



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/03406/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 May 2022**

**Decision sent to parties on  
On 8 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**MR D T  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Mohzam, Burton & Burton Solicitors

For the Respondent: Mrs A Nolan, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent on 1 February 2020 refusing him international protection, humanitarian protection or leave to remain on human rights grounds. It is not disputed that the appellant is a Kurd from Sulaymaniyah and a citizen of Iraq.
2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

**Failure to comply with this order could amount to a contempt of court.**

3. The basis of the appellant's case as currently presented is that he is bisexual and would be at risk in Iraq on return to Kurdistan for that reason. That is in dispute: the respondent accepts that if the appellant is bisexual he would be at risk in Iraq, but she does not accept his claimed bisexuality.

**Background**

4. The appellant was born in February 1993 and is 29 years old. He claims to have worked as a police officer in Iraq, on duty at an army base, and to have had two casual sexual relationships with men, one at school, and another which lasted from 2017 until he was caught by his mother in August 2018 and fled, following threats to kill him by his father by reason of his sexuality. The appellant remained in contact with his mother after leaving Iraq.
5. The appellant travelled on his own passport via Iran, Turkey, Greece, Serbia, Austria and Germany, spending 40 days in Turkey, four months in Greece, 15 days in Serbia, a month in Romania, three or four days in Germany, and between 7 and 20 days in France, depending which account is accepted. He was fingerprinted in Serbia, Romania, Germany and France.
6. The appellant had a valid CSID with him when he travelled and still had it when he reached the UK on 11 March 2019: he claimed asylum the next day and was referred to the respondent's Third Country Unit (TCU). The appellant claims to have lost the original CSID document now, though he does have a copy, which was provided to the First-tier Tribunal, with a translation.
7. On 1 June 2019, the respondent refused his protection and human rights claims. The respondent's Third Country Unit (TCU) considered the appellant's circumstances for three months, but on 6 June 2019, the TCU terminated its involvement.
8. There were two sets of further representations in January and February 2020 raising the appellant's claimed bisexuality.
9. The appellant has an in-country right of appeal against the respondent's refusal decision, which he exercised.

**First-tier Tribunal decision**

10. First-tier Judge Joshi found the appellant's account to lack credibility and rejected an arrest warrant which the appellant claimed had been issued against him following a false allegation of rape and sodomy by his former partner.

11. The First-tier Judge's core reasoning is set out at [52]-[61]. The judge considered an arrest warrant which had been produced some three years after the event and which was profoundly unsatisfactory for the reasons set out at [57]-[59]. The judge did not find the document to be reliable, applying *Tanveer Ahmed*.
12. He also found that its production damaged the appellant's overall credibility. At [60]-[61], the First-tier Judge explained why he did not accept the appellant's claimed sexuality or his core account to be credible:
  - "60. The appellant stated he did attend a gay club in the United Kingdom but has provided no evidence in support of this. I also do not accept his reason for no longer attending on the basis that people from the Kurdish community who were heterosexual would attend in order to find gossip about people in their community. I have noted that the appellant has not had any [sexual] relationship whilst he has been in the United Kingdom. Finally I also note that the appellant did travel through other safe countries.
  61. For the reasons set out above I do not find the appellant's claim to be credible. I do not accept that the claimed incident happened as put forward by the appellant or that he is a bisexual man".
13. The appellant, on his own account, had no relationship or family in the UK and has remained mainly discreet about his sexuality here, fearing rejection by the UK Kurdish community.
14. The First-tier Judge dismissed his protection appeal and also his Article 8 ECHR appeal, within and outwith the Immigration Rules HC 395 (as amended).
15. The appellant sought permission to appeal to the Upper Tribunal.

### **Permission to appeal**

16. The grounds of appeal argued that the First-tier Judge failed adequately to deal with whether the appellant was homosexual, focusing instead on the reliability of the arrest warrant.
17. Permission to appeal was granted on the basis that the First-tier Judge's finding that he was neither homosexual or bisexual was arguably inadequate.

### **Rule 24 Reply**

18. The respondent's Rule 24 Reply argued that the First-tier Judge's decision was sustainable. The core of her response begins at [3]:
  - "3. First it should be noted that the appellant apparently claims to be bisexual, and not gay. Second, the First-tier Judge made an express finding and conclusion at [61] that he is not bisexual. Third, contrary to what was pleaded at [2] of the grounds of appeal, the 'change in focus' to the arrest

warrants was not immaterial to the issue of the appellant's sexuality. On the contrary, it was evidence he submitted as core to his claim, that the arrest warrants arose directly as a result of illicit sexual activity with his ex-partner. The First-tier Judge was fully entitled and obliged to take this into account in assessing the appellant's claim to be bisexual. Finally, the matters referred to at [60] were also ones rationally open to the judge to take into account in assessing the appellant's credibility.

4. It appears the evidence before the First-tier Judge was not extensive – the determination necessarily therefore reflected this. ”

19. That is the basis on which this appeal comes before the Upper Tribunal for hearing.

### **Upper Tribunal hearing**

20. The grounds of appeal seek to go behind the finding of fact by the First-tier Judge that the appellant is not gay or bisexual. I asked Mr Mohzam, who appeared for the appellant, to assist me by identifying any evidence before the First-tier Tribunal which could have led to a different factual conclusion. He relied on the appellant's witness statements, which were considered and summarised in the First-tier Tribunal decision.

21. I remind myself of the high standard for interference with a finding of fact by the First-tier Tribunal Judge, that is that the judge's reasoning must be against the weight of the evidence, perverse or *Wednesbury* unreasonable, or frankly incomprehensible to the reviewing Tribunal: see *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982.

22. The findings in the First-tier Judge's decision, whilst robust, do not err at the *R (Iran)* level. The evidence before the First-tier Tribunal was very sparse, and the First-tier Judge gave good reasons for considering that the arrest warrants were unreliable on their face.

23. I am not satisfied that the standard for interference with a finding of fact of the First-tier Tribunal at the level of an error of law has been reached. That being the case, the Upper Tribunal has no power to interfere with the decision of the First-tier Judge.

24. The appellant's appeal is dismissed.

### **DECISION**

25. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)

Date: 6 June 2022

Upper Tribunal Judge Gleeson