



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001943
First-tier Tribunal Nos:
PA/51872/2021
IA/04230/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

GSH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 29 June 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Chohan (“the judge”), 28 October 2021. By that decision, the judge dismissed the Appellant’s appeal against the Respondent’s refusal of his protection claim.
2. The Appellant is a citizen of Iraq. He is of Kurdish ethnicity and lived in the IKR. In summary, his claim was as follows. In approximately 2015 he began a relationship with Ms D. Ms D came from an important family which in turn was part of an influential tribe in the IKR. As a result of the relationship the Appellant claimed to have been threatened through a series of events. His family also became hostile towards him and he claimed that if returned he would be at risk from KDP forces who held influence throughout the region.

The judge’s decision

3. It was clear that the Appellant’s case centred around the issue of credibility. For reasons set out between [5] and [11], the judge concluded that the Appellant’s account was untruthful. He ultimately found that there was no adverse history and no risk on return. The appeal was accordingly dismissed.

The grounds of appeal

4. The essence of the grounds of appeal were that the judge had misunderstood an aspect of the Appellant’s evidence, had failed to have regard to material evidence from the Appellant and, if the first two points were made out, had also failed to have regard to country information.
5. Permission was granted on all grounds with particular reference to the first point just described.

The hearing

6. At the hearing I received helpful submissions from Mr Spurling and Mr Wain. These are a matter of record.
7. At the end of the hearing I announced to the parties my conclusion that the judge had materially erred in law. In light of this the parties agreed that the appeal would have to be remitted to the First-tier Tribunal.

Conclusions

8. I have exercised caution before interfering with the judge's decision. He considered a range of evidential sources and, as a general proposition, he was best placed to have made relevant findings of fact. It is important to emphasise, however, that the core issue in the appeal was that of credibility. In assessing that core issue, the judge was obliged to take account of the evidence in the round. Where, as I find to have occurred, certain important elements of that assessment are flawed, it is likely that the overall conclusion on credibility will lose its force to the extent that the decision as a whole has to be set aside.
9. I am satisfied that the judge misread or misunderstood the Appellant's evidence as to when Ms D's family found out that she was not a virgin. At [8] and [9], the judge took the view that this knowledge has been obtained prior to two individuals visiting and threatening the Appellant in the middle of 2019. Having regard to question 141 of the Asylum Interview Record, it is clear that the Appellant's evidence was in fact that the knowledge had only been obtained after Ms D was married in 2020. Neither representative could find any reference in the evidence to the Appellant having said that the knowledge was obtained in 2019. The judge made no reference to any such source in his decision. The misunderstanding of the evidence is in my view of significance because it is sufficiently clear from [8] and [11] of the decision that the judge took the apparent timing of the two men's knowledge as being adverse to the Appellant's overall credibility.

10. For the avoidance of any doubt, I am satisfied, based on the witness statement from Mr Gayle (who represented the Appellant before the judge) and in light of Mr Wain's acceptance, that there had been no concession or suggestion on behalf of the Appellant at the hearing that the two men had obtained knowledge of Ms D's lack of virginity in 2019. I am satisfied that the apparent reference to what Mr Gayle said at the hearing is just an element of the judge's misunderstanding of the evidential picture.

11. The second error relates to the judge's finding at [6]. There, he found it to be incredible that the Appellant had only become aware of Ms D's family's power and influence after the Appellant's "problems started". The judge stated that "The appellant is expecting the tribunal to accept that in the years he had been with [Ms D] at no point did she mention her father's and brother's high profile and the risk they posed if the relationship were to be discovered". The Appellant's witness statement (which in general terms features very little in the judge's findings) stated that he did not know full details of Ms D's family profile at the outset of his relationship with her, but Ms D had subsequently told him of their membership of the influential tribe and their high position in the KDP. Mr Spurling accepted that the witness statement did not provide a particular point in time as to when the Appellant acquired that knowledge from Ms D. Having said that, neither representative was able to point to any evidential basis for the judge's finding that the Appellant only found out about Ms D's family's position once his problems had begun. Further, there was no evidential basis to support the judge's findings that Ms D had "at no point" mentioned her family's position: in fact the Appellant's witness statement asserted that she had told him, albeit that a precise date had not been provided. All-told I am satisfied that the judge either misunderstood the evidence, made a finding with no evidential basis, or failed to provide reasons for a finding. The finding was, as with the first error, clearly considered to be adverse to the Appellant's overall credibility.

12. I acknowledge Mr Wain's submission that there are a number of other adverse credibility findings which have not been specifically challenged in the grounds of appeal. However, his attempt to suggest that the errors I have identified were simply not material does not stand up. It cannot properly be said that the other findings were so overwhelming that the errors made could not have made a difference to the outcome. It is fairly clear that there were some difficulties with other aspects of the case, but as stated earlier in my decision, the assessment of credibility involves a holistic assessment of the evidence. In the present case aspects of that assessment are flawed and the unchallenged findings do not go to cure those errors.

13. In the circumstances the judge's decision must be set aside.

Disposal

14. This is a case which must be remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact. This case concerns credibility at its core and it is not appropriate to retain it in the Upper Tribunal.

Notice of Decision

The First-tier Tribunal's decision involved the making of errors of law and that decision is set aside.

This appeal is remitted to the First-tier Tribunal (Birmingham hearing centre) for a complete rehearing before a judge other than First-tier Tribunal Judge Chohan.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 11 July 2023