Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: PA/14131/2018**

PA/14132/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 2 September 2019	**On 4 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

DANIAR [M]

ZHIWAN [H]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Mair counsel instructed by Barnes Harrild and Dyer

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge O Williams promulgated on 6 March 2019, which dismissed the Appellants appeals against a refusal of their protection claims on all grounds.

The Judge's Decision

3. Grounds of appeal were lodged arguing that the Judge failed to apply anxious scrutiny; conflated credibility with plausibility and there was procedural unfairness in making credibility findings in respect of issues that the Appellants were not given the opportunity to address.

4. On 24 July 2019 Upper Tribunal Judge Smith gave permission to appeal.

5. At the hearing I heard submissions from Ms Mair on behalf of the Appellant that:

   (a) There was a lack of anxious scrutiny. The Judge accepted the Appellants nationality and ethnicity on the basis that their knowledge of the exitance of blood feuds was consistent with the relevant CPIN on Blood Feuds. The Appellants claim was not based on a blood feud but an honour crime and was consistent with that CPIN.

   (b) The Judge conflated credibility with plausibility thereby making speculative assumptions about the behaviour of Kurdish teenagers behaviour. She relied on the guidance given in HK v SSHD [2006] EWCA Civ 1037. She identified in her skeleton argument at paragraph 9 (a)-(d) instances where the Judge made speculative assumptions.

   (c) The background evidence relating to honour crimes set out at 18 of the Judge's decision and reflects the fact that the system of marriage arrangements is very complex and there is likelihood of falling foul of the code of conduct.

   (d) The Judge did not accept the circumstances in which the relationship was formed and did not accept that the Appellants would take the risks described and yet such behaviour was not inherently implausible. How they met was the only way they could meet in the guise of their acceptable roles in society. There was nothing inherently implausible in trying to formalise their

relationship by asking for her hand in marriage rather than immediately fleeing.

(e) At paragraph 26 the Judge refers to it being ‘a matter of common sense’ that A1 would be concerned about the risks of their relationship when the background material confirmed this happened.

(f) The Judge failed to refer to the accounts consistently with the CPIN on Honour Crimes.

(g) There was procedural unfairness. It is apparent that after the hearing the Judge has referred back to the evidence and taken issue with evidence given about specific matters that the Appellants were not challenged about in the refusal letter or in cross examination. She referred specifically to the matters raised in paragraphs 21,22 ad 23. Given the opportunity to address these issues their answers could have shown that the evidence was not as fanciful as suggested.

6. On behalf of the Respondent Mr McVitie submitted that:

(a) Consistency alone is not enough it is only one hallmark of credibility.

(b) Teenagers throughout the world are not all the same. Their account must be looked at in the context of her claim that they were in the IKR and she claimed to be the daughter of a high ranking PUK member.

(c) The Judge was entitled to find the account internally inconsistent: A2 case was that she could not go out without a chaperone but the chaperone apparently did nothing.

(d) The Judge could not apply British standards to Iraqi teenagers and he was entitled to find that they would not have behaved in the way they did. The Appellants case was that A2 was the daughter of a high ranking PUK member: had her father been a less powerful and high-ranking person the account may have been more credible.

(e) In relation to the points raised in paragraphs 24.29 and 30 these were all issues raised in the refusal letter

7. In reply Ms Mair on behalf of the Appellant submitted

(a) In relation to Ground 2 none of the matters referred to were raised in the refusal letter or put to the Appellants in cross examination. If these issues were the crux of the case why not put them to the Appellants

(b) The objective evidence states that Kurdish young people do form illicit relationships and honour crimes do occur. Is it wholly incredible therefore that their relationship was established as claimed, it was not inherently implausible.

(c) A2s case was that her father was strict not that she was locked at home. Her movements were prescribed and therefore her account was plausible.

Finding on Material Error

8. Having heard those submissions I/we reached the conclusion that the Tribunal made material errors of law.

9. Whilst the Judge is entitled to use common sense in assessing the evidence, as Neuberger LJ noted in HK v SSHD [2006] EWCA Civ 1037 at 28 to 29, inherent improbability can be a dangerous even a wholly inappropriate factor to rely on in asylum cases. As Keene LJ noted in Y v SSHD [2006] EWCA Civ 1223 at [27] care must be taken in concluding an account is incredible without looking at the issue through the evidence of the country information. Background evidence could assist with the assessment, revealing the likelihood of what was said having occurred. Background evidence could reveal that adverse inferences which were apparently reasonable when based on an understanding of life in this country, were less reasonable when the circumstances of life in the country of origin were exposed. I am not satisfied that the Judge has engaged with this guidance in reaching his credibility findings.

10. Ms Mair acknowledges that her challenge in relation to anxious scrutiny was not her strongest point nevertheless it is correct that the Judges unnecessarily

assessed the Appellants claimed nationality and ethnicity given it was not challenged and accepted it because they had knowledge of blood feuds: given that their case related to honour crimes and not blood feuds this is clearly an error . However I do not accept that it reflects that the Judge was unaware of the nature of the case as he summarised their claim quite fairly at paragraph 12 and while referring to the CPIN relating to Blood Feuds at paragraph 18 this is clearly a typographical error as all of the sections he reproduces come from the August 2017 Honour Crimes CPIN.

11. The Judge makes a fairly limited number of adverse credibility findings (7) against the Appellants and I am satisfied that it was therefore important to ensure that the Appellants had an opportunity to address those issues and that the factual matrix the case was assessed against was accurate. The background material, some of which is set out by the Judge at paragraph 18, is clear that in spite of the strict moral code and restrictions placed on woman in the Kurdish community relationships outside of the norm do occur and therefore I am satisfied that the Judge was required to give very clear reasons based on an accurate summary of her case why he rejected their case that such a relationship developed between childhood friends.

12. I am satisfied that Ms Mair has correctly identified at paragraph 9 of her grounds a number of findings that conflate credibility and plausibility. Given the clear evidence of the background material that such relationships occur these findings fail to acknowledge or give adequate reasons why in the Appellants case the behaviour that is acknowledged in the background material to occur was incredible in their case. Contrary to the assertion made by the Judge A2 did not state she was not allowed out but rather she was not allowed out on her own and therefore the Judge was required to assess whether the development of this relationship , as Ms Mair suggests in the only place that they could meet in the guise of their acceptable roles in society, was credible. Therefore the findings made at paragraphs 21, 22, 23 about how that relationship developed most clearly fail to assess their claim in the light of the background material.

13. I am satisfied that there was procedural unfairness in the same paragraphs as it does not appear that A2 was specifically asked about why she was permitted to

go to the market, or was able to use her friends mobile phone or go to the orchard when she was not allowed out without a chaperone . If these were points taken against the Appellants they should have an opportunity to address this. Similarly the Judge speculates that other stall holders would have been able to overhear their conversations and again this was speculation and the Appellants were not given the opportunity to address the challenge.

14. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law. The overall findings are arguably tainted by the improper approach to the assessment of the core claim of a relationship developing outside societal norms.

15. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.

16. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed Date 3 September 2019

Deputy Upper Tribunal Judge Birrell