Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/01696/2021
[PA/50350/2020]

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 9 December 2021	**On 11 January 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

S H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Joseph, instructed by Fountain Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

© CROWN COPYRIGHT 2022

Introduction

2. The appellant is a citizen of Iraq who was born on 9 July 1996. He is of Kurdish ethnicity. He was born in Khanaquin in Central Iraq but, around the age of 10 or 11, he moved with his family to Kalar in the IKR.

3. The appellant arrived in the United Kingdom clandestinely on 1 June 2019 and claimed asylum on that day. The basis of his claim was that in 2017 he met a girl ("S") who was the daughter of a Brigadier in the Peshmerga forces. They began a relationship in May/June 2017. In July/August 2017, they were seen by her brother and the appellant was threatened by S's family. The appellant left Iraq and came to the UK, via Turkey where he was detained as an illegal entrant, fearing an honour killing by S's family.

4. On 22 June 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a decision dated 31 March 2021, the First-tier Tribunal (Judges Wilson and C J Woolley) dismissed the appellant's appeal on all grounds.

6. As regards the appellant's asylum claim, the Panel made an adverse credibility finding and rejected the appellant's account of his relationship with S, and any risk to him from her powerful Peshmerga family in the IKR.

7. In relation to the appellant's claim to humanitarian protection and under Art 3 of the ECHR, the Panel found that the appellant's CSID was in the custody of his family in Kalar and he was in contact with his family there. His uncle would be able to travel to Baghdad on the appellant's return to Iraq so that he would have access to his CSID and so could safely travel between Baghdad and his home area in the IKR.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal to the Upper Tribunal challenging the Panel's adverse credibility finding and its rejection of aspects of the appellant's account.

9. Initially, the First-tier Tribunal (Judge Adio) refused permission to appeal on 23 April 2021. However on renewal to the Upper Tribunal, UTJ Plimmer granted the appellant permission to appeal on 1 September 2021.

10. The appeal was listed for hearing at the Cardiff Civil Justice Centre on 9 December 2021. The appellant was represented by Mr Joseph and the respondent by Mr Howells.

The Grounds

11. The appellant's grounds, upon which Mr Joseph placed reliance in his helpful and clear submissions, raise a number of points.

12. Ground 1 challenges the Panel's finding in para 51 of its decision in which the Panel rejected the appellant's claim that his father had, in 2006 whilst a Brigadier-General in the Peshmerga, been killed by Hashd al Shaabi. The ground contends that the Panel was wrong to reject, out of hand, the evidence given by the appellant that his mother had been told by the Asayish Agency that Hashd al Shaabi were responsible for his father's death. It is the internal security agency of the IKR and it was not sufficient reason to discount that evidence simply on the basis that it was "second hand".

13. The grounds acknowledge that the importance of this point, relating to any risk to the appellant from Hashd al Shaabi, only arose in relation to his former place of residence in Khanaquin in Central Iraq if he had to return there in order to obtain a CSID or INID at his local CSA office.

14. Ground 2 raises a number of points in relation to the Panel's reasoning rejecting the appellant's account that he was in a relationship with "S" and was, as a consequence, at risk of an honour killing by her family when their relationship was discovered.

15. First, it is contended that the Panel was wrong (at [57]) to discount two videos which, it is said, show a woman (said to be "S") in both instances in a car and in one video also the appellant. The grounds contend that the Panel was wrong to fail to give weight to this evidence because it did not have "the assistance of a facial recognition expert".

16. Secondly it is contended that the Panel was wrong (at [58]), to doubt that the appellant was at risk of an honour crime because the evidence was that "S" had married. Relying upon the *CPIN*, Iraq: Kurdish 'Honour' Crimes" (August 2017) at para 2.3.3, the grounds contend that one punishment a woman might experience as a result of a "perceived honour offence" is that "forced marriage" may be imposed upon her. The Panel was wrong to assume that the fact that her family had allowed her to marry was inconsistent, therefore, with the appellant's claim that both he, and S, were subject to honour crimes.

17. Thirdly, the Panel failed properly (at [59]) to take into account the Facebook evidence submitted with the hearing relating to S's Facebook profile (which listed her mother), her mother's profile which included S's claimed father and the profile of her brother which, taken together, the grounds contend, link S with her father who is a Peshmerga officer.

