Neutral Citation Number: [2023] EWCA Civ 1282

Case No: CA-2022-002237

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
UTJ Gleeson
LP/00140/2020

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03 November 2023

Before:

LORD JUSTICE BAKER
LADY JUSTICE SIMLER
and
LADY JUSTICE ELISABETH LAING

- -

Between:

ASO (IRAQ)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Craig Holmes (instructed by **Parker Rhodes Hickmotts Solicitors**) for the **Appellant**
Paul Skinner (instructed by **The Treasury Solicitor**) for the **Respondent**

Hearing date: 12 October 2023

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Approved Judgment

This judgment was handed down remotely at 11.00 am on Friday 3 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Elisabeth Laing:

Introduction

1. The Appellant ('A') appeals, with the permission of Bean LJ, against a determination of the Upper Tribunal (Immigration and Asylum) Chamber ('the UT'), dismissing his appeal from a determination of the First-tier Tribunal (Immigration and Asylum Chamber) ('the F-tT'). The F-tT had dismissed A's appeal from the Secretary of State's decision dated 20 February 2020 to refuse A's protection claims ('the Decision').

2. On this appeal, A was represented by Mr Holmes. Mr Skinner represented the Secretary of State. I thank both counsel for their oral and written submissions, which were excellent.

3. One of the strands of A's protection claim was that he would be at risk of violence if he were returned to Iraq because of his relationship with his girlfriend, S. The first issue on this appeal is whether the F-tT's assessment of that aspect of A's protection claim was flawed. The second issue, if, and to the extent that it was, is whether the UT was entitled to conclude that there were, nevertheless, no grounds on which it could interfere with the F-tT's decision that, in that part of his claim, A was not 'credible and reliable'. Another way of describing the second issue is whether it was open to the UT to decide that any error by the UT was immaterial, although that is not how the UT described that issue.

4. In this judgment, paragraph references are to the determination of the F-tT ('determination 1') or of the UT ('determination 2') unless I say otherwise. The F-tT relied on various Country Policy and Information Notes. I will refer to each as a 'CPIN'. In short, a CPIN is a document which is produced by the Secretary of State for decision makers which contains a range of information about various countries which is potentially relevant to protection claims.

The facts

5. The F-tT recorded that A left Iraq in August 2015 and travelled to Turkey with an agent (paragraph 5). He travelled from Turkey to Sweden. He claimed asylum in Sweden. His claim was rejected. He left Sweden on 20 November 2015 (paragraph 6). He then went to Denmark, Germany and Holland. He handed himself over to the police in Rotterdam and his fingerprints were taken on 22 November '2019'. I infer that the F-tT meant '2017'. He was told he would be deported to Sweden. To avoid that, he went by train to France. He then 'stayed in the jungle forest' and eventually travelled to the United Kingdom.

6. A arrived clandestinely in the United Kingdom on 20 December 2017. On 21 December 2017 he claimed asylum. The F-tT also recorded that, in cross-examination at the hearing, A had said that he had claimed asylum in Holland by mistake. The Dutch authorities did not interview him and had simply wanted to send him back to Sweden. He also said that his Swedish asylum claim was 'on same basis' as his claim in the United Kingdom (paragraph 11).

The Decision

7. The F-tT summarised the Decision in paragraphs 26-28. The reasons for refusal, said the F-tT, were full. In short, A had been inconsistent and not credible in his account of being at risk in Iraq. A had not taken a reasonable opportunity to claim asylum in a safe country before arriving in the United Kingdom and had not explained that failure. His failure to give the name and details of S and of her father in his asylum screening interview ('ASI') engaged section 8 of the Asylum and Immigration (Treatment of Claimants Etc) Act 2004. His credibility was damaged by that. There was sufficient State protection and A could safely move to another area of Iraq, in particular, to part of the Iraqi Kurdish Region ('the IKR') which was controlled by the Kurdistan Democratic Party ('the KDP').

