Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: **PA/12125/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34	**Decision & Reasons Promulgated**
On: 29 July 2020	**On: 03 August 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

FH
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to directions issued by Upper Tribunal Judge Hanson on 28 May 2020.

2. The appellant is a national of Iraq of Kurdish ethnicity, born on 2 November 1994, from Erbil. He arrived in the United Kingdom on 4 April 2019 and claimed asylum the same day.

3. The appellant's claim was made on the basis that he was at risk on return to Iraq from his uncles as a result of his refusal to kill his mother after she had eloped with a man, K, and thus dishonoured their family. The appellant claimed that K made three marriage proposals to his mother, but his uncles did not accept the proposals and his mother then eloped on 28 February 2019. The appellant claimed that his uncles had high military ranks within the KDP. They contacted the court and had an arrest warrant issued for his mother. He

claimed that his uncles would kill him if he returned to Iraq and that he was at risk of being persecuted as a member of a particular social group, namely a potential victim of an honour killing.

4. The respondent refused the appellant's claim on 28 November 2019. The respondent rejected the appellant's account and considered that he was at no risk on return to Iraq. Even if it was accepted that he was at risk in his home area, the respondent considered that the appellant could relocate to another part of the IKR. He would be able to obtain his CSID in order to do so. He could support himself with the help of his maternal aunt and her husband as they had helped him leave Iraq. The respondent concluded that the appellant's removal would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First tier Tribunal Judge Hawden-Beal on 13 February 2020. Judge Hawden-Beal had before her photographs of the appellant's uncles which his cousin N had sent to him. The appellant explained that he had asked N to send him his identity documents as well as information about the ranks of his uncles, but N had only been able to obtain the photographs as his eldest uncle S, his mother's brother, had kept hold of everything else. The appellant's evidence before the judge was that his father had died of cancer in 2010. He had a brother aged 11 and a sister aged 13. His sister had left with his mother when she eloped. He claimed that he could not live in any part of Iraq because his uncles were powerful and were highly connected within the government and would find him. He claimed that his maternal uncle S beat him badly when he refused to kill his mother and would have killed him but he was stopped by his paternal uncle F. It was his mother's sister who had helped him flee Iraq.

6. Judge Hawden-Beal considered that the respondent's reasons for rejecting the appellant's account were based upon speculation and she accepted the appellant's account. She accepted that his mother had eloped and that he was considered to have dishonoured his family by refusing to kill her. She accepted that he was in danger on that basis and was a member of a particular social group, namely a man who was perceived to have failed to protect his family honour and who feared honour violence. The judge did not accept that the appellant was at risk from his paternal uncles because one of them had tried to protect him against S at the beginning, but she accepted that he was at risk from his maternal uncle S. However, she did not accept that the evidence showed S to be as powerful or influential as the appellant claimed, she did not find the photographs to be determinative of his position or rank and she did not accept that he would be able to find the appellant anywhere in Iraq. She considered that if S was so powerful, he would have been able to find the appellant's mother. She did not accept that S was still looking for the appellant, as claimed by N, but in any event she considered that the appellant could live in the IKR without being found by his uncle, as he had managed to do before leaving the country. She considered that the appellant could relocate to another part of the IKR and could receive support and assistance from his maternal aunt and her husband. She did not, therefore, consider that he qualified for asylum. The judge found further that the appellant was not at Article 2 or 3 risk and that his removal would not breach his Article 8 human rights and she accordingly dismissed the appeal.

7. Permission to appeal was sought by the appellant on the following grounds: that the judge was wrong to find that the photographs were not determinative of S's rank as they showed him in military uniform and also showed him standing near the Deputy Prime Minister; that the judge had made contradictory and speculative findings about the appellant's uncle S's ability to find his mother; that the judge had made speculative and unclear findings about his cousin being afraid to help him; and that the judge's finding that the appellant was not at risk from his uncle S was incompatible with the positive findings of fact made.

8. Permission was granted on 7 April 2020 on all grounds, but with particular reference to the arguably speculative findings made by the judge in relation to S's ability to find the appellant's mother.