18. Fourthly, the Panel was wrong to assume, and take into account without any background evidence in support, that given the position of the appellant's father as a former Brigadier-General in the Peshmerga, it would have been open to the appellant, contrary to his evidence, to openly "court" S according to Kurdish culture and traditions.

19. Finally, the Panel erred in law by taking into account the absence of evidence that S's father was a powerful Peshmerga Brigadier-General: such would easily obtainable material on websites in the IKR. The ground contends that there was no supporting evidence before the Panel that such websites existed.

<u>Discussion</u>

20. I will take each of the grounds in turn.

Ground 1

21. The appellant's case was that, whilst he and his family were living in Khanaquin, his father was a Brigadier-General in the Peshmerga and had been killed by Hashd al Shaabi in 2006 either in Baghdad or when travelling to or from the city. The appellant accepted that he did not leave Iraq because he feared Hashd al Shaabi and the Panel found that the appellant's home area, now Kalar in Sulaymaniyah province in the IKR, was not a place in which the appellant had a well-founded fear from Hashd al Shaabi.

22. The point raised in the grounds, and elaborated upon by Mr Joseph in his submissions, was that Khanaquin was the place where the appellant's birth had been registered and it would be to a CSA office there that he would have to return if he wished to obtain a new CSID or, if that office had moved to the new form of documentation in Iraq, an INID. The risk to the appellant from Hashd al Shaabi was, in that case, relevant as to whether he could be expected to travel from the IKR to Khanaquin in order to do this.

23. Mr Joseph accepted that he was in some difficulty in showing the materiality of any error by the Panel. The Panel had found in paras 75-77 that the appellant's CSID was safely held by his family in Kalar in the IKR. That CSID card could not be shown to have expired and was, therefore, still valid and available to the appellant to use in Iraq. He could obtain that CSID when he returned to Baghdad because a male member of his family, such as his uncle, could travel from Kalar to Baghdad and bring the CSID with him so that, in accordance with <u>SMO and Others</u> (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), it could not be said that he would be at real risk from Shia militia passing through checkpoints between Baghdad and the IKR (see headnote (11)).

24. At para 51, the Panel said this:

> "The appellant has not been able to produce any evidence that Hashd al Shaabi was responsible for his father's death. The information that he had been came from the Asayish Agency and so was second hand before it reached the appellant. We find that the cause of his father's death has not been established. Even if we had come to a different conclusion about this, however, the appellant has produced no evidence that Hashd al Shaabi has approached either himself or his

> mother since their move to Kalar in 2007. The appellant had therefore spent some 11 years – in which time he was educated, worked, and played for his football team across the IKR, without the Hashd al Shaabi showing any interest in him. We find that he is not at risk of persecution by Hashd al Shaabi in his home area of Iraq. This would be so even if we had come to a different conclusion as to his father's death."

25. There is some merit in Mr Joseph's submission that the Panel fell into error in this paragraph. The appellant's evidence given in his asylum interview was that he had been told by his mother that the Asayish had told her that his father was killed by Hashd al Shaabi (see Q138). Mr Joseph was undoubtedly right to criticise the Panel for doubting that the Hashd al Shaabi had killed the appellant's father, and might therefore have a continuing interest in the appellant, because he had been able to live safely in Kalar since 2007 without any threat from Hashd al Shaabi. Of course, at that time the appellant was living in the IKR and not Central Iraq where Hashd al Shaabi were active.

26. However, the Panel made an adverse credibility finding in relation to the appellant. Although they accepted that the appellant's father had been killed and, indeed, that he was a Brigadier-General in the Peshmerga, the Panel might well have not accepted the appellant's evidence about what he had been told by his mother and which was set out in his asylum interview.

27. Had the Panel's finding in para 51 of its decision been material to any relevant issue upon which the appellant's claim turns, I would have acceded to Mr Joseph's submission that its finding was flawed. However, its finding is not material to any issue directly relevant to the appellant's asylum claim or to humanitarian protection.

