



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

Appeal Number: PA/06849/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
5th June 2020**

**Decision & Reasons Promulgated
On 19th June 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**MA
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as MA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. FtT Judge Tucker dismissed MA's appeal against the refusal of his international protection and human rights claim for reasons set out in a decision promulgated on 24th January 2020. Permission to appeal was granted by FtT judge Keane on 13th March 2020. Directions for the further conduct of the

appeal were sent and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.

2. Both parties complied with the directions; neither party sought an oral hearing to determine the error of law issue.
3. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

FtT decision

4. The appellant, on the date of his application for protection, the date of decision and the date of hearing was under 18 years old. The judge took into consideration the relevant guidance in reaching his decision. The core of the appellant's claim was that he had sex with a girlfriend (K) outdoors in September 2018, was discovered and filmed and threatened with disclosure; that he left home without telling his mother or father and went to a maternal uncle's home who arranged for him to leave Iraq. He did not know how old K was or where she lived or what her family did. His claim was that they were and had been in a love relationship and did not talk about their families. He claimed to have had no contact with his family since the incident. The appellant was fingerprinted in Greece on 4 June 2018.
5. The FtT judge identified that the central issue was the credibility of the appellant's claim.
6. The FtT judge records the appellant's evidence ([54]) that he had not told anyone of his and K's relationship because it was not acceptable within their culture and that they had not seen each other outside school prior to the incident relied upon. The judge recorded the appellant's evidence that K had phoned the appellant to suggest they meet in her family orchard to have sex although they had not previously discussed having a physical relationship. The judge found:
 56. K must have known the considerable personal risk she was taking by embarking on the course of action she was suggesting. The evidence of the Appellant was that the relationship was considered unacceptable, prior to it becoming intimate, and now K was suggesting that it suddenly progress to a much more dangerous level. This was not a situation where the couple had commenced a physical relationship which had suddenly 'got out of control' and resulted in sexual intercourse. It was, according to the Appellant's evidence, a calculated act at least on the part of K which she must have thought through in advance.
 - ...
 61. I found the Appellant's evidence was confused regarding the meeting saying he did not know what was going to happen and if he knew he

would not have gone there (question 94). That is inconsistent with his evidence that K was clear what the purpose of the meeting was for.

...

66. ... the Appellant has made no effort to contact anyone in Iraq to try and find out the fate of K. I find that the apparent indifference to the fate of K is wholly inconsistent with the nature of the relationship claimed by the Appellant who spoke of their 'love relationship'. I take account of the age of the Appellant with regard to his decision making but also of the fact that he was, at the time, receiving support and advice from his uncle.

7. The judge refers to the discrepancy in the dates namely that the incident took place in September 2018 but in June 2018 he was fingerprinted in Greece. The judge records the appellant's evidence that he must have been confused and that the appellant maintained the events took place as claimed but that he must have left Iraq earlier than he thought.

8. The judge finds:

- The inconsistency in dates undermines the credibility of the appellant's account;
- It was not credible the appellant would know so little about K if he was in a relationship as claimed;
- It was not credible he would not tell his mother what had happened;
- It was not credible that he would leave his mobile phone at home;
- It was not credible he had no contact with his family;
- The appellant was not a credible witness; he had not had a sexual relationship with a girl;
- He is still in contact with his family and, with family assistance he would be able to obtain the necessary identification documentation to enable him to return to the IKR where he would have accommodation and family support.

Error of law

9. The appellant sought and was granted permission to appeal on four (mis-numbered as five) arguable grounds:

Ground 1: that the judge imposed a test on what the appellant would do through speculation both as to K's motives, the personal details they would have disclosed to each other and that the appellant would legitimately say he did not know what was going to happen in his first sexual encounter; failing to identify what precautions it would have been reasonable for a 17 year old to take.