8. The arguments turn, in part, on what A is recorded as having said in his asylum interview, by reference to the Asylum Interview Record ('AIR'), in answer to question 'AI356'. The AIR was not in the bundle of documents for this appeal. The F-tT referred to this answer in paragraph 19, but did not quote it directly. I have not been able to find any reference to question '356' in the Decision. Paragraph 49 of the Decision refers to 'AIR 147' and 'AIR 152'. A is recorded as having said that S's 'family then threatened my family with death threat' during the seven days when A was staying in Erbil and as having said '…they came to threaten my family'. Paragraph 50 refers to AIR 156. A is said to have replied that he 'would have been killed if they found out' where he was. Paragraph 51 of the Decision also recorded that in AIR 158, A had been asked why he was in danger, since he had not personally received a threat, and had answered, '…they came to my families [sic] home because of me they were after me'.

The F-tT's summary of A's case

9. The F-tT accurately summarised A's case, as that case was described in A's appeal skeleton argument ('ASA') (paragraphs 29-32). A was an ethnic Kurd from Ranyah in the Sulaymaniyah Governorate. He was born in 1997. When he was about 18, he began a relationship with S, with whom he was at school. Their relationship 'became intimate when they met in [A']s father's car'. He then found out that members of her family were connected with the Patriotic Union of Kurdistan ('the PUK') and Asayish (a security organisation in the IKR).

10. He sent his mother and aunt to ask S's family for her hand in marriage. He was rejected because of his family's connection with the Ba'ath party. A and S continued their relationship by telephone, and sometimes at school. She was 'later "forced to marry" as soon as possible'. A took S to a lady who said she would take S to a women's rights centre, because S did not want to marry her cousin.

11. A contended that the F-tT had to decide seven factual issues, applying the standard of reasonable likelihood. Three are potentially relevant to this appeal.
    i. Did A have an illicit relationship with S?
    ii. Did their relationship become known to S's family?
    iii. Were S's family members associated with the PUK and Asayish?

The F-tT hearing

12. A was represented by Mr Holmes and the Secretary of State by a Presenting Officer. The F-tT had a hearing bundle which included all the material which was before the Secretary of State when she made the Decision, A's witness statement, and some 'objective material' (that is, general information about Iraq). The F-tT said that it had 'read, assessed the relevant weight of and taken into account' A's witness statement, the documents, and the oral evidence in 'reaching' its decision (paragraph 8). A gave evidence with the help of an interpreter in Kurdish (Sorani). The F-tT 'incorporated the relevant parts' of A's oral evidence in its findings (paragraph 9).

The F-tT's summary of A's oral evidence

13. In paragraphs 10-25, the F-tT summarised A's oral evidence. A adopted his witness statement dated 3 August 2020. His witness statement was not in the bundle for this appeal. A agreed with paragraphs 10 and 11 of the Decision, with the exception of paragraph 10g (paragraph 10).

14. A had given the names of his girlfriend and of her father to the Swedish authorities. He had refused to name them in his ASI. The record of the ASI was not in the bundle for this appeal. A said that he had been told to give 'very brief answers' in his ASI. The main reason he did not name them was because he was confused and scared, having just arrived in the United Kingdom. He was afraid of being sent back to Sweden and that the information 'was not confidential'. He gave their full details in his asylum interview (paragraph 12). As I have already said, the AIR was not in the bundle of documents for this appeal, either.

15. He had not had any news about his girlfriend since leaving Iraq. The only person he had contacted since leaving Iraq was his mother. He had contacted her secretly a few days after he arrived in the United Kingdom (paragraph 14). He accepted that he had a Facebook account in his own name in the United Kingdom. He had not had any messages from anyone in Iraq, including messages from people who wanted to do him harm. 'He explained that the people who wanted to do him harm might not have access to his Facebook account' (paragraph 15).

16. 'Mr Saeed' did not arrange for his girlfriend to go to the safe house. It is not clear from determination 1 who 'Mr Saeed' is. He did that himself, with his friend, R (paragraph 16). He had changed his account about contact with people in Iraq since his arrival in the United Kingdom, saying that he had telephoned R 'about twice'. He had memorised R's landline number before 'while she was still in Iraq as they are best friends' (paragraph 17). This sentence in determination 1 is hard to understand. It may be that 'she' is a mistake for 'he'.

