what extent that impacted upon her overall findings of the appellant's claim. It is not clear whether or not the judge accepted from the witness's evidence that the appellant was shot by her cousin and it is not clear from her record of the evidence at [33] if it was the witness's evidence that it was his own understanding that the appellant's father would want revenge for her running away with his friend (her current husband) or if it was something he had heard. At [32] the judge said that the evidence was enough for her to depart from the previous Tribunal's findings "on this issue" but she did not elaborate or explain if she was disregarding all of the findings made by the previous Tribunals or only in some respects and, if so, in which respects. All of those concerns are material to the outcome of the appeal since they give rise to a lack of clarity in the judge's reasoning in rejecting the appellant's account which in turn, as pointed out by Judge Rintoul in his grant of permission, also impacts upon the judge's findings on documentation.

12.As for the main ground upon which permission was granted, namely the judge's failure to consider section 117B(6), the relevant question is whether that was a 'Robinson obvious' matter which the judge ought to have considered, irrespective of the fact that it was not raised before her, which Mr Georget conceded was, somewhat surprisingly, the case. I have to agree with Mr Georget that it was a matter which the judge should have considered given that it is a statutory requirement of the public interest consideration. It may well be, ultimately, that it would not have made any material difference to the judge's decision, but it was a matter that should at least have been considered. In any event, the matter was, as with ground two, somewhat parasitic on the first ground which went to the credibility of the appellant's claim and the question of risk on return.

13.In the circumstances it seems to me that Judge Hena's decision is materially flawed and cannot stand. Given the nature of the first error identified, the only appropriate course would be for the entire matter to be re-heard, as was agreed by both parties. The matter will therefore have to be considered *de novo* in the First-tier Tribunal.

Notice of Decision

14.The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Hena.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2024