Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/50403/2020**
LP/00090/2021

THE IMMIGRATION ACTS

Heard at Manchester
On the 16th August 2022

Decision and Reasons Promulgated
On the 13th September 2022

Before

UPPER TRIBUNAL JUDGE PLIMMER
DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

NEM
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Howard, Counsel instructed by Legal Justice Solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a male citizen of Iraq who was born on the 26th March 1998. He appeals against the respondent's decision, dated the 16th June 2020, to refuse his protection and human rights claims (hereafter, "the decision"). He brings his appeal on the appropriate statutory grounds, namely, that his

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removal from the United Kingdom in consequence of the decision would be (a) contrary to the obligations of the United Kingdom under the Refugee Convention or in relation to persons eligible for a grant of humanitarian protection, and/or (b) unlawful under section 6 of the Human Rights Act 1998.

2. This appeal was previously dismissed by First-tier Tribunal Judge Dainty following a hearing on the 17th March 2021. However, that decision was set aside by Upper Tribunal Judge Bruce on the 2nd November 2021. It thus falls to us to remake the decision.

3. Whilst the First-tier Tribunal did not direct anonymity, this was subsequently directed by Upper Tribunal Judge Bruce and we accordingly extend it.

The appellant's case

4. The appellant's case is set out in the replies he gave during the asylum interviews that were conducted on the 21st August 2019 and the 4th February 2020, together with his witness statements dated the 14th December 2019 and the 11th August 2022 respectively. It may be conveniently summarised by saying that he has a well-founded fear of being killed by his family on return to Iraq. This is because they believe that he has besmirched the family 'honour' by refusing to marry his cousin and instead fleeing to the United Kingdom in order to marry his true love, Dunia. Alternatively, his removal would be contrary to his right to respect for private and family life given the consequent obstacles to his private and family life that he would face on return.

The respondent's case

5. The respondent's case is set out in an explanatory letter addressed to the appellant ('the Reasons for Refusal Letter'). It may be conveniently summarised by saying that, whilst it is accepted that the appellant hails from the Kurdish region of Iraq, there are significant inconsistencies in the evidence that he relies upon to support his account of (a) his relationship with Dunia, and (b) the threats made to him by his family on account of it. He has thus failed to substantiate his claim that he would face a real risk of serious harm and/or that there would be significant obstacles to enjoyment of his private and family life on return to Iraq.

The legal framework

6. Article 33 of the 1951 Refugee Convention states that no Contracting State shall expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened by reason of his race, religion, nationality, political opinion, or membership of another social group.

7. The requirements for a grant of humanitarian protection are set out in paragraph 339C of the Immigration Rules. So far as material these are that:

a) the Appellant does not qualify as a refugee; and

b) substantial grounds have been shown for believing that the Appellant, if returned to the country of return, would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail himself of the protection of that country.

8. "Serious harm" is defined in paragraph 339CA of the Immigration Rules, namely:

a) the death penalty or execution;

b) unlawful killing;

c) torture or inhuman or degrading treatment or punishment of a person in the country of return

d) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

9. The appellant bears the burden of substantiating the primary facts of his Protection Claim. The standard is a reasonable degree of likelihood (sometimes referred to as a realistic possibility).

10. Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms reads as follows:

(i) Everyone has the right to respect for his private and family life, his home and his correspondence.

(ii) There shall be no interference by a public authority with the exercise of this right except such as is necessary in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

11. In considering whether the respondent's decision breaches the appellant's right to respect for private and family life, and would consequently be unlawful under section 6 of the Human Rights Act 1998, the Tribunal must in particular have regard to the matters set out in Part V of the Nationality, Immigration and Asylum Act 2002. Those which are relevant to the present appeal are as follows:

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and
(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
(a) are not a burden on taxpayers, and
(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or
(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
(a) the person has a genuine and subsisting parental relationship with a qualifying child, and
(b) it would not be reasonable to expect the child to leave the United Kingdom.

117D Interpretation of this Part

"qualifying child" means a person who is under the age of 18 and who –

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years.

12. The burden of proving the primary facts of the appellant's human rights claim is also upon the appellant. However, the standard in this case is a balance of probabilities.

13. The Tribunal may have regard to any matter, including one arising after the decision, if it is relevant to the substance of the appealed decision (section 85(4) of the Nationality, Immigration and Asylum Act 2002).

The evidence

14. We were helpfully provided with a consolidated bundle of documents for the hearing before us. This included copies of the decisions referred to in paragraph 2 (above), the further witness statements referred to in paragraph 17 (below), and the documentary evidence that was before the First-tier Tribunal.