17. A said that, although that he had memorised S's number when they were in Iraq, he had tried to ring her as 'the refuge home took her mobile telephone from her as it was not safe for her to use it whilst she was there. It was the lady from the refuge who took S's phone. He had not had contact with her via his Facebook account' (paragraph 18).

18. He was asked about answer '356' in the AIR. He had said 'that when he said that his family received threats from S's family, the threats were that they were going to kill him, not to kill any members of his family. He did not know if any member of his family

had been threatened personally as he had no contact with them anymore. He denied that he had said in AI 356 that his family members had been threatened with death' (paragraph 19). As I have already indicated, the F-tT did not describe or summarise answer '356', or the question to which it was a reply.

19. The telephone to which he referred in the AIR was a telephone he had got in Sweden. It was taken from him by the authorities. The photographs in the telephone were taken by him in Sweden (paragraph 20). S's family did not know that he and S were in a relationship even when the marriage proposal was made, and still do not know, as far as he is aware (paragraph 23). She was being forced to marry an older cousin. She did not want to. That was why he arranged for her to be taken to the refuge centre. Her family must have found out that he had done that. He did not personally take S there, as it was in a secret place. He took her to a lady from the refuge. S had been due to marry the older cousin, against her will, about the time A left Iraq (paragraph 24).

20. In paragraph 25, the F-tT recorded that it had asked A some questions. A had said that his Facebook account settings were private so that it was not available for anyone to read. The F-tT also asked him questions about his CSID card.

The F-tT's relevant findings

21. Paragraphs 33-66 headed 'Findings as to Credibility and Fact'. In paragraph 33, the F-tT recorded that there was no dispute about A's age, sex, nationality, Kurdish ethnicity or Sunni faith.

22. Paragraphs 34-43 are headed 'The Appellant's Relationship'. A had consistently said that his relationship with S was 'almost exclusively restricted to him talking to her in plain sight at school so it would not be detected. It became sexual on one occasion only, when they were alone in A's father's car'. He had said, in paragraph 5 of his witness statement, that the Secretary of State was wrong that S's family had allowed the relationship to continue. This appears to refer to paragraph 45 of the Decision. A had said, 'I would like to say that S's family were not aware of our relationship. My family knew that I love the girl however they did not know that we were in a relationship. My family and S's family did not know about the relationship otherwise this would have created more problems for us'. The F-tT commented that A had 'maintained this account throughout the appeal hearing' (paragraph 35).

23. A explained that S's family must have discovered that he had organised for her to go to the refuge centre, which led S's family to go to A's family to tell them that they were going to kill A. The F-tT added that A had 'consistently maintained that he had not said that S's family had threatened to kill members of his own family'. The F-tT added that 'there is no evidence before me that any of [A's] family have been harmed in any way by S's family' in the way described in Section 7 of the CPIN dealing with Kurdish 'honour' crimes. The F-tT then quoted that CPIN (paragraph 36):

> *'So-called 'honour' crimes are acts of violence perpetrated by family members against a relative who is perceived to have brought shame upon members of the family or tribe. 'Honour' crimes are overwhelmingly perpetrated by male family members against female relatives, although occasionally males are also the victims of such violence…in Iraq, 'honour' crimes most often take the form of murder, although they can also encompass*

> *other forms of violence such as physical abuse, confinement, control of movement, deprivation of education, forced marriage, forced suicide and public dishonour. Wadie Jwaideh noted: 'In the severely puritanical atmosphere of Kurdistan, death is the usual punishment for any breach of the moral code.'*

24. The F-tT introduced paragraph 37 with the sentence: '[A] and S would have been approximately 18 years-of-age in 2015 when he claims the proposal of marriage was made'. The F-tT then quoted from Section 6 of the CPIN, under the heading 'Marrying Age':

