



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

Appeal Number: PA/06618/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2019**

**Decision & Reasons Promulgated
On 15 November 2019**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**'GMF'
(ANONYMITY DIRECTION CONTINUED)**

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Secretary of State: Mr L Tarlow, Senior Home Office Presenting Officer

For the respondent: Mr T Bahja, Solicitor

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and written reasons which were given orally at the end of the hearing on 6 November 2019.
2. This is an appeal by the appellant, who was the respondent in the First-tier Tribunal and to avoid confusion, will be referred to as the Secretary of State for the remainder of these reasons. The respondent was correspondingly the appellant in the First-tier Tribunal and will be referred to as the 'claimant,' as the party claiming international protection.
3. The Secretary of State appeals against the decision of First-tier Tribunal Judge Blake (the 'FtT'), promulgated on 28 August 2019, by which he allowed the claimant's asylum appeal, dismissed his humanitarian protection appeal; and allowed his human rights appeal. The Secretary of State, in refusing the claimant's applications in a decision dated 27 June 2019, accepted that the claimant was an Iraqi Kurd, but did not accept that he had attempted to marry a woman who, unknown to him, was already married, and whose estranged husband was a prominent member of the 'Popular Mobilisation Force' (or PMF). The Secretary of State did not accept that somebody had thrown a grenade into the claimant's shop, injuring the claimant, at the behest of his partner's husband or that the husband was a man of power and influence, working in the intelligence department of the PMF.
4. The Secretary of State disputed that the claimant had an objective fear, but that in any event, asserted that the claim was not based on a fear of persecution because of his race, religion, nationality, political opinion or membership of a particular social group. Instead, the claimant claimed fear of persecution because he wished to marry the former or estranged wife of a member of the PMF. The respondent alternatively concluded that if there were a risk, there was sufficient protection provided by the Iraqi authorities or in the alternative, the claimant could relocate. His claims for humanitarian protection and by reference to articles 2 and 3 of the European Convention on Human Rights ('ECHR') were rejected, along with any claim under article 8, as he did not have a partner or children in the UK and there were not very significant obstacles to his integration into Iraq, where he still had relatives.

The FtT's decision

5. The FtT concluded that the husband of the appellant's partner had indeed been identified in military uniform and with his military card and that the claimant had produced video evidence of the partner being beaten by her husband with some brutality. The FtT further found that the claimant's shop had been destroyed as claimed and that the claimant was a credible witness. The FtT concluded that relocation would not be a viable option, given the husband's position and likely power. The area of subsequent challenge was that the FtT then went on to conclude that the claimant's claim for asylum should succeed, whereas his appeal for humanitarian

protection should not. His appeal on human rights grounds also succeeded.

The grounds of appeal and grant of permission

6. The Secretary of State did not take issue with the FtT's findings, but took issue with the conclusion that the claimant satisfied the requirements of the Refugee Convention, which the FtT had failed to explain adequately, bearing in mind the fear was of the estranged husband of the claimant's partner.
7. First-tier Tribunal Judge Lever granted permission to appeal to the Upper Tribunal on 25 September 2019, noting that on the submitted claim, the FtT had failed to explain why it engaged the Refugee Convention; and also in the FtT's conclusions, the appeal was allowed on human rights grounds, without specific reference to articles 2, 3 and 8 of the ECHR.

The hearing before me

The Secretary of State's position

8. At the hearing before me, the parties' representatives confirmed that the FtT's findings of fact were not in dispute. I canvassed with them whether they accepted that the FtT's decision contained an error of law because of the absence of a reasoning as to why the appellant should be assessed as a refugee when the nature of his claim did not appear to engage with the Refugee Convention. On behalf of the Secretary of State, Mr Tarlow accepted that there was an error of law, which could be resolved by the Upper Tribunal merely remaking the decision to confirm that the appellant's claim should succeed on the basis of humanitarian protection, rather than the claimant being entitled to refugee status. Mr Tarlow indicated that the grounds of challenge to the FtT's decision in relation to the human rights claim were no longer pursued by the Secretary of State, so that the FtT's decision that the claimant's appeal on the basis of his human rights succeeded, should remain undisturbed. The focus was therefore solely on the refugee/humanitarian protection issue.

The Claimant's position

9. While Mr Bahja accepted the position advanced by Mr Tarlow as his fall-back position, he asserted that the FtT's error was not material, and his primary contention was that the claimant was entitled to refugee status. While he candidly accepted that the original claim had not been put on the basis that the claimant was a member of a particular social group, nevertheless in a skeleton argument that was provided to this Tribunal, he asserted that by virtue of being a victim of an honour crime and in particular by reference to the Country Policy and Information Note (or 'CPIN') Iraq: Kurdish 'honour' crimes; version 1.0; August 2017 and the CPIN, Iraq: Blood feuds; version 1.0; August 2017, paragraph [2.1.1] of the

latter dealt with the issue of membership of a particular social group and Mr Bahja stated the claimant's position in the following terms:-

“Victims or potential victims of ‘honour’ crimes can form a particular social group within the meaning of the 1951 Refugee Convention. This is because victims or potential victims of ‘honour’ crimes can share a common background that cannot be changed – the experience that they have compromised family or tribal ‘honour’ – and have a distinct identity that is perceived as being different by the surrounding society”.

Whilst I do not repeat the remainder of Mr Bahja's skeleton argument I have had the opportunity to consider it as developed in oral submissions by Mr Bahja.

10. Mr Tarlow indicated in response that the claimant had never asserted entitlement before the FtT on the basis of membership of a particular social group and therefore this was essentially changing the nature of the claim, in hindsight.

Discussion and conclusions

11. As already agreed with the representatives, the FtT's original decision did contain an error of law. Whilst the FtT's findings are undisturbed and I preserve them, nevertheless on the basis of the nature of the claim as identified by the FtT, it is unclear at [83] of the decision, how the FtT concluded that the claimant was entitled to refugee status.
12. I accept Mr Tarlow's submissions that the claim was never put on the basis of membership of a particular social group and whilst the CPIN already referred to indicates the *possibility* of somebody being a member of a particular social group by virtue of being an honour killing, I do not accept Mr Bahja's submission that it is an 'irresistible' inference from the findings of the FtT that the claimant must fall within membership of a particular social group. That is an assessment that would be fact-specific by reference to family groups and there are not sufficient facts on which to base such a conclusion.
13. It follows from my conclusion that whilst I was invited by Mr Bahja to conclude that the error was not material because I should 'fill in the gaps' in the FtT's reasoning, I concluded that the 'irresistible' inferences he invited me to draw from the facts were not ones I could make, so that the error of law was material. Instead, I concluded, based on the FtT's preserved findings, that the error of law meant that I should set aside the FtT's conclusions on asylum and humanitarian protection; and remake them by concluding that the claimant's appeal on the basis of refugee status fails (bearing in mind it was never put on the basis of membership of a particular social group); but that his appeal on the basis of humanitarian protection succeeds. The FtT's conclusions in relation to the claimant's appeal, on the basis of his human rights, remain preserved.

Notice of Decision - error of law and remaking

The decision of the First-tier Tribunal did involve the making of an error on a point of law in relation to the claimant's claimed refugee status and entitlement to humanitarian protection. The First-tier Tribunal's decision on these two issues alone is set aside and I remake it by confirming that the claimant's original appeal on the basis of refugee status fails and is dismissed. His appeal on the basis of humanitarian protection is allowed.

The decision of the First-tier Tribunal in relation to the claimant's human rights appeal did not contain an error of law.

The anonymity directions continue to apply.

Signed **J. Keith**

Date: 13 November 2019

Upper Tribunal Judge Keith