28. Mr Joseph accepted it was only relevant if the appellant had to return to Khanaquin in order to obtain a new CSID or INID at his local CSA office. There was some discussion before me as to whether or not Khanaquin was, indeed, the place of his local CSA office. It appears that it was assumed to be the case before the Panel and, in the absence of any clear evidence relating to it, I should proceed on the basis that it is. The Panel's finding was, however, that the appellant had a valid CSID and he could obtain that in Baghdad through his family bringing it to him and then safely travel back to the IKR and to Kalar where he lived before leaving Iraq. It is pure speculation when, and indeed if, he would require a new CSID or INID because his current one would expire. There was no evidence that was of any immediate concern to the appellant. He did not suggest that it is expired or was about to expire. Any risk that he might, therefore, be exposed to by having to travel to Khanaquin is speculative in relation to a future event at some unknown time. There would need to be a far firmer evidential basis for concluding that there was a real risk to him derived from this future scenario in order to establish a real risk of persecution or serious harm.

29. For these reasons, any error in reaching its findings in para 51 of its decision, was not material to the Panel's decision to dismiss the appellant's appeal on asylum grounds, humanitarian protection grounds or under Art 3 of the ECHR.

Ground 2

30. A number of points were raised under ground 2.

31. The first concerns the Panel's treatment of the videos relied upon by the appellant to establish his link with S as part of his claim that he had a relationship with her which had been discovered by her family and who, as a result, threatened him with, in effect, an honour crime if he returned to Iraq.

32. At para 57, the Panel said this:

> "The appellant produced two very [short] videos of a young woman in a car. In one of them the appellant is shown but in the other (and longer) video the woman only is seen. There is no identification in the video (either by caption or sound) as to who this woman is, or when the video was taken, Ms Wallace asked at the hearing how the appellant could have retained this video if his mobile phone was smashed in October 2017. He responded that he had retrieved it from his Facebook account. There are however two problems with this evidence. Firstly his Facebook account no longer exists and so there is no verification the video was ever posted. Secondly if the appellant had posted this video of this young woman on his Facebook account it would have been evident to anyone who viewed the account that there might be a relationship between the appellant and this young woman – something the appellant says that he was anxious to avoid. We accept that the account may have been restricted to his friends but even so there would have been a risk that it would have been disclosed. We find that the appellant has not satisfactorily explained how he is able to produce his video before the Tribunal, or why it was posted to his Facebook account in the first place. Ms Alban invited us to compare the photo of [S] on her Facebook account with a young woman in the video and to conclude that they were one and the same person. We find that such a conclusion will be unsafe to make. We would need the assistance of a facial recognition expert before making any findings on such a point. We find that the evidence shows a young woman in a vehicle. We find that it has not been established that this young woman is [S] or even that the video was taken in his car."

33. Mr Joseph submitted that the Panel had not, as they were entitled to do, said that they could not conclude on the basis of the videos that the link relied upon by the appellant - namely that they showed S and the appellant in his car – was established, but rather the Panel had wrongly declined to assess the evidence in the absence of relevant expert evidence by a 'facial recognition' expert.

34. I do not accept that submission. It is plain from reading para 57 that the Panel attempted to assess what was being said on the appellant's behalf as to who was in the vehicle to support his claim. The Panel, for example, note that there is no supporting evidence as to whether the car was in fact the appellant's. There were issues about its reliability given the Facebook account no longer existed and he had effectively made the videos available when he feared her family.

35. This was not a case where the evidence could only be assessed with the assistance of an expert, for example as is the case with fingerprint or DNA evidence. It might well have been possible for the Panel to be satisfied, based upon its own assessment of the pictures it saw, that the appellant and S were present in the car or, indeed, that they were not. However, the Panel could only do that if, on the appropriate standard of proof, they could be satisfied of what the appellant was claiming could be seen in the video footage. In para 57 of the decision, the Panel concluded that, using its own visual assessment, it was unable to be satisfied of what the appellant said about who was in the video footage. A facial recognition expert might have been able to assess the evidence in a way that the judges, as nonexperts, could not. All that the Panel was saying was that, as nonexperts it was unable to reach any conclusion either for or against the appellant, and that expert evidence would have been necessary assuming that an expert could reach a firm conclusion on the video footage. There was nothing wrong in the Panel's approach on this basis. It did not wrongly fail to assess the evidence but rather, attempted to do so, but was unable to reach a view (at least favourable to the appellant) on it without the assistance of expert evidence. The Panel did not abdicate its judicial role to assess the evidence.