> *'Kurdish Marriage Patterns, in the Marriage and Family Encyclopaedias, observed:*
>
> *'The marriage age of male and female children varies according to socioeconomic class and the specific needs of individual families. The average age for marriage increases in urban areas, where the parties involved are usually educated and employed. Although the marriage age of boys is slightly higher than girls, this depends on various social and economic strategies of households. Generally girls' marriages are postponed when there is a labor shortage in the family. However they may be given in marriage at an early age to settle a dispute in a case of kidnapping, taking an unmarried girl against her will. That is, if a son of family A kidnaps a girl from family B, the resulting dispute between the two families cannot be settled unless family A gives the girl to family B. The possibilities of both eloping and kidnapping also contribute to the desire to arrange early marriages for girls.*
>
> *A report by the Norwegian Refugee Council (NRC) observed that, in Dohuk, local Kurdish women reported that the common age for girls to marry was between 15 and 18, 'but they felt that the best age was at 25'. 'In contrast, the male focus group in KRI felt that girls should marry at 15-20 years, whereas men should wait until they were 25-30 years old. Many of the females felt that they were subjected to parental pressure'. It quoted one woman from Dohuk who said, 'When a girl gets a proposal, the family accepts because it's not socially acceptable to refuse'.*

25. The F-tT then said, 'I, therefore, conclude that his account of the marriage proposal is inconsistent with the known background material set out above and is not credible and reliable (paragraph 38).

26. The F-tT added that there was 'no reliable evidence before me that S's family were aware of her fleeing to a refuge centre for women'. A was 'merely speculating' when he inferred that they must have discovered that he had organised S's flight to the refuge centre. Nor was there any evidence that S's family had alerted the authorities that S may have been abducted by A, notwithstanding A's claim that S's father had influence with the PUK. A did not claim that criminal proceedings had been started against him, or that the authorities had visited his family to question his parents about where he and S were (paragraph 40).

27. Nor was there any evidence from the refuge centre, or that S had been harmed in any way, or returned to her family. The F-tT added that, in the light of A's claim that his family knew that he was in love with S, that they went to school together, 'I conclude that they lived in the same local Kurdish community in Ranyah. I, therefore, conclude that his mother, at the very least, would have learned of S's fate after [A] left Iraq. In reaching this conclusion, I have taken into account' Section 5 of the CPIN, headed 'Status of Women'. The F-tT then quoted this passage:

> *'Wadie Jwaideh, in his 1960 book on the Kurds, noted: 'Most writers seem to agree that Kurdish women enjoy a remarkable degree of freedom in comparison with many Arab women. …In this respect, Kurds seem more like the people of eastern Europe than the people of the Middle East.' He further observed that: 'The Kurdish woman is mistress in her own home. Her influence in the family circle is considerable, and her counsel is heeded and respected' and women have often attained great power and influence in Kurdistan, some of them even being recognised as chiefs of their tribes.'*

28. In paragraph 41, the F-tT added that, on his own account, R was A's best friend, and 'he telephoned him at least twice from the UK. The last call was about twelve months ago. I infer that he lived in the same locality as [A], Ranyah, and he would have known whether R [sic] was still not at her home with her family of if she had been harmed by them and forced to marry her cousin after a period of about four years after [A] fled the IKR'. The F-tT appears to have confused 'R' and 'S' in the third sentence of this paragraph.

29. The F-tT's conclusion on this part of A's claim was 'I do not find [A] to be credible and reliable in his claim that he had a secret relationship with S at school which became intimate on one occasion leading to his family making a marriage proposal on his behalf. His account of their contact together and relationship is very vague' (paragraph 42). In paragraph 42, the F-tT added that it did not have a copy of A's asylum claim in Sweden 'to illustrate consistency or inconsistency in the two claims. I conclude on the evidence before me taken as a whole, that [A] has failed to show, to the low standard required, that he had a relationship with S and that her family have threatened to harm him, as claimed'.

A's grounds of appeal from the F-tT to the UT

30. Mr Holmes drafted A's grounds of appeal. He listed five grounds in paragraph 2. In his oral submissions to this court, Mr Holmes identified the grounds which were relevant to this appeal.