15. We heard oral testimony from the appellant (given through the medium of a Kurdish Sorani interpreter) and from Dunia (given in English). There were no apparent difficulties of either comprehension or communication. We were then helpfully addressed by each of the representatives upon the evidence before indicating that we would reserve our decision, which appears below.

16. We are bound to be selective in our references to the evidence when giving reasons for our decision. We nevertheless wish to emphasise that we considered all the evidence in the round in arriving at our conclusions.

Findings (the primary facts)

17. We found Dunia to be an honest, accurate, and straightforward witness, whose testimony showed not the slightest hint of evasion or exaggeration. Her testimony is moreover supported in many of its material particulars by letters from her parents (dated the 22nd April 2021), her two sisters (dated the 21st and 27th days of April 2021 respectively), her two brothers (each dated the 21st April 2021), as well as from a number of close friends who attended the ceremony of marriage between her and the appellant. Although the contents of those letters are untested in cross-examination, they are nevertheless expressed in a similarly open and straightforward manner. Finally, Dunia's account of her close and loving relationship with the appellant is confirmed by the proven fact that she bore his child 'AW' on the 7th March 2019 (AW's birth certificate is before us). We thus have no reason to doubt that she gave us a truthful account of the history of her relationship with the appellant. This can be summarised by saying that they first met whilst she was visiting Iraq in order to attend the wedding ceremony of a mutual relative in August 2017, and that they thereafter kept in touch by text message and telephone until the appellant arrived in the United Kingdom in October 2018. We further find that they married in an Islamic ceremony that was held at a mosque in Stoke-on-Trent on the 7th March 2019 (the wedding certificate is before us) and that they began living together following a wedding reception that was held on the 15th February 2020 (there are a very large number of photographs of this event within the consolidated bundle of documents). We now turn to consider the appellant's account of his family's reaction to these events.

18. The appellant's account of being threatened by his family by reason of his refusal to enter into an arranged marriage with his cousin is plausible in the sense that we find it to be consistent with background country information concerning the frequent

reaction of members of the Iraqi Kurdish community to perceived slights to their 'family honour'. Although background country information appears to suggest that it is primarily women who are the targets of so-called 'honour killings', it is by no means unusual for men also to suffer this fate. We have therefore weighed this in the appellant's favour when assessing his credibility as a witness of truth. There are, however, a number of difficulties with the appellant's account of the threats made by his family due to him marrying Dunia rather than his paternal cousin.

19. At the hearing, the appellant claimed that the marriage to his cousin had already been arranged by his family prior to him meeting Dunia in August 2017. In his witness statement of the 14th February 2019, however, he said that his father had only arranged for him to marry his cousin after Dunia's father had rejected a proposal that the appellant marry his daughter (paragraph 17). The appellant did not provide an explanation for this significant discrepancy in his account and we find that it undermines his credibility.

20. At paragraph 15 of the same statement, the appellant stated that his parents had asked for Dunia's hand in marriage over the telephone. At the hearing, however, he said that his father had not been involved in the proposal at all and that it was his mother who had made it. This modified account as to who precisely put the marriage proposal to Dunia's parents is at least consistent with Dunia's own account of the matter (see her witness statement of the 27th July 2020 in which she also explains how she was able to win her father round to accepting the appellant as her husband). We therefore attach less adverse weight to this particular inconsistency in the appellant's account than otherwise.

21. So far as the threats that the appellant claims were made against him by his father and paternal uncle are concerned, these are said only to have been made verbally. Direct evidence of their occurrence is thus limited to the appellant's own testimony. Asked in cross-examination when he had first reported the threats to Dunia, he replied: "that day". We understood him to mean by this that he had reported them to her immediately. This impression was confirmed when Mr Tan asked the appellant when "that day" was, to which he replied: "I don't remember exactly – I believe it was the 12th January 2018 – I am not sure". The date of the 12th January 2018 is very close to that which he gave in his asylum interview for the time when his father first told him that he had to marry his cousin, namely, the 18th January 2018 (see his reply to question 85 of the asylum interview of the 21st August 2021). It was in any event tolerably clear that the appellant was claiming to have informed Dunia of these supposed threats as soon he had received them, and prior to him leaving Iraq in August 2018. This account was however contradicted by Dunia, whose evidence we accept, that the appellant had not mentioned anything about being threatened by his family until after he had arrived in the United Kingdom. We find that these matters further undermine his credibility.

