IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002497
FfT No: PA/56995/2023;
LP/00216/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd October 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MF (IRAQ)
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr L. Gayle, Counsel instructed by Elder Rahimi
For the Respondent: Ms Z. Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on the 16th October 2024

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 him or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iraq, born in July 1997. He appeals with permission against the decision of the First-tier Tribunal (Judge Gumsley) to dismiss his appeal on human rights and protection grounds.

2. The basis of the Appellant's claim was that he is fleeing honour killing in Iraq. He states that he formerly lived in Sulaymaniyah governate and whilst living there he had met and fallen in love with a young woman, who was a distant relative. They had secretly spoken to each other over the phone on a number of occasions. Eventually the Appellant decided that he wanted to marry this girl and approached her father to ask for her hand in marriage. While the matter was still under negotiation the Appellant and the girl met in person, having decided that they "could not wait". He arranged to pick her up some distance from her home. They drove somewhere and had sexual intercourse. He then drove her home. It later emerged that a cousin had seen them together in the car and had reported them to their respective fathers. The Appellant's father disowned him; her father starting making threats. An uncle intervened and said that both the Appellant and the girl should leave Iraq for their own safety. It is said that her father is a man of considerable influence who would be able to harm them with impunity because of his connections to the Kurdish intelligence services.

3. The Respondent refused to grant any leave on the grounds that the account was not credible. When the Appellant appealed against that decision to the First-tier Tribunal, Judge Gumsley agreed and the appeal was dismissed. The Appellant now appeals on the grounds that Judge Gumsley erred in his approach to credibility, and that he failed to apply the lower standard of proof when assessing risk.

Ground 1: Credibility

4. Judge Gumsley prefaced his findings by directing himself to consider all of the evidence in the round. He stated that he had been mindful of the cultural differences that exist between different countries and that he had been careful not to make assumptions. He also directed himself to be mindful of the fact that whilst a person may seek to exaggerate their claim that did not mean that they are not in fact at risk. Having issued these cautions, he found as follows:

    i) The alleged reaction of the girl's father was consistent with the country background evidence which demonstrates that matters of 'honour' are taken very seriously in Kurdish culture;

    ii) A number of the criticisms made by the Respondent of the Appellant's evidence are without foundation;

    iii) There was however a discrepancy of "some significance" in the Appellant's evidence about whether he had ever spoken directly to the girl's father. In his asylum interview the Appellant had said that he had received a call from an unknown number and when he had answered it, this man was on the other end, threatening him. At the hearing the Appellant said that he had never spoken directly to the man. Judge Gumsley asked him to clarify if he had ever spoken to him directly and he said "no".

iv) The claim that the girl's father had fabricated a drugs charge against the Appellant, now relied upon in evidence, was not mentioned at the screening interview. The Appellant was there directly asked whether he had been accused of any crime and he said no;

v) A further discrepancy arose in respect of his CSID. In his asylum interview the Appellant said that the CSID had been left in his car when he fled. In a subsequent 'supplementary witness statement' he said that his CSID had been taken from him by an agent and destroyed. In his most recent statement he reverted to his original evidence, which was that he had left it in the car;

vi) The Appellant's account of having sex with this girl on the first occasion that they had met in person was "unconvincing, implausible and incredible" given the nature of Kurdish society and the importance placed on matters of honour. It is difficult to accept that they would have risked this, particularly at a time when they still hoped to persuade her father to say yes to the marriage proposal;

vii) It is difficult to accept that the pair would have behaved in such a reckless fashion, in her using her mother's phone to speak to the Appellant, and him waiting in the neighbourhood to pick her up. She had told her family that day that she was too sick to attend school; Judge Gumsley struggled to accept that she would have been allowed out unaccompanied to go elsewhere (she had, it is said, used the excuse of visiting a tailor);

viii) Given that this is claimed to be a 'love match' the Appellant seemed to know very little about her.

Drawing all of that together, Judge Gumsley found the case not proven and dismissed the appeal.

5. The Appellant now challenges the reasoning summarised above on two grounds.

6. The first is that the Judge failed to consider that matter (iii) above could have arisen from an interpreter's error. The grounds themselves do not explain which interpreter might have made the error, ie the one at the hearing or the one at the interview, but in submissions before me Mr Gayle submitted that it was the former. He suggested that a recording/transcript would resolve the matter. That it would. It is therefore unfortunate to say the least that one was not requested before this point occurred to Mr Gayle whilst he was making his submissions. I have considered whether the hearing should, in effect, be adjourned part heard to enable the recording, and what was said in Sorani, to be listened to by a qualified interpreter. I have decided that fairness does not require this. Firstly because the decision itself makes clear that the Judge noticed the discrepancy and put it to the Appellant at the hearing: he confirmed that his answer was no, he had not spoken directly to the girl's father. It is unlikely in the extreme that an interpreter would have managed to mistranslate the word "no" twice, once when it was being specifically clarified from the bench. Secondly because the Appellant, legally represented throughout, has had ample time to make his case clear, and to obtain the recording if he thought it necessary.

7. The second ground is that the Tribunal erred in placing weight on what are characterised as “minor” discrepancies in the evidence: see (iv) and (v) above. With respect, neither of these discrepancies are minor. I agree with Judge Gumsley that they fundamentally undermine the Appellant’s credibility as a witness. In respect of the CSID Mr Gayle points out that the Appellant had nothing to gain by reverting to his original account. That might be true, but this goes nowhere to answering the simple point that the reason the discrepancy arises is because the Appellant does not recall what he has said previously; he is not recalling these matters from memory, he is making it up.

8. In his submissions Mr Gayle strayed from the grounds to criticise other aspects of the Judge’s decision making. None of those criticisms are justified. The Judge plainly had regard to the country background material, that is evident since he refers to it. Furthermore I find that it was rationally open to the Judge to draw adverse inference from the Appellant’s apparent lack of knowledge about this girl.

Ground (ii): Standard

9. The short point made here is that in importing terminology such as “implausible” it is unclear whether the Judge has in fact applied the lower standard of proof.

10. I do not accept that is the case. The Tribunal has repeatedly referred itself to the lower standard of proof [at its 17, 18, 32] and there is nothing in its decision that leads me to conclude that it did not follow its own self direction.

11. Finally, issue is taken with the fact that the Tribunal refers, in its analysis of potential risk arising from the claim that the Appellant has been on two demonstrations in the UK, to caselaw regarding Iran. As the decision makes clear, the Judge was well aware that it was not the facts of these cases that was relevant, but the guidance they give on how cases of sur place activity should be approached. The paragraphs which follow make clear that the First-tier Tribunal had proper regard to the country background evidence and situated his risk assessment in that context.

Decisions

12. The decision of the First-tier Tribunal is upheld.

13. The appeal is dismissed.

14. There is an order for anonymity in this ongoing protection appeal.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
16th October 2024