31. The first ground was ground (ii)(b). A argued that the F-tT failed to take account of material evidence in finding that A's mother and friend should have been able to tell A where S was. That evidence was said to be A's consistent evidence that S had been taken away to a refuge, and her whereabouts had been kept secret, so that, as A said in cross-examination, his friend would not have been able to inform A where S was.

32. Ground (iii) was headed 'Mistake of Fact/Adequate Reasons'. This ground was that, in three respects, the F-tT had made a mistake of fact about the contents of the background

material relied on, and/or had failed to give adequate reasons why those passages applied. The paragraphs relevant to this appeal are paragraphs 36 and 40.

33. Ground (iv) was that the F-tT had failed to give adequate reasons. A relied on paragraphs 38 and 42.

The F-tT's grant of permission to appeal

34. On 12 November 2020, the F-tT gave permission to appeal on all grounds.

The UT's reasons for dismissing A's appeal

35. The UT held a remote hearing. A was represented by Mr Holmes. A Senior Presenting Officer represented the Secretary of State. The UT described the background in paragraphs 3-11. In paragraph 3, the UT explained that the PUK were sharing power with the KDP in the IKR. The UT summarised determination 1 in paragraphs 12-15. The UT quoted the material paragraphs of the F-tT's grant of permission to appeal in paragraph 17. The UT then described the hearing, in paragraphs 20-21. The UT explained that Mr Holmes had 're-configured his argument under grounds (iii)-(iv)'.

36. He had argued that, in seven different respects, the F-tT had made findings of fact which were not open to it, or which had not been reasoned adequately or at all (paragraph 21). Four concern the issues on this appeal.

i. Would A's friend or mother have known where S was, and whether she was still hiding for her own protection?
ii. Was the information in the CPIN about honour killings and the status of women relevant?
iii. Was evidence that A's family had not been harmed since he left Iraq relevant?
iv. Were A's and S's claimed ages inconsistent with evidence about dates of marriage in the IKR?

37. The UT's 'Analysis' is in paragraphs 22-30. The UT reminded itself of 'the narrow circumstances in which it is appropriate to interfere with a finding of fact by [the F-tT] who has heard the parties give oral evidence'. The UT then cited two authorities of this court and said, 'I therefore consider each of the findings'. The UT considered this aspect of the appeal in paragraphs 28 and 29.

38. In paragraph 29, it observed that A's 'lack of concern for, or contact with, his former partner is strange, and [the F-tT] was entitled so to find. Either the young woman was discovered, and forced to marry her older cousin, or she was not. His friend took her to the women's refuge and [A] has had at least two conversations with his friend since coming to the United Kingdom. [The F-tT] did not err in expressing surprise that the question of the safety of the young woman as not discussed'.

39. Paragraph 29 is concise:

> *'The country evidence extracts at [36] - [37] and [40] of the decision do not add significantly to [the F-tT's] reasoning but nor do they detract from it. They are simply superfluous and no arguably material error of law can be drawn therefrom.'*

The grounds of appeal from the UT to this court

40. There are two grounds of appeal.
    i. The UT did not apply the right test when deciding whether or not any errors of law by the F-tT were material.
    ii. The UT did not give adequate reasons for dismissing the appeal from the F-tT.

Discussion

Three introductory points

41. The starting point for this appeal, as for the appeal to the UT, is that the appellate courts are bound to recognise the special expertise of the F-tT. An appellate court must assume, unless it detects an express misdirection, or unless it is confident, from the express reasoning, that it must be based on an implicit misdirection, that the specialist tribunal knows, and has applied, the relevant law. The appellate court must also bear in mind, on an appeal on a point of law, that questions of fact and of evaluation are for the specialist tribunal, unless its approach is *Wednesbury* unreasonable.

42. The starting point for the F-tT on A's appeal to it, as the F-tT recognised (paragraphs 4 and 43) is 'the low standard required'. A did not have to prove any facts, even past facts, on the balance of probabilities, as he would have had to in a civil claim (*Karanarkaran v Secretary of State for the Home Department* [2000] 3 All ER 449). The reason for that is that it cannot be necessarily held against an appellant, who claims to have fled for his life, that he has not assembled the necessary evidence to 'prove' those parts of his claim which might be thought to be capable of proof, as much if not all of such evidence is likely to originate in the country he has fled. Instead, A had to show, by reference to all the material he relied on, that, if he were returned to Iraq, there would be a real risk of persecution for a Convention reason, or a real risk that he would suffer harm breaching article 3 of the European Convention on Human Rights.

