The Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA035272016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 2nd June 2017	**On 6th July 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR.K.K.S.

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Mr Brown, Bury Law Centre.
For the Respondent: Mr A McVettey, Home Office Presenting Officer.

DECISION AND REASONS

Introduction.

1. Permission to appeal to the Upper Tribunal has been granted to the appellant against the decision of First tier Judge Austin dismissing his appeal on all grounds.

2. The appellant is a national of Iraq who gave his date of birth as June 1994. He was encountered by police in November 2015 and claimed protection. He claimed to have arrived in the United Kingdom two days earlier. Initially he said he was Syrian.

3. When he attended his screening and substantive interview he explained that he suffered from epilepsy and had run out of medication. However, he indicated he was fit and well to be interviewed.

4. The basis of his claim is that he is at risk of an honour killing. He said he was of Kurdish ethnicity and from the age of 4 had been living in Erbil with his mother and siblings. He said in 2009, by which stage he would have been 15, he was attracted to a girl he saw as she was coming out of school. He made contact with her. They had a walk in the park and would telephone each other. They did not disclose this to her family.

5. He claimed that her family subsequently checked her phone and discovered what had been happening. He said members of her family kidnapped him and beat him. However he was rescued by the police who gave him protection for two weeks until he left the area. One of her brothers was subsequently detained but released shortly afterwards. He said that her family were influential in the Peshmerga and the KDPI. Shortly after this his family moved to Makhmur. However he said that they received threats over the telephone and shots were fired at his home.

6. In June 2015 ISIS entered Makhmur and his family moved to Sulimaniyah. He claimed in October 2015 he left his home country. He says that in addition to his fear of the girl's family he is also fearful of ISIS.

7. The respondent had accepted he was an Iraqi Kurd. However inconsistencies in his account were highlighted in the refusal letter. Consequently his claimed fear of a family was rejected.

8. The respondent accepted that ISIS entered Makhmur in June 2015 as he claimed. However, the background information was that they

were expelled subsequently by the Peshmerga. Consequently, there was no risk for him in returning to this area.

9. The respondent also took the view that it would be reasonable to expect the appellant to relocate to another part of Iraq if he was in fear: for instance, to Sulimaniya. The Iraqi Kurdish region was considered to be virtually violence free from the troubles affecting the rest of the country.

The First tier Tribunal

10. The parties were represented. The judge was provided with information about the appellant's medical condition in the appeal bundle and documentation about the giving of evidence in court and epilepsy. The judge records that the appellant was advised the court was aware he suffered from epilepsy and if he felt unwell during the hearing he should say so.

11. The judge heard from the appellant and listened to submissions. The background to the claim was set out in the decision. The judge did not find the appellant had given a clear and credible account in relation to the claimed relationship and what happened subsequently.

12. The judge acknowledged that the relationship described could cause great difficulty in the cultural context described. The judge rejected the respondent's contention that the contact was so innocuous that it would not constitute a relationship. Clearly the judge was aware of the cultural context. However the judge did not find the appellant at risk of an honour killing. His account at its highest was that he had had no problems since 2013 and his family continue to live in Sulimaniya.

13. The judge concluded that there was sufficiency of protection for him and internal relocation to Sulimaniya was available. No risk from ISIS was identified.

The Upper Tribunal.

14. Permission to appeal was granted on the basis it was arguable that the judge in assessing the claim failed to take into account the effect of the appellant’s epilepsy. It was also arguable the judge failed to take into account relevant background material in relation to honour killings. Finally, it was argued the judge paid insufficient attention to the arguments about internal relocation.

15. The respondent in a rule 24 response opposed the appeal. The appellant's epilepsy was referred to by the judge at paragraphs 17, 18, 25 and 40 of the decision. In particular, at paragraph 40 and 41

the judge acknowledged from the material provided that epilepsy can affect a person's memory and allowance should be made for this in considering the account. However the judge referred to the fact he had lied when first detected about being Syrian. Reference was again made to inconsistencies in his account.

