Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01868/2020

THE IMMIGRATION ACTS

Heard at Manchester CJC (via Microsoft Teams)	**Decision & Reason Promulgated**
On 12 October 2021	**On 15 November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AM
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Patel instructed by WTB Solicitors.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hollings-Tennant ('the Judge') promulgated on 27 April 2021 in which the Judge dismissed the appellant's appeal on both protection and human rights grounds.

2. Permission to appeal was granted on a renewed application by another judge of the Upper Tribunal, the operative part of the grant being in the following terms:

> "The First-tier Tribunal made very comprehensive negative credibility findings. It is, however, allege that in doing so, it acted unfairly in taking points against the Appellant to which he was not given an opportunity to respond. It will be for the Appellant to make good that ground.

Background

3. The appellant is a citizen of Iraq whose case is set out by the Judge, in summary, between [7 – 10] of the decision under challenge.
4. The Judge's findings are set out from [17] – [41]. A summary of the credibility findings are set out at [33-34] as follows:

> 33. Having considered all the evidence presented in the round, to the lower standard of proof that applies in such matters, I find that the Appellant is not a credible witness and has not told the truth about his reasons for leaving Iraq. Whilst his claim to be at risk of an honour killing because he married against the wishes of his father does not run counter to relevant country information about the importance of marriage within Kurdish society and the circumstances which may give rise to issues relating to honour, it does not necessarily follow that his marriage to his wife was not accepted by his family or indeed arranged by mutual agreement between the two families.
>
> 34. Whilst I accept that the Appellant and his wife were married in an Islamic ceremony and enjoy a genuine and subsisting relationship, I do not accept that they are at risk of serious harm from his family. I do not find it credible that they would have been able to live in Sulaymaniyah for over 12 months without any difficulties if his family were as powerful and influential as he tries to make out, particularly given extended family lived in the same city. I find the Appellant's evidence to be somewhat vague and inconsistent with regards to the incident in which he claims to have been beaten, detained, and released three months later, such that I do not accept it took place. I do not find it remotely credible that after having been released, he would remain in Sulaymaniyah for some five months and not make any effort to contact his wife to tell her he was alive and well, despite the fact that he had her mobile phone number and email address. I also do not accept that his family are as influential as claimed given the lack of credible evidence to corroborate the Appellant's assertions in this regard. I find that he has fabricated his asylum claim to circumvent the Immigration Rules because he did not believe that he would qualify for an entry clearance Visa to join his wife and children here on family life grounds.

5. Leading to an overall summary at [40] in the following terms:

> 40. In summary, having considered all the evidence in the round to the appropriate standard of proof, that is, the lower standard of a reasonable degree of likelihood, I find that the Appellant is not a credible witness and has not told the truth about his reasons for claiming asylum. I do not accept that he was ill treated by his family for refusing to marry his cousin and find that he has not discharged the burden of proof upon him to demonstrate that he faces a real risk of persecution or serious harm on return to Sulaymaniyah. I also find that there is no reason why he cannot contact his family to obtain his CSID to facilitate is travel from Baghdad to the IKR.

6. The appellant's grounds seeking permission to appeal are in the following terms:

> **Grounds of Appeal**

7. The Appellant (hereinafter 'A') seeks permission to challenge the decision of JFTT Hollings-Tennant (hereinafter 'the Judge') on the grounds that he has made multiple findings in regards to the A's credibility without putting matters to A or his witness to response. Further the Judge has made findings based on errors of fact and has held unreasonable expectations as to the requirement of supporting medical evidence.

8. Given the overriding duty of the Tribunal to act fairly it is submitted that the determination reflects a lack of fairness to A. The majority of the matters raised by the Judge is damaging to A's credibility do not amount to obvious points that A would have been expected to address in advance of the hearing and nor were they points raised by the Respondent (R) in the refusal or during cross examination. Whilst it is of course open to the Tribunal to raise additional matters for clarification, it is submitted that the overriding duty of fairness cannot be met by a Judge raising matters for the first time, post-hearing without any opportunity of a response from an Appellant or their representative.

9. At paragraph 22 the Judge states that he has doubts as to whether A and his wife were married without the knowledge of A's family. However, the basis of these doubts relies upon assumptions by the Judge which were not put to A or his wife to respond to. The Judge found that A's wife's parents would likely not approve of her marriage to a man which placed her life at risk. However, this assumes her parents were aware of the details of A's circumstances. The Judge whilst holding this concern did not choose to raise this point with A, his wife to enable them to respond as to what A's wife had in fact disclosed to her family. In fact, A's wife in her statement at paragraph 14 stated that she withheld information from her family including her pregnancy.