43. There was some debate in submissions about the test which we should apply on this appeal in order to decide whether or not, if the F-tT did err in law in its approach to A's appeal, any such error was material, or not. As I understood the arguments, counsel in the end agreed that the question for us, based on the formula in paragraph 49 of the judgment of Sales LJ (as he then was) in *Secretary of State for the Home Department v AJ (Angola)* [2014] EWCA Civ 1636 is whether 'it is clear on the materials before [the F-tT] any rational tribunal must have come to the same conclusion'. If that is clear, then any error of law would be immaterial, and the appeal should fail.

44. The UT did not engage with A's criticisms of the F-tT's reasoning in paragraphs 36, 37 and 40. It did not decide whether the F-tT had erred in law, but held, rather, that those paragraphs could simply be ignored. I do not accept that those paragraphs should be ignored, for three reasons. First, if there were no errors of law, the UT should have dismissed A's appeal. Second, if there were any errors of law, it is not possible to decide

whether they were material without deciding, first, the nature and extent of any such errors, and to what extent, if any, the decision rested on those errors. Third, it is not possible to decide whether any errors are material without considering whether a rational tribunal would have been bound to come to the same decision on the evidence which the F-tT considered. As Mr Holmes pointed out in his oral submissions, when a court decides whether or not errors are material, it is wrong in principle to apply a notional blue pencil to the potentially erroneous passages, as those passages may be relevant to a decision about materiality, if that point is reached.

45. I will therefore consider, first, the parts of the F-tT's reasons for rejecting A's claim which were criticised by Mr Holmes, and whether, as he submitted, any parts of those reasons are flawed. I will then consider the impact of that analysis on the F-tT's overall conclusions. Finally, I will consider whether any errors were material.

Paragraph 36 of determination 1

46. The F-tT twice recorded its understanding (in paragraphs 19 and 36) that A's case at the hearing was that S's family had made threats to A's family that they would kill A. It was not A's evidence at the F-tT hearing, as recorded and as understood by the F-tT, that S's family had threatened to harm members of A's family. It may be that the F-tT was referring by implication to some of A's answers in the AIR (see paragraph 8, above), although it did not say so expressly. But A's answers also included the answer to AIR 158. If the F-tT's point was that A's case at the hearing was inconsistent with his answers in the AIR, first, the F-tT did not say so, and second, it did not explain what it made of AIR 158.

47. Something is missing, therefore, from the reasoning which led to the F-tT's observation that there 'was no evidence before me that any of [A's] family have been harmed in any way by S's family' as set out in section 7 of the CPIN. Set against A's evidence at the hearing, and in the absence of a reasoned finding about the significance of A's answers in the AIR, read as a whole, the observation is hard to understand, for at least three reasons. First, the passage from section 7 of the CPIN says nothing about members of a woman's family (or, come to that, of a man's family) being threatened or harmed as a part of (misnamed) 'honour' crimes. It neither supports, nor contradicts such a contention, were such a contention made. Second, and more problematically, as the F-tT was aware, such a contention was not being made by A at the hearing. Finally, perhaps the F-tT's point was that section 7 does not support a claim that a man who was involved in a relationship which was thought to be a threat to the supposed 'honour' of a woman, or of her family, would be threatened or harmed. Even if the quoted passage is ambiguous about that, it does not contradict such a case, and, if that was the F-tT's point, it is a bad point, as a passage from the CPIN quoted in the Decision at paragraph 44, makes clear ('sometimes the man as well').