16. The respondent also contended that the judge did have proper regard to the background information about honour killings. Reference is made to paragraph 42 of the decision where the judge acknowledged that what to the West could be an innocent relationship could cause great difficulty in the cultural context of Kurdish Iraq. The judge had rejected the respondent's contention that this did not amount to a relationship. However, the judge concluded the appellant was not risk in the circumstance. The judge pointed out that on the claim there have been no problems since 2013 and that his family continue to live in Sulimaniyah relatively trouble-free.

17. At hearing the appellant's representative relied upon the grounds for which permission to appeal was granted. I was referred to the fact that the appellant at his substantive interview pointed out he had been without his medication. Reference was also made to information in the appeal bundle about subsequent seizures and overnight admission to hospital. Reference was also made to the respondent's guidance about the stress of giving evidence in an appeal.

18. His representative referred to information about honour killings and pointed out that the police protection afforded to the appellant was only temporary. It was submitted that there were no further incidents because the appellant was hiding. His family had not experienced problems because they were not the ones offending.

19. The presenting officer acknowledged that seizure activity and medication could affect a sufferer's memory. However, it was contended there was no evidence of such mental impairment and that was no specific medical evidence to support this. Individuals are affected differently. It was pointed out the appellant at his screening interview said he was feeling all right and there was no reference to any fitting either shortly before the interview or subsequently. Whilst the condition might explain minor discrepancies it could not explain away the major features affecting the appellant's credibility: for instance, his claim to be Syrian at the outset and the absence of any reference to honour killing at screening. The appellant's representative had referred to the decision of Mibanga [2005] EWCA 367.The-presenting officer contended this did prevent a judge from simply rejecting an account as lacking credibility. There was no medical evidence the appellant was incapable of giving evidence. The Presenting Officer pointed out

that typically honour killings were directed towards the female rather than the male. On the appellant's account he had been given protection. The reasonableness of relocation was essentially a separate argument being advanced and it was contended the judge's conclusions were sustainable.

Consideration.

20. I find this to be a very balanced decision. The judge repeatedly acknowledged in the decision that the appellant suffered from epilepsy. The judge had been given information about the condition and details of the appellant's medical history which were referred to. The judge indicated if the appellant required a break at any stage he should say so. The appellant was represented at the hearing and no representations were made that he was unfit to give evidence. No requests for adjustments were made. There was no medical evidence led specific to his ability to give evidence.

21. Notably, at the substantive interview the interviewer was aware as evidence at question 3 that he suffered from epilepsy. The appellant confirmed he was in a position to proceed at question 5. He further confirmed at question 198 that he was content. In the subsequent statement two weeks after the interview there were no representations to the effect that epilepsy was any impairment to his performance at interview. The same applies to his statement of the 14th September 2016. As the presenting officer sensibly points out, epilepsy would not explain the clear misrepresentation that the appellant was Syrian when first detected. I see nothing to suggest any unfairness in either the interviews; the conduct of the hearing; or in the appraisal of the evidence because of the appellant’s epilepsy.

22. Mibanga requires that medical evidence should be taken into account in the overall assessment of a claim rather than treated as an add-on after a conclusion had been reached. I find the decision clearly demonstrates the judge was fully aware throughout of the medical condition and its effect upon the appellant's ability to explain his condition. However, there was nothing before the judge to suggest it materially affected his performance either in the course of the hearing or earlier.

23. The judge showed an appreciation of cultural differences by recognising that the very limited contact the appellant described could nevertheless be viewed as a serious infringement to a Kurdish Iraqi. However, the judge assessed the risk and reached conclusions which were open.

24. I can see no error in the judges treatment of the issue of relocation which accords with the country guidance decision of AA[2015]. Relevant considerations were highlighted .The same can be said about sufficiency of protection.

25. In summary, I do not find any merit in the arguments advanced on behalf of the appellant in this appeal. It amounts to an attempt to unpick the conclusion of the judge that the appellant was not at risk on return. The decision demonstrates that the judge properly understood the competing arguments advanced; properly analysed the evidence; and reached sound conclusions.

Decision

I find no material error of law established in the decision of First tier Judge Austin. Consequently, that decision, dismissing the appellant's appeal on all grounds shall stand.

Deputy Judge Farrelly

5th July 2017