10. At paragraph 23 the Judge states there is "no reasonable explanation" as to why A did not know who his wife was on holiday in Iraq with when the two of them met. However, it is submitted contrary to the Judge's findings, that there are a number of very obvious explanations. For example, this is information that A could well have forgotten. It is submitted that is entirely logical and reasonable that A's wife would recall who she travelled to Iraq with and yet that A, who had only just met his wife at that time may not have paid close attention to that information.

11. Again, at paragraph 23 the Judge did not query either A or his wife as to the reason why A did not meet his wife's family. Whilst the Judge states that her family were 'fully aware of their intentions' this is not reflected in the evidence given by her. In fact, A's wife in her statement at paragraph 14 stated that withheld information from her family.

12. At paragraph 24 the Judge states that was not evidence that anything had happened between the date the parties married and the date she left Iraq to alter the risk to them. However, this is not the case. By their account A's wife lost a child during pregnancy and then fell pregnant again. Her pregnancy was given in evidence as the specific reason she chose to return to the UK and both A and his wife stated that after the birth A advised her not to return to Iraq along with their child due to a fear of harm.

13. At 25 the Judge raised concern over A and his wife having remained for 12 months in Sulaymaniyah without having been discovered by A's family. This is a matter which was not raised by R, was not raised in cross examination or in clarification by the Judge. It is submitted that it was open to the Judge to query of A what steps were taken to avoid problems during this 12 – month period and this was not done.

14. At 28 the Judge is mistaken in stating that there is a discrepancy in A's account. A expressly stated in his interview that he did see his father at the end of the 3 months and prior to his release. In questions 162 – 165 he explains that his father came back to speak to him and at that time he lied and agreed to the marriage. He further explains that it was his brother, who then arranged for him

to then go to Sulaymaniyah with the men. A says in this statement that these were his father's men. Whilst the Judge states that A has not given evidence how we escaped from these men, again, this point was not put to A for him to respond and this was not raised by R.

15. At paragraph 29 the Judge states that evidence is expected to prove A's hand was broken in the way claimed and the absence of such evidence raises further doubts. It is submitted that given the criteria established in the Istanbul protocol, it is not reasonable for the Judge to expect that medical evidence might prove how an injury such as an injured hand from an assault was caused. A was not asked by the Judge how healing had progressed or whether he had continued issues after arrival in the UK. A entered the UK some substantial period after this assault had taken place. There is no reason as to why A would have sought NHS treatment for the injury after all that time. A private referral for an x-ray would have proved little beyond a previously broken and healed bone. The absence of such medical evidence should not be held against A as damaging his credibility.

16. Whilst the Judge has raised other points as affecting his view of the credibility of A's account it is submitted per the above that the majority of concerns raised by the Judge contain significant errors in law in failing to put the matters to A to provide a response, incorrectly interpreting evidence, and in attaching unreasonable expectations as to supporting medical evidence. Overall, these demonstrate an overriding issue as to the fairness of proceedings before the First-tier Tribunal.

7. In her Rule 24 response dated 12 August 2021 the Secretary of State opposes the application, writing:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately.

3. In effect it is argued that the Judge must, if upon consideration of the evidence, decide that parts of the Appellant's account not credible must somehow reconvene the hearing and put all the points he or she intends to take to the Appellant to enable them to provide an explanation. It is submitted such an approach is evidently not how any effective judicial system operates. The Judge has not undertaken any post hearing research and all of his findings are based on the evidence submitted on behalf of the Appellant before or during the hearing.

4. The issue of the ability or not of the Appellant's to lawfully marry (which in fact the FTTJ accepts they have) was clearly an issue raised by the Respondent at paragraph 21 of the decision, and as such cannot be said to have taken the Appellant by surprise.

5. At paragraph 10 the grounds of appeal simply seeks to proffer alternative explanations for the FTTJ's credibility findings, and do not establish the finding was one not open to the FTTJ to make.

6. Paragraph 12 of the grounds utterly misrepresents the findings of the FTT at paragraph. The FTTJ is clearly referring to the fact that on the Appellant's own account nothing happened to him in Iraq between 2014 and 2015 in respect of the alleged risk from his family. The fact his wife returned to the UK due to a miscarriage has absolutely no bearing on the Appellant's claimed fears.