48. Whether or not the reasoning in paragraph 36 makes sense, the natural reading of paragraph 36, read as a whole, is that the F-tT considered (wrongly, in my judgment), that, somehow, this part of A's case at the hearing was inconsistent with the CPIN. The only part of the F-tT's reasoning which can survive this analysis is the completely irrelevant but nevertheless correct comment that there was no evidence that any member of A's family had been harmed. The F-tT failed, however, to take into account as potential support for A's claim the fact that the better reading of this section of the

CPIN, in the light of the passage from the CPIN quoted in the Decision, is that the woman involved in a relationship of which her family disapproved could be threatened or harmed, and so could the man. That was capable of providing some support for that aspect of A's claim.

Paragraphs 37 – 38 of determination 1

49. Mr Skinner argued that the only relevant part of paragraph 37 was the final sentence of the quotation from the CPIN, which, he submitted, supported the F-tT's conclusion, in paragraph 38, that A's account of the marriage proposal (focussing only on its rejection by S's family) was inconsistent with the background material and therefore not credible and reliable. I reject that argument. The natural reading of paragraphs 37 and 38 in their context is that the F-tT was relying on the CPIN to contradict two parts of A's claim: that a marriage proposal had been made when he and S were both 18, and that it had been rejected by S's family. Those two aspects of A's claim were not 'inconsistent' with the background material. The background material was not strongly persuasive, still less conclusive, on either issue. The general material about marriage ages is just that, very general. It did not contradict, but potentially provided some support for, A's case. The statements from groups about marriage ages came, first, from a report about 'local Kurdish women in Dohuk' (a different part of the KRI from Ranyah), and second from 'a male focus group in KRI', the location of which was not identified. The reader does not know how many people were asked, or how representative their views were of views in the KRI generally. Be that as it may, none of the views was inconsistent with S's age. The male group 'felt' that men 'should wait' until they were 25-30 years old. But it does not follow from that opinion, either, that all men in the KRI wait until they are 25-30, nor that A's proposal, made when he was 18, was 'not credible and reliable'.

50. Similar points apply to the 'one woman from Dohuk' who is said to have stated that 'When a girl gets a proposal, the family accepts because it's not socially acceptable to refuse'. It does not follow, from that one opinion, expressed by one woman in Dohuk, that A's account was 'not credible and reliable'. The F-tT simply did not explain how its apparent conclusion followed from this flimsy premise.

51. Most of the material in paragraph 37, therefore, was capable of supporting A's claim that he and S were 18 when the proposal was made; and none of that material was capable, logically, of contradicting that aspect of his claim. The last sentence quoted in paragraph 37 could be seen as contradicting an aspect of his claim (that S's family rejected that proposal) but I consider that the F-tT should not have given the statement of one anonymous source decisive weight without explaining why.

Paragraph 40

52. The F-tT concluded in paragraph 40, for the reasons given in that paragraph, that A's mother would have found out what happened to S after A left Iraq. The F-tT added, that 'In reaching this conclusion I have taken into account' material in section 5 of the CPIN about the status of women in Kurdistan. I reject A's submission that this passage has no logical bearing on whether or not A's mother could, or would, have found out about S's fate. It provides some support for that conclusion, because the degree of freedom to which it refers is consistent with a view that S's mother could have made her own

inquiries about S's fate. I consider that that conclusion was open to the F-tT on the evidence.

The impact of the F-tT's errors on its conclusions

53. In sum, the F-tT rejected A's claim because it did not find A 'credible and reliable in his claim that he had a secret relationship with S… which led his family to make a proposal' to A's family (paragraph 42). The F-tT gave seven reasons for that conclusion. The third reason was based on two suggested inconsistencies with the background material. I list those reasons in the order in which they appear in determination 1.

    i. There was 'no evidence' before the F-tT that any member of A's family had been harmed in any way by S's family.
    ii. A's account of the marriage proposal was 'inconsistent with the known background material' in two different respects and was 'not credible and not reliable'.
    iii. There was no 'reliable' evidence that S's family knew that she had fled to a refuge (paragraph 39). There was only speculation by A to that effect.
    iv. There was no evidence that S's family had contacted the authorities about S's disappearance, that criminal proceedings had been started against A or that his family had been questioned.
    v. There was no evidence from the refuge, or that S had been harmed, or returned to her family; and, for various reasons, A's mother would have learned of S's fate, at the latest, by the time A had left Iraq.
    vi. A's best friend, R, would have known what had happened to S.
    vii. A's account of their contact and relationship was 'very vague'.

