Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/07898/2019 (P)**

THE IMMIGRATION ACTS

Decided under Rule 34	**Decision & Reasons Promulgated**
On 6 July 2020	**On 20 July 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

AM

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The appellant, a citizen of Iraq and an ethnic Kurd, has appealed to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 2.1.20, dismissing his appeal against the decision of the Secretary of State, dated 8.8.19, to refuse his claim for international protection made on grounds of fear of persecution on return on

grounds relating to religion and the non-Convention reason of having lost his dignity because his sister was recorded having sex and the video posted online. He claimed to be a member of a particular social group (PSG) on the basis of being at risk of sexual violence in an IDP camp.

2. Whilst the First-tier Tribunal refused permission to appeal to the Upper Tribunal, on renewal of the application permission was granted by Upper Tribunal Judge Lindsley on 25.2.20.

3. The matter had been listed for an error of law hearing in North Shields on 15.4.20, a date which had to be vacated because of the COVID-19 pandemic. On 20.3.20 the Vice President issued directions proposing that the error of law issue be resolved on the papers without an oral hearing, providing for further written submissions.

4. In response to those directions, on 3.4.20 the Upper Tribunal received the respondent's written submissions, drafted by Mr Jarvis in the absence of the appellant's further submissions, which were not received by the Tribunal until 8.4.20.

5. I have had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal,* to the *UTIAC Presidential Guidance Note No 1 of 2020*, *Arrangements during the COVID-19 pandemic,* and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended).

6. I have taken account of the view expressed by the parties as to whether to hold a hearing and the form of such a hearing. In fact, neither party has opposed the error of law issue being resolved on the papers without a hearing. Both parties have submitted detailed written submissions such that the Upper Tribunal is able to proceed with a full understanding of the arguments of each party. In the circumstances and for the reasons outlined, I am satisfied that it is appropriate to determine this appeal without a hearing. I therefore proceed to consider and determine this appeal on the papers.

7. I have carefully considered the relatively brief decision of the First-tier Tribunal, dismissing the appeal in the light of the written submissions and the grounds of appeal against the respondent's refusal reasons.

8. The Tribunal noted that since a Daesh attack in 2014, the appellant and his two siblings relocated to an IDP camp in Zakho, which is within the IKR. The respondent accepted that account and conceded that he had been of the Islam faith but no longer practised that faith. The Tribunal proceeded on the basis that the appellant might be at risk on return to the camp because of anti-Islamic remarks he had made and the ensuing perception that he was not a 'believer'. At [18] the judge accepted that the Convention was engaged on religious grounds. It was

also accepted at [19] that the appellant's sister had been involved in a sexual relationship in the camp, the precise nature of which was unclear, and that he was threatened that he must act against her on the basis of honour, and that if he did not do so, he would face a similar fate. However, the First-tier Tribunal found no satisfactory evidence to demonstrate that the video recording was published beyond the camp and thus it was not reasonably likely that persons outside the camp would either be aware of his sister's actions, or associate him with her. It was pointed out that the appellant had left the camp and would not in any event return to it.

9. Complaint is made that at [20] of the decision the judge speculated that, given that Daesh was no longer in control of any Iraqi territory, the camp may well have been disbanded and the inhabitants able to return to their home areas, or elsewhere. It is said that this issue was not put to the appellant or his representative for comment and that there is no reason to believe that the camp no longer exists. Nevertheless, for those reasons, the judge was not persuaded that the appellant would be reasonably likely to meet people from the camp on his return to Iraq. In the circumstances, the Tribunal found no risk on return on the basis of anything which may have happened in the camp. Noting that it had not been a problem for him in the past, the judge also found that his lack of adherence to Islam would not be an issue for him on return. It was for those reasons that the judge dismissed the Refugee protection claim. Neither did the prevailing circumstances suggest a need for subsidiary protection.

10. The judge found that the appellant would not be able to access a replacement CSID and that he would therefore be at risk of destitution which would cross the article 3 ECHR threshold. The appeal was allowed on that basis only.

11. I note that the appellant has not challenged the dismissal of the religious identity claim.

12. The grounds first argue that the judge erred in suggesting that the IDP camp may well have been disbanded and that this should have been put to the appellant at the hearing. However, it is clear that whether or not the IDP camp has in fact been disbanded, the appellant made clear he had left it and had no intention of returning, and, therefore, as the judge found, there was no real risk of him encountering anyone on return who was aware of his sister's sexual relationship or, even if they knew of it, who would associate him to her. Neither was there any risk to him on religious grounds. The appellant did not establish that he was reasonably likely to have to reside in that IDP camp on return and that he would there face a risk of harm arising out of his sister's sexual activity. The burden of establishing such risk was on the appellant, to the lower standard of proof. If the appellant

failed on that primary ground, as the judge found, this issue of reasonableness of internal relocation does not properly arise at all in relation to the Convention claim.

13. It is also argued that this issue should have been considered on the balance of probabilities. I do not follow the logic of this ground, as the judge decided the issue of risk of encountering someone from the camp on the lower standard of proof, as was required. If that lower standard had not been met, the burden being on the appellant to demonstrate a real risk, it is obvious that it could not have been resolved any differently on the balance of probabilities.

14. The grounds also argue at [3(d)] that if the appellant had fled for reasons engaging the Refugee Convention and could not relocate elsewhere because of conditions which would breach article 3, the appeal should have been allowed under the Refugee Convention instead of article 3, as it would be unduly harsh for him to relocate within Iraq. However, the fact remains that the appellant failed to discharge the burden of the facts engaging the Convention. In this regard, the appellant's written submissions point to [18] of the decision, suggesting there that the judge accepted that the appellant's claim engaged the Refugee Convention. However, the judge was there merely accepting that taken at its highest the nature of the claim based on religion only was one which would engage the Convention; it was not a decision on the merits of the religion claim, which was rejected at [20] of the decision, a finding which, in fact, has not been appealed to the Upper Tribunal. It follows that the argument advanced in the appellant's written submissions fails at the first hurdle; the Convention was not engaged. For completeness, the PSG claim in relation to sexual violence was also rejected. In the refusal decision, the respondent had considered the claimed risk of violence arising from his sister's sexual activity fell outside the Refugee Convention. It does not appear that the judge accepted the argument in this regard advanced by the appellant's representative and noted at [18] of the decision. In any event, the judge did not accept that there was any satisfactory evidence that the video footage had been published outside the camp. Nowhere in the decision does the judge accept that the appellant fled the IDP camp for Refugee Convention reasons.

15. Finally, complaint is made that the decision discloses no reference to the Country Guidance of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), and AA (Iraq) v SSHD [2017] EWCA Civ 944. However, the grounds concede that the findings of the First-tier Tribunal were made in line with that Country Guidance and that the absence of specific reference to the authorities "may not necessarily be material." If the appellant cannot suggest that there was a material error in this regard, the Upper Tribunal need consider that ground no further.

16. In the circumstances and for the reasons set out above, I find no error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

There is no error of law in the decision of the First-tier Tribunal;

The appellant's appeal to the Upper Tribunal is dismissed;

It follows that the decision of the First-tier Tribunal dismissing the appellant's appeal must stand as made.

I make no order for costs.

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 6 July 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email