9. The appellant's case was then reviewed by the Upper Tribunal due to the circumstances relating to Covid 19. In a Note and Directions sent out on 28 May 2020 Upper Tribunal Judge Hanson indicated that he had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

10. Written submissions have been received from both parties, from Fountain Solicitors on behalf of the appellant dated 8 June 2020 and from Ms Aboni for the respondent dated 15 June 2020. Neither party had any objection to the matter being decided on the papers. In the circumstances, and having considered further whether deciding the matter without a hearing would give rise to any unfairness, I conclude that I am able, fully and fairly, to consider the error of law issue on the basis of the papers before me in accordance with rule 34 of the Procedure Rules. I have therefore proceeded to consider whether or not Judge Hawden-Beal's decision contains errors of law such that it should be set aside. I conclude that there are no errors of law in her decision. I do so for the following reasons.

11. Having accepted that the appellant was a member of a particular social group and was at risk from his maternal uncle S by reason of having dishonoured his family, the judge dismissed the appeal on the basis that the appellant could safely and reasonably relocate to another part of the IKR where his uncle would not be able to find him. She did not accept the appellant's claim that S was powerful and influential and, as such, could locate him anywhere in Iraq. The sole issue in dispute, therefore, is whether the judge erred in her reasons for finding that S was not as powerful and influential as claimed by the appellant.

12. The ground of appeal upon which permission was specifically granted (albeit granted on all grounds) was in relation to the judge's finding on S's inability to locate the appellant's mother as a reason for concluding that S was not as influential as claimed. It is argued that such a finding was speculative and based upon guess work as the evidence was that the appellant's mother had left Iraq and the judge had acknowledged at [43] that S could not be expected to have found her if she had left Iraq completely. However, that does

not mean to say, in my view, that the judge was not entitled to consider the failure of S to find the appellant's mother prior to her departure from Iraq when assessing his level of power and influence. In any event, there were various other reasons given by the judge for concluding that S would not be able to find the appellant if he relocated within the IKR. At [45] the judge noted that the appellant was previously able to go into hiding with the help of his aunt and her husband without S finding him, that there was no evidence that S was actively looking for him at that time and that there was no evidence that S had found out who had helped him. The judge also referred to the background evidence, at [45], in considering the extent to which the appellant could relocate within the IKR, a matter not challenged in the grounds. Further, the judge had regard to the photographs relied upon by the appellant as evidence of his uncle's high ranking position and influence, at [39], and concluded that they were not sufficient to demonstrate that he held such a position. The grounds challenge the findings in that regard, but the judge provided proper reasons for so concluding. She was entitled to reach the conclusions that she did and to accord the photographs the weight that she did.

13. As a final comment at [3(vi)] of the grounds, there is the suggestion that, having accepted that the appellant was a member of a particular social group and at risk of being the victim of an honour killing at the hands of his uncle, the judge contradicted herself by concluding that he was not at risk on return to Iraq. However, that is clearly not the case because the judge gave proper reasons for concluding that the appellant could safely and reasonably live elsewhere in the IKR without his uncle knowing that he was there. It is clear from [46] that the judge was not satisfied about the credibility of the appellant's claim that his uncle was still looking for him, but in any event, the judge's findings as to the availability of relocation within the IKR were fully and properly open to her. The judge had the benefit of hearing from the appellant and assessing the documentary evidence and it is clear that she gave careful consideration to all the evidence in making her findings. The grounds are essentially a disagreement with the judge's conclusion as to the ability of the appellant's uncle S to find him in another area of the IKR, but that was a conclusion she was entitled to reach.

14. Accordingly, I find no error of law in the judge's findings and conclusions. Her conclusion, that the appellant could safely and reasonably relocate to another part of the IKR, that he had or could obtain the relevant documentation to enable him to return there and that he was therefore not at risk on return to Iraq, was one which was fully and properly open to her on the evidence. I therefore uphold the judge's decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 29 July 2020