36. The second point raised relates to para 58 of the Panel's decision and its reasoning which took into account the marriage of S after the appellant left Iraq as being relevant as to whether or not, consistent with the appellant's account, their conduct had brought dishonour on the family. The Panel said this:

> "We find however that the marriage status of [S] does affect the assessment of risk. If she were suspected of being involved in an elicit relationship then she would have brought dishonour on the family and would (according to the CPIN on Honour Crime) have been equally liable to sanctions and punishment. She would not have been able to escape her family. Whenever she got married it must (if the appellant's account is believed) have been after their relationship was discovered. The fact that she was put forward for marriage by a family, and permitted by them to retain a Facebook account undermines the credibility of the appellant's account that an honour crime was suspected by her family. We find that the family could not have decided that [S] had damaged her family's honour."

37. Mr Joseph relied upon para 2.3.3 of the *CPIN*, Iraq: Kurdish 'Honour' Crimes (August 2017) where it is said:

> "punishments for perceived 'honour' offences range from physical abuse, confinement, *forced marriage*, forced suicide and murder". (my emphasis)

38. Mr Joseph submitted that the Panel had been wrong, therefore, to assume that S had escaped sanctions and punishment by her family since she could have been subject to a forced marriage.

39. Mr Howells, on behalf of the Secretary of State, submitted that in para 58, in addition to taking into account S's marriage, the Panel also took into account that S's family had allowed her to keep a Facebook account.

40. It not clear whether the point now made by Mr Joseph, relying on the grounds, was made by the appellant's (then) representative before the First-tier Tribunal. The *CPIN* was, undoubtedly, referred to by that representative as is clear from para 45 of the decision. It does not appear to feature in the skeleton argument before the First-tier Tribunal where only para 2.4.1 of the *CPIN* is cited.

41. Although "forced marriage" may be a punishment for a perceived honour offence, I do not accept that it was not reasonably open to the Panel to have regard to the fact that S was married and her family had allowed her to maintain a Facebook account in assessing whether it was established that S had "damaged her family's honour".

42. Mr Joseph, in relation to the next point raised in relation to para 59 of the Panel's decision, took me to the extracts from what was claimed to be S's Facebook profile, that of her mother and of her brother. He sought to show a link running through these profiles showing S, linked to her mother's account showing that a man dressed as a Peshmerga was S's father. He also relied upon her brother's account and pointed out that although the Tribunal were not satisfied of the link without evidence that the name "Hezha" was not prevalent in the IKR, his account also showed the same surname as the appellant said was S's surname.

43. At para 59 the Panel said this:

> "[S's] Facebook account shows photographs of men in Peshmerga uniform. We accept that the persons depicted must hold some rank in the Peshmerga, but there is no identification as to who these men are or their relationship to [S]. No inferences can be drawn that they are of her father. Similarly it is argued that the fact that a '[H]' likes one of the photos corroborated the appellant's reference to a '[H]' being a brother who threatened him. In the absence of any evidence about the prevalence of the name '[H]' in Iraq we find that no link to the appellant's account has been shown. It may be entirely a coincidence. There is nothing in the Facebook account that refers to the appellant. We accept that a [S] may exist in Iraq but the Facebook evidence does not establish that her father is a powerful Peshmerga figure or even that this [S] has ever known the appellant. The appellant has produced photographs of a person in uniform whom he says is [S's] father. These photos have not been given any context and can be of anyone in

> the Peshmerga. We are not satisfied that any photos of [S's] father have been produced or that he has been shown thereby to have any influence in Iraq. The case of **Tanveer Ahmed** IAT [2002] UKIAT 00439 provides guidance on whether a document produced can be relied on. It is for the individual claimant to show that a document could be relied on. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. We find that reliance cannot be placed on the photos provided to evidence the position of [S's] father and brother in Iraq."

