Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001221
(PA/51960/2021), IA/04424/2021

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons promulgated**
On 21 June 2021	**On 3 August 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KHH
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain of Fountains Solicitors.
For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Borsada ('the Judge'), promulgated following a hearing at Birmingham on the on the 13 September 2021, in which the Judge dismissed the appellants appeal on all grounds.

2. The appellant is a citizen of Iraq who was born on the 1 January 1993.

Error of law finding

3. The Judge sets out his findings from [8] of the decision under challenge. In relation to the burden and standard of proof the Judge writes:

> 8. I am considering this appeal as at the date of the hearing. In relation to the refusal to grant refugee status I have considered this portion of the appeal under the provisions of the Qualification Regulations which itself incorporates the Geneva Convention (Convention Relating to the Status of Refugees 1951) and with respect to the standard of proof this will be as set out in the cases of Sivukumaran [1988] Imm AR 147 and Kaja [1995] Imm AR 1 i.e. the reasonable degree of likelihood. I have also had regard to all the matters mentioned in paragraph 339 L of the amended Immigration Rules. This same standard of proof and the same factors mentioned in 339 L of the amended Immigration Rules have been applied to my consideration of the appeal against both the refusal to grant Humanitarian Protection (under the amended Immigration Rules) and the Human Rights appeal under the ECHR insofar as that Human Rights appeal amounts to a consideration of that same evidence. As to the claim with regard to human rights and the right to private and family life i.e. the consideration of the appeal in relation to matters which are not directly to do with the asylum claim, the standard of proof is the balance of probabilities. All references to my opinion concerning the evidence shall be construed as a direct reference to the relevant standard of proof.

4. There is no challenge to the correctness of the legal self direction. The challenge is to its application.

5. Having considered the evidence, both written and oral, with the required degree of anxious scrutiny the Judge identifies his concerns about the appellants case in the following terms (which I set out in full in light of the specific challenge to the language used by the Judge, [but now anonymised]):

> 2. I note first the respondent's concession with regard to the appellant's claim and that the country information when taken together with the account given by the appellant does point to the truthfulness of the evidence concerning the appellant's affair with [R] and the subsequent agreement that was reached between the parties to settle the affair. I have been given no reason to reach a different conclusion from that having regard to all the evidence I have considered.
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> 3. I do however entirely agree with the respondent about the rest of the appellant's account and its lack of plausibility. For instance, I note that after the agreement the appellant and [R] lived together for ten months such that it is difficult to accept that [R] would have waited this long before deciding to divorce if she was really experiencing problems from her family about the marriage. The appellant's account also lacked internal logic i.e. on the one hand the appellant has said that [R] was still experiencing problems from her family because of her marriage to the appellant but on the other that the appellant was told that he must stay married to the [R] by the head of [R]'s family and was then threatened for having gone ahead with the divorce.
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> 4. The lack of internal consistency in the account noted in the previous paragraph does significantly undermine the credibility of the appellant's case as do the other matters referred to by the respondent

in the refusal letter including the inconsistency in the appellant's evidence about whether [R] and the appellant were legally divorced. Although the appellant now says that there was a divorce, he gave different evidence in the screening interview and also at paragraph 12 of his original witness statement. Whilst corroborative evidence is not necessary in an asylum claim the absence of any divorce papers has not assisted the appellant. I do also agree with the respondent that these are not marginal matters and in fact go to the core of the appellant's claim such that the discrepancies and inconsistencies in my view fatally undermines the credibility of the appellant's asylum claim and this is even allowing that honour-based violence is common place in Iraqi Kurdistan and that he did in fact have an affair with [R].

5. Adding, as well, to my sum of doubts is the appellant's claim that he managed to live in Iraq for a large period of time without any problems and here I particularly refer to the period of time spent in Koyeh (three months). If as the appellant claimed [R]'s family were well connected and powerful it is doubtful in my mind that any part of Iraqi Kurdistan would have been safe and that his whereabouts would not have been ascertained by [R]'s family. Even if I am wrong to have these doubts I am still of the view that the account is not credible based on the findings I have made in the previous paragraph.

6. I note that the appellant indicated that his family have recently been attacked by [R]'s family but again I agree with the respondent's representative that this lacks credibility i.e. that [R]'s family would still be engaging in hostile acts against the appellant's family two years after the appellant left the country and I am concerned that this further evidence has been added by the appellant at the hearing as bogus attempt to embellish a claim that fundamentally lacks credibility.