7. The Respondent further submits that the majority of the FTTJ's findings are not in fact challenged in the grounds, presumably on the basis that no challenge could be made, and contrary to the grounds on fact, the majority of findings have not been challenged.

8. Even if, which it is not accepted, the FTTJ was required to put each and every point that he wished to raise to the Appellant in court, there is no evidence, by

way of the contemporaneous record of proceedings produced in support of the allegations raised by the First-tier Tribunal.

Error of law

8. Article 6 (1) ECHR reads:

> "1.In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing by [a] tribunal ..."

9. While an appellants has the right to present the evidence they regard as relevant to their case, Article 6(1) does not guarantee a litigant a favourable outcome. The appellant has received a clear reasoned decision from the Secretary of State, was able to exercise a right of appeal to an independent tribunal to consider his challenge to the decision, and the fact the Judge dismissed the appeal for reasons the appellant disagrees with does not mean that he was denied a fair hearing.
10. The role of the Judge was to manage the proceedings with a view to ensuring the proper administration of justice. To enable a proper decision to be made the Judge was required to have close regard to the information and submissions put forward by both parties in writing prior to the appeal and to the submissions and evidence heard at the appeal. It is not made out that the Judge failed to do so in this appeal.
11. In reaching the decision under challenge the Judge was required to consider and be guided by the legislation, Immigration Rules and any case law that may be relevant to the case. It is not made out the Judge failed to do so in this appeal.
12. The case law establishes that a decision maker such as a judge should not undertake post hearing research without giving the parties an opportunity to comment upon issues that might have come to mind: see In EG (post-hearing internet research) Nigeria [2008] UKAIT 00015 in which the Tribunal said that it is most unwise for a judge to conduct post-hearing research, on the internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong.
13. In this appeal it is not suggested the Judge relied on post-hearing research. The decision is based upon an assessment of the evidence provided to the Judge before and during the hearing.
14. It is accepted that in some cases fairness may require an appellant who may be adversely affected by a decision to have the opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. That is a fact/case sensitive assessment. It is not made out this is such a case on the facts.
15. In Marghia (procedural fairness) [2014] UKUT 00366 (IAC) it was held that the common law duty of fairness is essentially about procedural fairness. There is no absolute duty at common law to make decisions

which are substantively "fair". The Court will not interfere with decisions which are objected to as being substantively unfair, except the decision in question falls foul of the Wednesbury test i.e. that no reasonable decision-maker or public body could have arrived at such a decision.

16. The appellant may have made written statements and given oral evidence, as did his wife, but that does not mean the Judge was bound to accept that what they had stated was true. That is an assessment requiring detailed consideration of all the available evidence and relevant legal principle. The claim in the alternative is, in effect, a challenge to the weight to the Judge gave that evidence, when the weight that was given has not been shown to be irrational.
17. The appellant filed all the documentary evidence he was seeking to rely upon in support of his appeal. The directions issued by the First-tier Tribunal stated that the appellant or the appellant's representative must serve a bundle that includes (a) a chronology of the main (claimed) events relied upon by/for the appellant; (b) statements of evidence from everyone, including the appellant, who may be called to give evidence at the hearing. The statements must cover all the evidence the appellant wishes to give himself/herself or wishes the witness concerned to give. The statement shall stand as the evidence in chief of the person concerned.
18. The Judge was therefore entitled to take the view that on the basis of the written and oral evidence and submissions made, there was nothing further to be added by the appellant in seeking to establish his entitlement to international protection.
19. In his evidence in chief the appellant confirmed that he was aware of the content of his statements and that they were true. The appellant was cross examined, and the Upper Tribunal has available a typed copy of the Judge's Records of Proceedings showing the questions asked of the appellant and the answers he gave in cross-examination, after which there was no re-examination. The Judge also asked questions to clarify points of concern.
20. The Record of Proceedings shows the appellant's wife confirmed her witness statement was true and that she was cross examined. There was no re-examination and no questions from the Judge for this witness.
21. The purpose of re-examination in litigious proceedings is to enable the witness to explain and clarify relevant testimony which may have been weakened or obscured in cross-examination. The fact there was no re-examination clearly indicates that the appellant's representative was satisfied that no further clarification was required.
22. The grounds fail to establish any procedural unfairness or irregularity in the conduct of the proceedings up to the point where the Judge reserved the decision with a view to considering the merits of the appeal.
23. As found above, there is no evidence the Judge did not thereafter consider all the evidence with the required degree of anxious scrutiny

before coming to the findings set out in the determination, which are adequately reasoned.

