Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13699/2018

THE IMMIGRATION ACTS

Heard at North Shields (Kings Court)	**Decision & Reasons Promulgated**
On 18 July 2019	On 25th July 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

KAH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rogers, Immigration Advice Centre Ltd
For the Respondent: Ms Pettersen, Senior Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant who is a national of Iraq, has been granted permission to appeal the decision of First-tier Tribunal Judge K Henderson. For reasons given in her decision promulgated 26 February 2019, the judge dismissed the appellant's appeal against the Secretary of State's decision dated 13 November 2018 refusing to grant asylum and humanitarian protection. The appellant's claim is to have arrived in the United Kingdom on 15 May 2018 unlawfully and applied for asylum the same day. He had travelled via Turkey to Greece and then by lorry to reach this country.

2. The appellant is of Kurdish ethnicity. His background is recorded in [10] of the judge's decision, as follows:

> "10. A summary of the Appellant's account is as follows. He is of Kurdish ethnicity. He was born in Madera which is near Ranya in the IKR. The family moved to Warrita when he was a child. His family originates from Qaladza. He is a member of the Mahmallah tribe which is situated mainly around Qaladza. He is unmarried. He had two brothers and one sister. He attended school for approximately three years and then had a business selling sweets and drinks and saz (a musical instrument)."

3. Difficulties arose as a result of the appellant's brother's relationship with a married woman whose husband found out. This resulted in his brother being forced to marry the woman concerned. The appellant and his family fled to live in Erbil where they sought to reach a tribal agreement with the woman's husband. The family paid compensation but were told not to return to Warrita where they had once lived. These events occurred in early 2015. The appellant's brother disappeared in August that year. It emerged that he was found dead and this led to the arrest of his wife and her former husband Omer, both members of the GOL tribe. In the face of continuing threats from Omer's family the appellant left Iraq.

4. The evidence before the judge included certain videos and after a survey of that evidence set out her findings of fact in the course of which she surveyed the country information on the issue of honour killings in the IKR. At [68] to [70] the judge set out her findings as follows:

> "68. The Appellant's account of the two people who murdered his brother is that they are now free and able to seek revenge against him with other family members. The first difficulty with this proposition is that the video evidence is that they are arrested and detained on charges of murder. This is a significant charge for anyone to then be able to avoid particularly when they have publicly confessed to murder. The evidence suggests that there is corruption in the IKR and that those with great influence and power can obtain amnesties. There is no evidence to show that the couple in the video have obtained an amnesty. I find it unlikely that having made such a public confession on a national TV network that an amnesty would be given. No evidence was provided to show that either Maryam or Omer are persons of influence.
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> 69. The Appellant has referred to the tribe of Maryam and Omer being the Gol tribe. I was not provided with any evidence of the Gol

> tribe showing the extent of their influence and power to control the authorities including the police. The external evidence made no reference to this tribe. The video films did not refer to the tribe of the murder perpetrators or show that they were persons of influence. The scenario outlined in the video is very different to the typical profile of victims of honour conflicts and I note that at pages 109 and 110 of the Appellant's bundle there is a reference to men in honour conflicts and the fact that in some relationships the man will escape consequences whilst in others he and the woman will be killed. This is referring to the couple who have had a relationship outside marriage. The Appellant is not in that category. He is a brother of the person at the centre of the honour conflict and he has not carried out any violent act or sought any revenge.
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> 70. I note that the Appellant has the possibility of internal relocation within the IKR. He has relocated to Erbil and I have rejected his account of being harmed when he relocated there with his family. I conclude that he can return to the IKR and seek the protection of the authorities as he has not shown that Maryam or Omer are seeking to harm him or that they have been released. He has not shown that the GoI tribe are intent on harming him and have the influence, power or inclination to continue to look for him and harm him should he be returned to the IKR."

5. In respect of the appellant's identity, the judge observed at [71] that evidence of a CSID had been provided and that it should be possible for him to obtain a full document from Iraq or a duplicate. She concluded at [72]:

> "72. I find that the Appellant is not at risk of persecution or serious harm should he be returned to Iraq. In the event that he is returned to Bagdad [sic] he can travel by air to Erbil and relocate their [sic] or in another city in the IKR."

6. Finally, the judge concluded that with reference to paragraph 276ADE she did not consider there would be very significant obstacles to the appellant's reintegration.

1. Three grounds of challenge are relied on. The first ground is best understood with reference to paragraph [4] of the grounds:

> "4. The Immigration Judge finds that A can relocate as he has not shown that the perpetrators are seeking to harm him or have been released or that the GoI tribe has the influence suggested by A despite the findings in his favour in relation to credibility. It is contended that the release of the perpetrators is irrelevant to risk as the family of the perpetrators would still pose a risk to A and this was his case. Given that A's account of his experiences in Iraq was largely accepted and that there was significant evidence in support of A's case which was not in dispute it is contended that the Immigration Judge has materially erred in her findings in relation to risk on return to Iraq."