Ground 2: the decision lacked cogent reasoning in referring to the appellant's lack of concern for K and yet his genuinely held fear of death at the hands of K's family; that the finding he would not tell his own mother was irreconcilable with negative family attitudes to honour crimes.

Ground 3: procedural impropriety in going behind a concession by the respondent that the inconsistency between when the appellant was in Greece and when the claimed incident occurred did not impact upon the appellant's credibility.

Ground 4: the appellant's inability to remember why he was not in school on the date of the claimed incident was a minor irrelevancy.

10. Grounds 1, 2 and 4 essentially submit that the judge improperly considered the evidence through the prism of his own experiences and gave inadequate reasoning for the findings made. On the contrary, the FtT judge set out the country information and background evidence regarding honour crimes and considered the evidence in the context of that evidence. He identified the salient parts of the appellant's evidence and referred to the inconsistencies, for example that K had asked to meet him for sex, that he didn't know what they were meeting for and that he wouldn't have gone to meet her if he knew. It was not inconsistent or unreasonable for the judge to refer to the lack of knowledge the appellant had of K personally after a claimed two-month relationship; nor was it irrelevant that this was the first meeting they had had outside school. That the appellant could not remember why he was not in school that day may be a small point and on its own would have been insufficient to found a lack of credibility but the judge simply took this as a factor to be taken into account. The judge directed himself properly and reminded himself of the appellant's age. He took note that the appellant went to a maternal uncle who assisted him. The appellant's claim that the relationship was a love relationship, the lack of concern shown by the appellant for K and the failure by the appellant to tell his mother what had happened were relevant factors that it was correct for the judge to consider. The judge has considered the evidence from the perspective of the appellant as is plain from his consideration of the background evidence in relation to 'honour' crimes.
11. The reference in the grounds to the judge failing to identify 'precautions' is difficult to understand – the reference comes immediately after the judge has set out extracts of interview records where the appellant describes what he knew and didn't know, which included reference to the appellant knowing the risks if he were caught having sex in the open and that had he known that was proposed he would not have gone.
12. Ground 3 submits the judge went behind a concession by the respondent that being in Greece in June 2018 whereas he claimed the incident that formed the core of his account was in September 2018 was not being held against him. As identified by the judge, there was a discord in the reasons for refusal letter of the respondent where the respondent points out the discrepancy in dates between June and September in paragraph 42 but in paragraph 46¹ states the

¹ 42. Furthermore Home Office records show that you were encountered in Greece on 04-06-18 (Home Office records), 3 months before you left Iraq for the first time (AIR q151). It is considered internally inconsistent and implausible that you had these problems in Iraq at the time you say, when by your own assertion you had not left Iraq before 01-09-2018.

...

46. As previously noted, you assert that you left Iraq shortly after the incident on 01-09-2018 (WS). Home Office records show that you were encountered by the authorities in Greece on 04-06-2018, 3 months before you claim to have left Iraq for the first time (AIR q151). However, given your age at this time it is

discrepancy does not engage s8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Ground 3 mischaracterises this as a concession by the respondent. Firstly, there is no clear concession – the respondent makes direct reference to the inconsistency and implausibility of his account as a result of this ([42]). Secondly the appellant himself accepts there is a discord between paragraph 42 and 46. Thirdly the appellant did not rely upon a claimed concession at the hearing before the FtT; and fourthly [46] of the reasons for refusal letter does no more than acknowledge that the discrepancy is insufficient to result in a reduction in weight of the appellant’s evidence overall, because of his age at that time.

13. The judge identified all the relevant evidence, the discrepancies and contradictions and assessed that evidence holistically in the context of the background evidence and taking account of the appellant’s age and vulnerability.
14. There is no error of law by the FtT judge in his findings such that the decision is to be set aside to be remade.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Jane Coker
Upper Tribunal Judge Coker
Date 05 June 2020

considered that this will not be held against you. It is considered that your behaviour is not one to which section 8(2) of the Asylum and Immigration (Treatment of claimants etc) Act 2004 applies.