24. In relation to the question of whether during the period post-hearing but prior to the promulgation of the determination, when whilst assessing the evidence the Judge would have come to a number of conclusions leading to the findings set out in the determination, the Judge was required to reconvene the hearing or set out his concerns and invite further comment in writing, the Grounds fail to establish the Judge was required to do as suggested.

25. I do not find the appellant has made out that there was any procedural obligation upon the Judge, having undertaken a proper assessment of the evidence, to do more than the Judge did in this appeal. It is not made out the Judge's decision is based upon evidence of which the parties had no notice. The decision is based upon an assessment of all the evidence in the round that had been provided by the appellant and his wife. It is therefore not the case of the Judge considering evidence from external sources, but rather the Judge deciding, having exercised judgement, what weight should be given to the evidence that was provided.

26. In a substantial majority of cases within the immigration jurisdiction a decision-maker will proceed in precisely the same manner as this Judge did. These are complex cases where the need for anxious scrutiny is well established. The suggestion there is an obligation upon a judge to reconvene to give the parties the opportunity to comment upon their proposed findings that arise from an assessment of the evidence is wholly unrealistic, in the absence of a case specific reason requiring the same, which is not present in this appeal. To suggest that such an approach should be universally adopted is unrealistic. Prior to the Covid-19 pandemic the First-tier Tribunal (Immigration and Asylum Chamber) was disposing of between 10,000 to 15,000 cases per annum. The suggestion that in such cases there was an obligation upon a judge to give the parties an opportunity to comment upon the findings that it was proposed to make would result in the appeal system effectively grinding to a halt. That itself is contrary to the interests of justice.

27. The Secretary of State asserts in her Rule 24 response that the appellant's challenge misrepresents some of the findings of the Judge. There is specific reference to [12] of the grounds of appeal, which refers to [24] of the decision under challenge. The Judge in this paragraph refers to the fact the appellant had provided no evidence to suggest that anything in particular had happened between the date they got married and the day his wife left Iraq to indicate a heightened risk. This does not refer to the fact the appellant's wife miscarried but to the fact that the real risk alleged by the appellant of real harm as a result of an honour killing was shown to be baseless. The Judge was focusing on the core claim to be at risk as a result of the alleged refusal to marry and the claimed power and influence of his family which, on the evidence, was not made out. The Judge was

entitled to find for the reasons stated in that paragraph that that cast doubt upon the veracity of the appellant's claim.

28. Similarly, in relation to the medical evidence at [15] the grounds of challenge assert the Judge's findings in this regard are flawed in seeking corroboration of whether the appellants hand was broken in the way claimed. At [29] the Judge wrote:

> 29. The Appellant also claims to have sustained injuries when he was beaten in early 2018, most notably a broken hand, and yet he is not provided any medical evidence in support of his claim. Whilst he may not have been in a position to seek treatment in Sulaymaniyah, he could have sought treatment, or medical evidence to support his assertion that his hand was in fact broken during the incident, after arriving in the United Kingdom. It appears that he has sought treatment on the National Health Service (NHS) with regards to his anxiety (AIR, question 10) and yet has not seen a doctor about his hand (AIR, question 168). It seems odd to me that if his hand was broken in the circumstances he claims that he has not seen a doctor about it nor has he seen fit to provide any medical evidence to corroborate his assertions.

29. The finding of the Judge is therefore not that the appellant should provide evidence to prove that his hand was broken in the manner claimed, but that the appellant had provided no evidence to show that his hand was broken at all. The comment by the Judge regarding lack of medical evidence is factually correct. The Judge was entitled to consider this, together with the other adverse findings made, when arriving at the recorded conclusion.

30. I find the appellant has failed to establish any procedural unfairness in the way the Judge determined the merits of this appeal. As noted in the Rule 24 response, it is also the case that not all the findings of the Judge are challenged. I find the appellant has failed to establish any procedural irregularity sufficient to amount to an error of law. I find the appellant has failed to establish that the findings set out in the determination under challenge, which are adequately reasoned, are outside the range of findings reasonably open to the Judge on the evidence.

31. In light of the appellant failing to establish legal error material to the decision to dismiss the appeal, the Upper Tribunal has no jurisdiction to interfere any further in this matter.

Decision

32. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

33. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated: 19 October 2021