7. It follows from my above-mentioned findings that I do not consider the appellant is at risk on his return to Iraq and that the settlement following [R]'s divorce from her first husband, in all likelihood, brought to an end the dispute between the two families. As to the claim that [R]'s family are well connected and powerful: there is simply no supporting evidence provided for this and in the context of not having accepted the appellant's account as truthful I am not prepared to accept this claim either. Certainly, the claim that internal relocation within the IKR or Iraqi Kurdistan is impossible because of the ability of [R]'s family to find him bears little close scrutiny in the face of a lack of supporting evidence and certainly is at odds with the [R]'s family's patent inability to find him when he was living in Koyeh with his aunt even allowing that he said he was in hiding.

8. Turning therefore to the issue of the appellant's returnability: had the appellant credibly satisfied me that there was a genuine risk of harm from [R]'s family and that that risk was ongoing, I would have been sympathetic to the argument that state protection may not have been sufficient to protect him from this kind of violence. I was certainly not satisfied that the country information supported the contention that the state was able to provide adequate and sustained protection in such circumstances. Whilst it is true that in respect of the initial dispute the state did help the appellant, it is not clear that this reflects the existence of a systematic system of protection particularly against

honour based violence. In any event I do not consider that the appellant is in need of such ongoing protection.

9. As to internal relocation however I do find that even in circumstances where it might be argued that there was some ongoing risk for this appellant, such an option would be available to this appellant in circumstances in which there is no satisfactory evidence that [R]'s family do have power and influence outside the appellant's home area. Such an option would not be unduly harsh or risk a breach of his article 3 rights (see also paragraph 18 and 19 below). I would emphasize however that I do not accept that there is such a risk from [R]'s family at the current time. It follows that he could safely return to his home village and resume his old life.

10. As to the issue of the appellant's CSID card and/or INID: I note all that both parties have said about this with regard to the case law and the country information but I simply do not accept that the appellant has lost his CSID card and in that regard I note that he initially said that it was at his home before more recently saying that it was lost. I do not believe the appellant about this given my general credibility findings I am therefore satisfied that he could either be sent his existing CSID card by his family or obtain a replacement one again with the assistance of his family and in particular the male members of that family who would be able to vouch for him should an application to his local registrar be required. Given what is said about CSID cards in the case of SMO and the centrality of such cards to living a normal life in Iraq, I do not believe that the appellant has satisfied me that he is likely to have forgotten the volume and page number in the CSID register either.

11. It follows from this that there is no reason why he could not return to Iraq and internally travel to Iraqi Kurdistan (or go back by plane) and that such in such a journey he would be able to receive the assistance of his family in one form or another. Once home the appellant's family would also help him to re-integrate. It is very likely that he would easily be able to obtain any necessary ID documents and I also find that given that this is so he could easily live elsewhere in Iraqi Kurdistan if required even supposing that he does have a residual fear of [R]'s family in his home area. I do accept that living in Baghdad or any other area of Iraq outside Kurdistan is not a reasonably viable option for the reasons set out by the appellant's representation in their submissions as summarized in this decision.

12. To summarise: I find that that the appellant has not made out his case due to a lack of credible evidence and I therefore also find that he is not at risk of persecution in Iraq for the reasons he has claimed. I therefore dismiss the asylum appeal and for the same reasons the humanitarian protection appeal as well as the appeal on human rights grounds article 2, 3 and 8 of the ECHR. Outside the remit of the asylum claim I have been given no other reasons why the appellant might be allowed to stay in the UK i.e. under article 8 for private and family reasons and there was certainly no substantial evidence given for the appellant currently enjoying a well-developed private life in the UK and/or a family life that this needs to be protected and as such there is no disproportionate interference with this right by the respondent

consequent on the making of the refusal decision. I therefore dismiss the appeal on article 8 of the ECHR for this reason too.

