Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02049/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 February 2018	**On 3 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

HAK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Sanders, of Counsel instructed by Messrs J D Spicer Zeb Solicitors
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Khawar who in a determination promulgated on 9 October 2017 dismissed the appellant's appeal against a decision of the Secretary of State to refuse to grant asylum or other protection.

2. The appellant is a citizen of Iraq born on 1 January 1989. He asserts that he left Iraq in June 2015 arriving in Britain in September that year. The basis of his claim for asylum was that he had been in a relationship with a girl in Sulemaniya, R, whose father was a PUK leader. He had asked her

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father for her hand in marriage and had been refused on two occasions but had then met her in the garden of her house. Her father had returned home early and had tried to shoot him but missed and he had escaped in a taxi having received a call from a Peshmerga who told him that he should hide as he would be sought out. He was uncertain about the date of the incident but said that after that he had gone into hiding for a week before leaving Iraq in July 2015 once he had received a visa which enabled him to travel to Turkey. His fear was that he would be killed by the girl's father if he returned.

3. The judge considered the appellant's claim in detail and noted his evidence. He noted that there was no independent evidence that the appellant's girlfriend's father had any position of authority in Halabja as the appellant had claimed and in fact there was evidence to the contrary. He accepted the submission of the Secretary of State that the appellant's assertion that if his girlfriend's father had 50 peshmergas under his control it was not credible that they would be out all the time and particularly if the appellant had said that only fifteen would be on duty at a time. It had therefore been stated that if R's father's house needed to be guarded there would be more than one peshmerga there to guard the property. In any event, it would be inconsistent that R would be able to go out without a guard and meet him at the restaurant where he worked. Moreover, the appellant had said that the incident had occurred on 22 July 2015 when indeed that was the date he left.

3. The judge set out basic refugee law in paragraphs 15 onwards of the determination and in paragraphs 20 to 23 he set out the burden and standard of proof. In paragraphs 24 onwards he set out his assessment of credibility and findings of fact. He did not find the appellant to be credible. He stated in paragraph 25 "having carefully considered all of the evidence of the appellant both documentary and oral, and due to the various inconsistencies, contradictions and high improbability of events in his account I am not satisfied the appellant has proffered a credible account". He had come to that conclusion both in relation to the appellant's claim that he had been involved in a relationship with his claimed girlfriend and that her father was a powerful leader within Sulemaniya or indeed within the PUK. He referred to the lack of objective evidence to establish R's father's status either as a member of the PUK or as a leader within the Sulemaniya area or within the Halabja area. He stated that the appellant had claimed to have met R during his work as a baker and that he had been involved in a relationship of approximately one year. He stated that if the appellant had been genuinely involved in a relationship for approximately one year with R and he genuinely proposed marriage to her through her father it was highly likely, given the religious and cultural context within which the appellant lived in Sulemaniya, that his mother and/or uncles would have been involved in such a proposal. The appellant had failed to proffer any evidence of any involvement of his family in relation to any such proposal for marriage.

4. He went on to consider the fact that the appellant had said that his proposal for marriage had been rejected on two occasions but he had still

sought to continue with the relationship and that he had visited R at her home climbing into the garden when he had been spotted by her father who had returned from work with his guards. He noted that the appellant had said that initially that he had been shot by R's father but had made good his escape by running away but that during his oral evidence the appellant had been questioned about who had shot at him and he stated that R's father did not shoot at him because upon return to the home he would have been tired and would "go to a room to have a rest". Further he did not know if the guards had given chase because he did not look back. The judge stated he did not find the account to be reasonably likely to be true. He went on to say:-

> "In my judgment anyone in the position of H would immediately have alerted the guards as to the appellant's presence and required them to seek to apprehend the appellant. If H shot at the appellant it is inevitable that any guards who had been left at the property to guard H's home would also have been alerted immediately of the appellant's presence and in my judgment would also have shot at the appellant and in all probability given chase and apprehended the appellant."

5. The judge went on to say that the appellant had said that he had hid for one week but had then changed his account from one week to two days.

6. He then went on to say that the appellant, when hiding in Sulemaniya had not contacted his family to make sure they were okay but had said that his lack of contact as to their welfare was because they were females and therefore "nothing would happen to them". He stated that that assumption was wholly undermined by the fact Iraq is an extremely male dominated society and women are considered subservient and domestic violence remains a serious problem and that there is no law prohibiting domestic violence.