7. The second ground argues error by the judge in using her own knowledge without giving the parties an opportunity to comment. This related to an aspect of the appellant's journey to the United Kingdom in which he had explained he had been picked up by Ukrainian police on a big boat and landed on an island called Kalamata. The judge explained that so far as she was aware no such island existed but Kalamata is a city in the south-west coast of mainland Greece. She was unclear why the Ukrainian police would be operating in the area. It is contended that the judge erred by relying on her knowledge. Also within the compass of this ground, it is argued that the judge erred in [64] of her decision in relation to the appellant's evidence that he believed his mother and sister had drowned or were taken elsewhere. She explained in her decision that she was aware from other cases and of her own reading that records covering rescues in Greece and deaths by drowning have been well recorded in contrast with boats sinking on the way from Libya. This led her to not accept that the appellant was being straightforward about this aspect of his claim and did not accept he was accompanied across Europe by his mother and sister. It is argued that the judge had erred by failing to raise this issue at the hearing and allowing the parties to comment.

8. Turning to ground 3, it is argued that the judge materially erred in her assessment of the country information in relation to honour crimes. Reference is made to country information in support of a case that "honour is eternal and that a family can seek retribution for years to come". It is argued that retribution would extend beyond those directly involved in the dishonour and the judge was wrong to find the appellant would not be at risk.

9. In granting permission, First-tier Tribunal Judge Keane considered the judge's reliance on her own knowledge and circumstances regarding the geography in Greece was arguably unfair. He made no comment on the other grounds.

10. The first enquiry is to see what findings of fact the judge made and to then see if in doing so, the judge had erred by reference to each of the grounds as each raises issues as to the safety of the findings. The case the appellant had to meet was set out in the refusal letter which accepted the appellant's identity and origins. The claim was however rejected in blunt terms in paragraph [45], "Following facts are rejected:-Threatened and attacked by Omar's family and the Gul tribe.". Thus it was incumbent on the appellant to establish the credibility of his account.

11. The judge's findings begin at [47] after a comprehensive survey of the evidence. Here it is noted that there was no rejection in the refusal letter of the CSID documents. In [48] the consistency of dates of the account is acknowledged. Paragraphs [49] to [55] notes features of the video evidence including at [52] a discrepancy between the appellant's evidence and the video content. The judge then turns in [56] to the country information and notes in [57] that this evidence and the transcript, pointed to the continuing existence of honour crimes in the IKR. After addressing the argument by the respondent as to the likelihood of there being no

continuing threat in the light of the solution having been found (money was paid) at [59] the judge explains that the core of the account "cannot be dismissed as implausible simply on the basis that a settlement was reached and a large sum of money was paid. This ignores the situation outlined in the videos provided that showed a murder was committed after a settlement was made".

12. At [60] the judge observes that there were elements of the account which "are inconsistent and much less credible". She illustrates this by reference to the appellant's confused account of the attack and at [66] the consistency of his account of his father's health and the fate of the family house.

13. The judge then leaves the IKR based account and turns to the appellant's journey. This included at [63] the role of the Ukrainian police and being taken to the island called Kalamat. Negative inferences are drawn over the likelihood of such police operating in the area and the geography of Greece. She also refers to the lack of clear evidence as to the fate of his mother and sister who appear to have travelled with him. It is noted in [66] that there was evidence of the appellant suffering from mental health problems in which there was a inconsistency between the account given to the mental health team and that given to the Home Office. The judge however accepted that the appellant has shown symptoms "suggestive of PTSD" which was thought to be attributable to the journey. After a direction as to the burden on the appellant, the judge returned to the IKR based account at [68] to [70] cited above.

14. Both parties accepted that the judge has erred in failing to make clear findings on the evidence. As result it was accepted that the decision needs to be set aside and remade. I consider that they were right to do so. What is missing from the paragraphs that I have analysed above and those cited are clear factual findings. The judge appears to hover towards an acceptance of the account of murder and its background but matters are not sufficiently clearly stated for me to be sure that is what she concluded. This is in part due to the qualified way in which aspects of the account were identified in the cited paragraphs. The judge seeks to resolve the matter by settling on internal relocation but in order for this to be in play, it is first necessary to establish whether the appellant would be at risk in his home area from non-state actors and whether there would be protection available. If the answer is positive as to risk and negative as to protection considerations as to the reach of any available protection in the rest of the country are then required prior to embarking on a relocation analysis.

15. Ground one is poorly drafted but there is enough in its content to persuade me that the challenge is the unsatisfactory nature of the credibility findings. The decision needs to be set aside. Given the nature of the error the case will need to be reheard by a differently constituted tribunal in the FtT. None of the findings by Judge Henderson is preserved but the judge's decision stands as a record of what was said in evidence.

16. There is no need to make a decision therefore on grounds two and three but I observe as to the former, it was encumbent on the judge to invite submissions on the geographical concerns which could have simply been done in writing. As to the latter, this is more a disagreement with the judge's finding on the evidence rather than identification of legal error. The decision of the FtT is set aside and the case is remitted to a differently constituted tribunal in the First tier for it to be remade.

Signed Date 22 July 2019

UTJ Dawson
Upper Tribunal Judge Dawson