44. Mr Joseph acknowledged that the linkage that was being relied on was, in his words, "asking a lot of the Tribunal". I agree. In my judgment, the Panel did the best that it could with a series of extracts from Facebook profiles which contained some linking, or some potentially linking, features but which, ultimately, the Panel had to decide whether the links were, in fact, established as the appellant claimed. The Panel accepted that a person called "S" existed in Iraq and that it was looking at her Facebook page. It also accepted that there were photographs of a man dressed as a Peshmerga. In my judgment, the Panel could, but were not required to, make the inference that these were, in fact, photographs of S's father and that he was, as claimed, a *high-ranking* Peshmerga officer. In context, it must be remembered that the "S" whose profile the Panel was examining was not established to be the "S" with whom the appellant claimed to have a relationship. Whilst the Panel did not refer to the fact that the person called "H" also shared a surname with "S", the evidence had to be considered as a whole and I am not persuaded that the Panel's assessment in para 59 (seen in the context of the entirety of the Panel's detailed consideration of the evidence and the appellant's case) amounted to a material error of law.

45. The next point relied upon by Mr Joseph concerned the Panel's reasons or comment in para 63 that the appellant's case, that he could not go through "traditional courting practices" which exist in Kurdish society because he was from a poor family, was implausible as his own father had been a Brigadier-General in the Peshmerga. The appellant's claim was that S's father was also a Brigadier-General in the Peshmerga.

46. In my judgment, it was open to the Panel reasonably to infer that the appellant's account that S's family would not have countenanced (and he was scared to do so) an approach to them to court S was not plausible given the claimed respective and similar ranks of his, albeit now deceased, father and S's father in the Peshmerga.

47. The final point relied upon by Mr Joseph is that the Panel erred in para 64 in taking into account that there was no supporting documentation, such as a website in the IKR, to show that S's father was a powerful Peshmerga Brigadier-General.

48. In my judgment, what is said in para 64 by the Panel has to be seen as a whole:

> "The appellant's account is that the family of [S] is a powerful Peshmerga family. In support of this he has produced numerous photographs from Facebook accounts. These show men in military uniforms. There is nothing in the Facebook accounts to identify who these people are and whether they are related to [S]. No objective evidence has been produced to substantiate the claim that her father was a powerful Peshmerga Brigadier-General. If the father held such a position it would have been possible, we find, to show that he did from easily obtainable material (such as from websites in the IKR). We have not accepted above that these photographs can be relied on, following **Tanveer Ahmed**. We find that the appellant has not produced evidence to substantiate the claimed position of [S's] family."

49. In my judgment, the general point made by the Panel in para 59 was that, even in the Facebook accounts, no evidence was produced to show that S's father was a Brigadier-General in the Peshmerga. A decision maker can take into account the absence of evidence which could reasonably be expected to be produced (see TK (Burundi) v SSHD [2009] EWCA 40 at [20]-[21]). Although it is not clear what, if any, "websites" the Panel had in mind, what they said was merely an illustrative comment reflecting the absence of evidence which the Panel was reasonably entitled to conclude could be made available to it if the appellant wished, namely supporting evidence concerning the claim that S's family was a powerful family headed by a senior Peshmerga officer. That evidence might have taken a number of forms, including websites or news reports or other government documentation. The grounds do not suggest that such evidence is not available but rather simply assert that the Panel was not entitled to infer that a website existed. As I have said, the Panel simply used that as an illustrative example of the type of evidence which it might have expected and which, in my judgment, it was reasonable for them to conclude could have been provided. The Panel did not err in law, in my view, in para 64 in this respect.

50. In any event, this formed only one of many reasons offered by the Panel to reject the appellant's account, reach its adverse credibility finding and conclusion that the appellant had not established his claim. Read overall, I am wholly unpersuaded that the Panel's reasoning was not sufficient to sustain its adverse credibility finding and, on the basis of that, to dismiss the appellant's claim.

51. For these reasons, I am satisfied that the First-tier Tribunal did not materially err in law in dismissing the appellant's appeal on all grounds.

Decision

52. The decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of a material error of law. That decision, therefore, stands.

53. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
21 December 2021

TO THE RESPONDENT
FEE AWARD

The First-tier Tribunal made no fee award. That decision also stands.

Signed

Andrew Grubb

Judge of the Upper Tribunal
21 December 2021