7. The fact that the appellant had waited around for a visa again the judge considered undermined his claim: if he were genuinely truthful he would not have waited around in Iraq to acquire a visa - he would have simply escaped. The judge did not accept that the appellant's family would not have a telephone given that the appellant had $14,000 with him to be able to pay for an agent to take him to a safe place. Moreover, if he had been genuinely involved with R he would be likely to have attempted to maintain some type of contact with her after his alleged flight from Iraq. The judge did not believe the appellant's claim that he discarded the SIM card containing her telephone number while he was fleeing her home in a taxi and wrote back to Halabja and they did not have a telephone number. He considered that before discarding the SIM card the appellant would have written down R's number so that he could contact her. If he had been genuinely involved with R he would wish to ensure that she was not harmed by her father. The judge also referred to paragraphs 10 to 27 of the Reasons for Refusal Letter and adopted the conclusions of the Secretary of State therein – these were the issues to which I have referred above regarding R's claimed membership in the PUK and how or whether

or not it was guards or Rs' father who had shot at him when he left her house.

8. Having found that the appellant was not credible the judge considered that the appellant would be able to return to his home area without difficulty – the IKR was considered to be virtually violence free.

9. I note that the evidence that the appellant left his identity card with his family: so there should be no difficulty in his obtaining entry into the IKR nor, indeed, if he
obtained his identity card from his family, in his obtaining passport from the Iraqi Embassy in London.

10. The judge found correctly that Article 8 was not engaged in this case.

11. The grounds of appeal state that the judge had been wrong to consider that the appellant's "mother and/or uncles" would have been involved in any marriage proposal stating that the appellant specifically mentioned that he had approached R's father was his mother and uncle. Moreover he had stated that he had sent his mother to talk to Rs' father four or five times. It was stated that that evidence would not be taken into account. Moreover it was argued that the judge had speculated regarding the shots fired at the appellant when he left R's garden, and that he would have left the country immediately without waiting to acquire a visa and would not have just discarded the SIM card. It was stated that he had engaged in inappropriate speculation contrary to the judgment of **HK v SSHD [2006] EWCA Civ 1037.**

12. It was stated that the judge had failed to apply the appropriate standard of proof referring to what the appellant would have "in all probability" done. It was also stated that he had not made recent findings on relevant issues.

13. At the hearing before me Ms Sanders emphasised the assertion that the judge had used speculation when reaching his conclusions. She repeated that family members had been involved in the proposal and that the judge should have taken that into account. Moreover she said that the judge had not applied the appropriate standard of proof but had merely applied speculation as to what he considered might have happened. She argued that the judge was assessing the appellant's evidence against what a reasonable person would have done and not what the appellant had said he had done. Moreover the judge had not properly dealt with or given reasons for adopting the reasons in the Secretary of State's the letter of refusal.

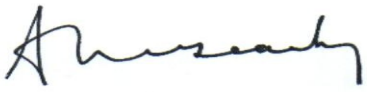
14. Ms Pal in reply stated that the fact that the judge had not made references or in terms to the various paragraphs to which he referred in the letter of refusal was not material to the outcome and should be viewed in the context of the many findings made by the judge. He was entitled to consider the appellant's claim was not credible and had given reasons for doing so. Clearly he had applied the correct test which he had set out in paragraphs 20 to 22 of the determination.

15. In reply Ms Sanders stated that the paragraphs 20 to 22 were merely standard paragraphs and that did not indicate the standard of proof which the judge had used.

16. I consider that there is no material error of law in the determination of the Immigration Judge. The judge set out the correct burden and standard of proof at paragraphs 20 to 22 onwards and I consider there is absolutely nothing to show that he did not apply that low standard of proof. The judge did engage with the evidence and gave clear reasons why he considered that the appellant was not credible. I consider that those reasons were fully open to him. There is nothing in his reasoning that is illogical or has been shown to be irrational. The reality is that this appellant's claim is based on assertions which are not backed up by any supporting evidence and the judge was entitled to weigh up the appellant's claim stating what he accepted and what he did not. He was not bound to accept assertions made by an appellant if he considers that they cannot be supported or indicate a lack of coherence or where there are discrepancies. I consider, moreover, that the judge is not required to give detailed reasons for every single aspect of the appellant's claim. He was entitled to state that he accepted the analysis and conclusions of the Secretary of State in the letter of refusal with regard to certain elements of the appellant's claim. It is not the case that he merely adopted the reasons for refusal. He gives detailed reasons for his conclusions that the appellant was not credible and these were properly reached after a detailed analysis of the evidence. I therefore can only conclude that the conclusions of the judge were fully open to him that there is no error of law in his determination. Accordingly the decision of the judge shall stand.

Decision

The appeal is dismissed

Signed:  Date: 18 February 2018

Deputy Upper Tribunal Judge McGeachy

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.