54. The structure of those reasons is important. The first reason is based on one of two alternative planks. The first plank is an apparent misunderstanding of A's case at the hearing and of its relationship with the background evidence. The second might be that A's evidence at the hearing was inconsistent with his answers in the AIR, that the answers in his AIR were his real case, and that that real case was inconsistent with the background evidence. The F-tT did not spell out that potential alternative reasoning in the determination, and in order to rely on it, would have had to have done so, and to say what it made of the relevant answers understood as a whole. The first plank was not a valid reason for rejecting A's claim. Nor was the second, because the F-tT did not expressly rely on it.

55. I have already explained why I consider that the second pair of reasons was flawed.

56. The third conclusion refers to an absence of 'reliable' evidence. That is the F-tT's description of A's evidence on the point. The conclusion that A's evidence on that point was not reliable either depends on, or must be influenced by, the earlier reasoning, including the second pair of (flawed) conclusions that two aspects of A's claim were inconsistent with the background evidence and therefore not 'credible and not reliable'. The fourth and fifth reasons are based on an absence of evidence about various potential events in the KRI, and a circumstantial inference that A's mother would have known about S's fate. The sixth is a circumstantial inference about R's knowledge. The seventh is a brief comment about the vagueness of A's account about the relationship and his contact with S.

Were those errors material?

57. The question is whether, on the evidence which was before the F-tT, any rational tribunal would be bound to reject A's claim. That tribunal would know that other aspects of A's claim had failed on credibility grounds, including his argument that his family was connected with the Ba'ath party. That would mean, although the F-tT did not rely on this, that A would not be able to rely on his stated reason for the rejection of the marriage proposal. That tribunal would also take into account all the relevant answers in the AIR, and all the intrinsic difficulties in A's claim which were identified in the Decision and by the F-tT.

58. By a narrow margin, I do not consider that that test is met. This is a protection claim. As I have said, the direct evidence from the country of origin which an appellant may be able to adduce in such a claim may be limited. Such claims will therefore depend on a range of factors, such as an assessment of his evidence, of its internal consistency, of its plausibility and of its consistency with relevant background material, while allowances must be made for the intrinsic difficulties inherent in such claims. In this case, A's claim at the hearing was consistent, to an extent, with the background evidence, as the Decision acknowledged, and not inconsistent with it. The F-tT's express conclusions that parts of A's evidence were not credible and reliable were flawed, for the reasons I have given. To the extent that the F-tT's reasons for rejecting the claim were sound or potentially sound, they rested on an absence of evidence about various possible events in Iraq, and on evaluations and inferences by the F-tT, or on an absence of express reasoning by the F-tT. I do not consider that this is a case in which any rational tribunal would have been bound to make the same evaluations and to draw the same inferences from the matters about which there was, and there was not, evidence in this case. A rational tribunal might well have done so, but that is not the test to be applied on this appeal.

Did the UT err in law?

59. The UT did not consider whether or not there were any errors by the F-tT, but jumped directly to the (unexplained) conclusion that the passages of determination 1 which were criticised were 'superfluous'. For the reasons I have already given, that was wrong in law. I do not criticise the use of the word 'superfluous' as a proxy for 'immaterial'. The UT's error, rather, was not to have acknowledged that the materiality or otherwise of any errors could not have been assessed in this case without a decision, first, whether there were any errors, and, if so, what they were. Nor could their materiality have been assessed without asking what impact any errors had on any good reasons which the F-tT gave for dismissing the appeal. Without assessing those matters, the UT was not equipped to judge whether or not, on the evidence which was before the F-tT, a rational tribunal would have been bound to dismiss the appeal.

Conclusion

60. For those reasons, I consider that the F-tT erred in law in its approach to A's appeal, and that those errors of law were material. The UT erred in law in concluding otherwise. I would allow A's appeal.

Lady Justice Simler

61. I agree.

Lord Justice Baker

62. I also agree.