Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00757/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination sent**
On 7 August 2013	**On 24 October 2013**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE
DESIGNATED JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

YASSIN BAKI MOHAMMED RAHIM
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Mullen, Home Office Presenting Officer
For the Respondent: Mr Forrest, Counsel, for Latta & Co Solicitors Glasgow

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State, however, for convenience in the following determination I shall refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of Iraq of Kurdish ethnicity. He appealed against the decision of the respondent dated 16 January 2013 refusing to grant him asylum, humanitarian protection and on human rights grounds. His appeal was dismissed by Judge Watters in a determination promulgated on 6 March 2013. Permission to appeal was granted by Upper Tribunal Judge O'Connor on 18 April 2013.

3. The appellant's parents, five brothers and one sister live in Arbat, Iraq. His brother, Hassan, died in a car accident in 2010 and the appellant claims to have entered a sexual relationship with Hassan's widow. This affair was carried on in secret, but in October 2012, the appellant invited his late brother's widow into the family home as no-one else was there at the time. They went in to the appellant's old bedroom, did not close the door and the appellant's younger brother returned home and saw them semi-naked and hugging each other. His brother told his father, who, in turn, told his sister-in-law's parents. The sister-in-law was beaten and locked up and, a short while later, she set herself on fire and died. A tribal agreement was reached between the appellant's family and his sister-in-law's family, to search for the appellant and kill him. The appellant fled.

The Hearing

4. Mr Forrest, for the appellant, submitted that the judge had erred in law by not believing that there had been a sexual affair between the appellant and his sister-in-law. At paragraph 16 of the determination, the judge commented that "it simply beggars belief that the appellant would have put his life at risk by undertaking a sexual liaison in the family home." Mr Forrest submitted that, in the field of human sexual activity, extremely unlikely things do happen and it was not open to the judge to make this finding. Relying on Hamden [2006] CSIH 57, he submitted that, if the main reason a judge does not believe something, is flawed, other reasons for his decision are likely to be coloured by this. He submitted that this finding infected with error the core of the judge's findings. Mr Forrest acknowledged that an illicit affair in Iraq can have serious consequences for an individual because of the tribal nature of the society and the fear of honour killings but nonetheless significant numbers of people there still had illicit affairs.

5. Mr Forrest also referred us to AJ Afghanistan [2009] UKAIT 00001. In that case, the appellant was a homosexual man who was warned that he could face a death sentence if he continued a homosexual relationship. Despite this the affair continued and the appellant's parents were asked to hand the appellant over to the Taliban. They had refused and had been killed. Mr Forrest submitted that the facts in that case illustrated how unsafe it may be to make assumptions regarding human sexual behaviour. He also cited HK [2006] EWCA Civ 1037; the Court of Appeal had noted that "in many asylum cases some, even most of the appellant's story may seem inherently unlikely, but that does not mean that it is untrue". Mr Forrest submitted that what happens in Iraq should not be judged by Western standards of morality or behaviour. The First-tier Tribunal had erred in law as a consequence of adopting the wrong approach to the evidence.

6. Mr Forrest also submitted that the judge had erred by failing to have proper regard for the opinions of the expert psychiatric report. The judge

refers to this report at paragraphs 14 and 20 of the determination but it was not clear why he had attached limited weight to it.

7. We suggested to Mr Forrest that it could be said that, at paragraphs 17, 18 and 19, the judge had given other discrete reasons separable from those at paragraph 16, for not believing the appellant's account and that paragraphs 18 and 19 may not be coloured by the finding at paragraph 16 as they relate to discrepancies in the appellant's evidence about his mother and whether she is deceased or not, what her name is and also Section 8 issues raised by the respondent. Mr Forrest submitted that those findings were not sufficient alone to support the judge's assessment of the appellant's credibility.

8. We also asked Mr Forrest to comment on the proposition that, whilst it may be true that people may take risks in order to obtain sexual gratification regardless of the possible penalties, it was arguably open to the judge to have found it incredible that this sexual encounter had taken place "in the family home." Mr Forrest submitted that the judge should not have assessed the appellant's conduct by inappropriate standards.

9. Mr Mullen asked us to note that the appellant's evidence was that he had moved away from his family home a long time before the affair had taken place and yet he had gone to the family home, where three of his family members still lived, to have an illicit sexual encounter. He submitted that the appellant would have been aware that one or more members of the family could have returned at any time. This went to the core of the appellant's account. The judge was aware that the appellant had his own house. The appellant knew that his family members were likely to come home at any time yet he took no precautions to avoid discovery and did not even close the door to the room. Mr Mullen submitted that it is true that people do ridiculous things when indulging in illicit sexual relationships but this does not undermine the judge's finding. Further, the judge had taken other factors into account in dismissing the appellant's account as credible. He did not believe that the appellant would not have warned his sister-in-law when he found out that his father had been made aware of the relationship. There was also an inconsistency in the appellant's evidence as to whether his mother at this time had been alive or dead. (The appellant had subsequently explained this by claiming that he had been referring to his stepmother). Mr Mullen submitted that these other findings went to the core of the account and the judge had given cogent and adequate reasons for rejecting the appellant's credibility.

10. At paragraph 14, the judge summarises the psychiatric report. This states that the appellant drinks too much and that consumption of a bottle of whisky a day can affect someone's mental condition. The judge noted that the doctor's conclusions are based on the documentation provided to him, the history provided by the appellant and his observation and assessment of the appellant. At paragraph 14 the judge made it clear that he intended

to take the medical report into account when assessing all the evidence in the round.

11. The Presenting Officer submitted that there is no material error of law on either of the grounds.

12. We find that the judge gave proper consideration to the medical report and this has been taken into account when he considered all the evidence in the round (see Mibanga (2005) EWCA Civ 367). It was open to the judge to attach limited weight to a report which was based on an account of past events which (having assessed the evidence as a totality) the judge had found to be unreliable.

13. With regard to the credibility assessment as a whole, we find that it was open to the judge to find that the appellant's account was not credible for the reasons he has given and which we have discussed at length above. He did not, as the appellant submits, test the appellant's sexual conduct by inappropriate cultural standards. He had the advantage of hearing the appellant give evidence and his findings (to which he was able to bring his own understanding of human behaviour) were not, in our opinion, perverse in any way. We find that the grounds are, for the most part, little more than a disagreement with findings which were reasonably open to the Tribunal on the evidence which was before it. Further, we agree with Mr Mullen that, even if the judge was wrong to disbelieve the appellant's account of the sexual encounter described at paragraph 16, he had other good reasons for rejecting the appellant's credibility and that the findings at paragraph 16 do not in any way "infect" the fact-finding assessment as a whole. There were serious inconsistencies in parts of the appellant's account and we find that the judge has given proper weight to them; there is no suggestion that the judge has dismissed the appellant's explanation of those inconsistencies because he did not believe his account of the alleged sexual encounter. Finally, he has given appropriate weight to operation Section 8 of the 2008 Act. In the circumstances, we find that the judge did not err in law such that his determination falls to be set aside and this appeal is dismissed accordingly.

DECISION

14. This appeal is dismissed.

15. No anonymity direction has been made.

Signed Date

Designated Judge Murray

Judge of the Upper Tribunal