Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/08050/2019 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 25 November 2020	**On 2 December 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SM

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr K Khan, instructed by Kings Law Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote

hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iraqi national with date of birth given as 10.2.81, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 28.10.19 (Judge Smith), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 2.8.19, to refuse his claim for international protection made in further submissions of 7.12.18.

2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 9.12.19, suggesting that the grounds merely sought to reargue the appeal. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Finch granted permission on 27.1.20, on the basis that in reaching his decision the judge "failed to take into account relevant objective (evidence) relating to blood feuds and honour crimes which would have provided a proper context for this consideration of the evidence given by the appellant. He also failed to take into account relevant country guidance when considering the effect of returning the appellant to Iraq." Although Judge Finch considered that there were errors of law in the decision, that is a matter for me to consider and permission is granted only on the basis that there is an 'arguable' error of law.

3. The appellant's case was that for a number of years from 2008 he was in a clandestine relationship with a woman (Dereen) but that in 2011 her family refused to agree to his family's proposal of marriage. In apparent consequence, it is alleged that she set fire to herself at home and died from her injuries a few days later. He claims that having discovered the extent of their relationship, her family blame him for her death and threatened to kill him. He also claimed an Article 15(c) risk of indiscriminate violence on return to Kirkuk.

4. His claim first made in 2013 was refused the same year and certified as unfounded. He lodged further submissions in 2014 and twice in 2016, all refused without a right of appeal. A Settlement Protection application was also refused in 2018.

5. The most recent refusal decision of 2.8.19 was the only occasion in which his claims were subsequently tested before the First-tier Tribunal, on 25.10.19. Following a detailed consideration of the oral and documentary evidence in relation to alleged arrest warrants, set out in the decision between [24] and [33] of the decision, the judge reached the conclusion that the documentation was not reliable and in fact a fabrication, finding that the appellant was prepared to provide false documents, thereby undermining the credibility of his claim. After referring to previous rejections of the appellant's claims, at [35] of the decision the judge stated, "I do not accept that any reliable new material has

been provided to the court which supports the fact that Dereen had been in a relationship with him or that she took her own life or that if she did die it was the result of any conduct by this appellant. I do not accept he has established even to the lower level of proof that he has anything to fear returning to Iraq and would not be the subject of violence from the family of Dereen or the subject of an arrest."

6. The grounds of application for permission to appeal argue that the assessment of credibility was flawed, the approach taken as to reliability of documentation flawed, and the decision devoid of adequate reasoning.

7. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. Mr Khan was unable to connect with the hearing by video but was content to continue with audio-only by telephone. He relied on his skeleton argument and made oral submissions. Mr McVeety also referred me to the written submissions of Mr Clarke on behalf of the Home Office, dated 12.5.20.

8. In large part the grounds are a disagreement with the decision, making various assertions that the judge was wrong and asserting, for example that the appellant was "rather credible in his accounts." These do not disclose any error of law.

9. Mr Khan's primary submission was that the judge failed to take into account the objective evidence on blood feuds. I noted at the hearing that the appellant's bundle prepared for the First-tier Tribunal appeal hearing contained some 90 pages of background information addressing honour-based violence in the Kurdistan region and the respondent's CPINs on blood feuds, dated August 2017, and on internal relocation, dated February 2019.

10. However, I accept Mr McVeety's submissions that in the light of the findings of the First-tier Tribunal, the blood feud background evidence was not material to the outcome of the appeal, which turned on the credibility of the appellant's account. The judge did not make findings that there are no such blood feuds in Iraq but found the core factual claim simply not credible. In that light, referencing the background information would have been pointless.

11. Given the detailed assessment of the various arrest documents, which the judge pointed out were chronologically inconsistent, the judge provided adequate reasoning to justify the conclusion that these documents had been fabricated to support the appellant's further submissions. In short, the claim was found not credible. As Mr McVeety submitted, it would be difficult to conceive of a more incoherent and incredible account, where arrest warrants with an 'incorrect' date on were returned by the appellant's family years later for them to be re-

issued with the 'correct' date. The judge was entirely entitled to reject the factual claim and therefore failure to reference or take into account the background material is irrelevant. Mr McVeety also pointed out that this complaint arises from the grant of permission and was not part of the grounds of application for permission.

12. Although he didn't mention the issue in his initial submissions, when I raised it with him Mr Khan confirmed that he also pursued alleged errors in the judge's assessment on documentation for return to Iraq and relocation to the IKR.

13. In relation to return to Iraq, the refusal decision accepted that the appellant could not return to Kirkuk but maintained that he could relocate to the IKR. I note that whilst the appellant was born and lived in Kirkuk, his mother is from Sulaymaniyah in the IKR, where he has uncles and other family members who would be able to support his relocation there. The judge concluded that the appellant remained in touch with family and friends in Iraq, who had assisted in providing the supposed arrest documentation, and would be able to seek assistance from his brother and cousin to obtain appropriate identity documentation to enable his safe return to Iraq and relocation to the IKR.

14. In this regard, it is important that at [36] of the decision the judge pointed out that neither in the grounds of appeal, nor the skeleton argument, nor in oral submissions, was the proposed relocation to the IKR challenged, the judge stating "This was not challenged before me." At [43] of the decision the judge again noted, "This appeal focused upon the reliability of the appellant's new account and documents and it was not submitted that if it was rejected he could not return to Iraq."

15. Mr Khan referred me to the skeleton argument prepared for the First-tier Tribunal appeal hearing which does, I accept raise issues about relocation, but only to Baghdad or the South of Iraq. The issue of relocation to the IKR is not addressed.

16. The grant of permission infers that the recent decision of the Upper Tribunal in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), will have to be considered. However, that decision was promulgated only after the impugned First-tier Tribunal decision. Despite that, the judge did consider AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC) and was satisfied "having considered this appellant's circumstances and the fact he will be able to seek assistance from his brother and cousin that he would be able to obtain appropriate documentation and can be returned to Iraq." Given that the respondent was not suggesting return to Kirkuk and that he could relocate to the IKR, it was on the basis that the appeal proceeded. That approach was, in any event, consistent with SMO.

17. I am satisfied that not having taken any issue on documentation for return to Iraq before the First-tier Tribunal and not having challenged the respondent's case that with the support of family in the IKR he could relocate there, the appellant cannot now raise that issue on appeal to the Upper Tribunal. No error of law is disclosed on this ground of appeal.

18. In relation to article 15(c), there is no such risk in the IKR.

19. In all the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal, so the decision must stand as made.

Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 25 November 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*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 his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 25 November 2020