6. The appellant sought permission to appeal on five grounds. Permission to appeal was granted by another judge of the First-tier Tribunal in the following terms:

> 2. Ground 2 complains that the judge applied the incorrect standard of proof.
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> a. At para. 8 the judge correctly recites the standard of proof for protection claims.
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> b. The judge expresses forcefully certain criticisms of the appellant's account at para. 4 (pp. 16-17), but he then describes these as being a "sum of doubts" (para. 5, p. 17). He then refers to a "doubtful" matter and to "doubts" (ibid).
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> c. The judge then refers to the settlement following [R]'s divorce as having "in all likelihood" brought an end to the despute (sic) (para. 7, p. 18).
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> 3. One should not infer from the occasional infelicitous expression by an expert tribunal that the wrong standard of proof has been applied. Also, it is entirely open to a judge to express doubts about certain aspects of the case which, cumulatively, mean that the appellant has not shown a sufficient likelihood of past threats, &c., to create a reasonable degree of likelihood of future risk.
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> 4. However, the repeated reference to doubts followed by a reference to what "in all likelihood" occurred when expressing the conclusions on future risk (para. 7) makes it arguable that the judge omitted to keep in mind certain aspects of the evidence, albeit doubtful, until the end when the question of risk is posed in relation to the evidence considered as a whole (KS (benefit of the doubt) [2014] UKUT 552, paras. 68, 73). It is arguable that the judge has rejected or left out of account some past events when assessing future risks because evidence of those events was merely doubtful or they were merely unlikely to have occurred (sic).
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> 5. I grant permission on all grounds, but it might be thought the other grounds either lack merit or would not be material if ground 2 is not established because:
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> a. Contrary to ground 1, if the judge applied the correct standard of proof, the judge articulated clear reasons for finding there was not a future risk notwithstanding past violent acts. There is nothing to show the judge did not take proper cognisance of prior violent acts as being a serious indication (but no more) of future risk.
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> b. With respect to ground 3, if the judge applied the correct standard of proof when rejecting the appellant's claim to have lost his CSID, and when finding that he would have his father's assistance, the finding that he should be able also to remember his Family Book number would be immaterial.
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> c. With respect to ground 4, if there was no real risk, sufficiency of protection was academic, but in any event the judge was "sympathetic" to the appellant's case on this point (decision, para. 8 (p. 19));

d. Contrary to ground 5, the judge was entitled to find, as is clear from the decision when read fairly as a whole, certain facets of the appellant's account to be plausible and certain other facts to be implausible.

7. The advocates agreed with the logic of the grant in that the determinative issue was that set out in Ground 2 which is drafted in the following terms:

2) **Ground Two – Material Misdirection – Standard of Proof**

2.1 At [5] of the FTT determination, the FTT Judge states (emphasis added):

'... Adding, as well, to my sum of doubts is ...'

'... if as the appellant claimed [R]'s family were well connected and powerful, it is doubtful in my mind ...'

'... even if I am wrong to have those doubts, I am still ...'

2.2 It is contended that the Appellant has applied a higher standard of proof than the lower standard of proof as is required when assessing the Appellants Refugee Convention Claim.

8. It is accepted the reference in the grounds to the 'Appellant' applying an incorrect standard of proof is a typographical error, as it is that applied by the Judge which is in issue.

9. It is important to read the decision as whole rather than to 'cherry pick' isolated phrases when assessing the merits of the claim.

10. In his submissions Mr Hussain, in effect, sought to argue that on the facts the appellant should have succeeded. That may be the appellant's opinion but disagreement with the outcome does not, per se, establish legal error in the decision actually made.

11. In simple terms the role of a judge is to make a decision. The process by which that happens is by the judge considering the evidence received, deciding what weight can be placed upon that evidence, and then assessing whether the required legal test is met. There is no authority supporting a claim that just because a judge used phrases such as those set out in Ground 2 material legal error will be established. A judge can assess the evidence in a legally correct way, by reference to the correct burden and standard of proof, and express doubt as to the credibility of the claim. It is only if the judge expresses such doubt as a result of an impermissible basis on which the evidence has been assessed that legal error may arise.

12. In this case I do not accept that the appellant has established that the Judge applied too high a standard of proof when assessing the evidence. There was nothing in the submissions made to the Upper Tribunal to support such a contention and as noted, a full reading of the determination does not support such a claim.

13. Whilst the appellant disagrees with the outcome and would prefer a more favourable outcome to enable him to remain in the UK, that is not enough.

14. I find the appellant has failed to establish material legal error in the decision of the Judge in relation to Ground 2 and, consequently, in the remaining grounds. The decision shall therefore stand.

Decision

15. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

16. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

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

Signed……
Upper Tribunal Judge Hanson

Dated: 22 June 2022