22. This leads us to consider the impact upon the appellant's credibility of his failure to claim protection in Italy. Whilst that failure is of course consistent with what we accept was his earnest desire to be united with Dunia in the United Kingdom as quickly as possible, it is inconsistent with his claim to have been fleeing Iraq in order to escape the threat to his life posed by his father and his paternal uncle. That said, we do not attach great adverse weight to this factor in our overall assessment of the appellant's credibility.

23. The appellant's claim to have been in need of the United Kingdom's surrogate protection is however significantly undermined by the fact that, on his own account, he remained with his family in Iraq for more than six months after his father had supposedly insisted that he marry his cousin (see his reply to question 85 of his asylum interview, above).

24. We have considered the statements made by the appellant's friend, Nawaz Esmat Mohammed Ali, concerning the threats that he says were made against the appellant by his family due to his refusal to marry his cousin. However, that statement is inconsistent with the account given by both the appellant and Dunia concerning the circumstances in which they first met. It is moreover entirely based upon what the appellant has told him about these matters. We therefore attach very little weight to this evidence as support for the appellant's claims.

25. Having examined the appellant's evidence in detail, we have stood back and considered it in the round by weighing those matters that tell both for and against the appellant as a credible witness of truth. Having done so, we are left in no real doubt that he has fabricated the account of his life being threatened by family members in Iraq in order bolster his claim to remain in the United Kingdom with Dunia. Nevertheless, given the credible evidence that Dunia has provided, we are wholly satisfied that they are in a genuine and subsisting marital relationship and that they intend to remain so.

Legal analysis (conclusions)

26. Given our factual findings (above) the appellant cannot succeed in his claim for international protection (asylum and humanitarian protection), and questions concerning sufficiency of protection, internal relocation, and difficulties in accessing his CSID card do not therefore arise for consideration. We accordingly turn to consider his private and family life claim under Article 8 of the Human Rights Convention. In doing so, we have adopted the structured approach suggested by Lord Bingham of Cornhill in *R v SSHD ex parte Razgar* [2004] UKHL 27. It will be recalled that his involves addressing the following questions:

(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

27. Given the facts (above), we have no doubt that the appellant's proposed removal would constitute an interference with his right to respect for both private and family life, and that this suffices to engage the potential operation of Article 8. The decision was taken under the Immigration Acts by a person who had the authority of the Secretary of State to do so. To this extent, therefore, the decision is in accordance with the law. It was also taken in the interests of maintaining the economic well-being of the country through the consistent application of immigration controls. Thus, the remaining question is whether the removal of the appellant would be proportionate in furtherance of that public interest to which we now turn.

28. Whilst we note that the appellant has a significant number of friends in the United Kingdom, many of whom have taken the trouble to write letters of support, we are not satisfied that this alone would pose very significant obstacles to the appellant's reintegration on return to Iraq. This is especially so given our findings of fact concerning his family who continue to reside there. Were the appellant's private life to stand alone, we would accordingly not have considered his removal to Iraq to be disproportionate in furtherance of the public interest. It is however also necessary consider his private life alongside the undoubted family life that he has now established in the United Kingdom. We accordingly turn to consider the 'checklist' that appears in section 117B of the 2002 Act (above).

29. We note that there is a public interest in maintaining immigration controls. We accordingly acknowledge that the appellant ought to have sought entry clearance as Dunia's fiancé from Iraq rather than entering the country illegally. We also note that the appellant does not appear to have any significant facility in the English language. On the other hand, we note that Dunia is employed as a nursing assistant (see AW's birth certificate) from which we infer that the appellant is financially independent of the state. As a British citizen, Dunia is a 'qualifying partner' as defined by section 117D. We are nevertheless obliged to attach "little

weight" to the appellant's relationship with her if we find it to have been, "established ... at a time when [he was] in the United Kingdom unlawfully". However, given that the "relationship" with Dunia was already "established" prior his illegal entry into the United Kingdom, we consider that his relationship does not fall within the mischief of this particular provision. This is especially so give that we have already attached adverse weight to the appellant's illegal entry to the United Kingdom when considering the general public interest in maintaining immigration controls (see above). We therefore conclude that his relationship with Dunia is one that falls to be considered on the positive side of 'the balance sheet'.

30. Finally, we turn to consider the position of AW, whose best interests are a primary consideration. The balance in his case is to be struck by reference to section 117B(6). Mr Tan accepted that the potential operation of this sub-section was engaged given the appellant's fulfilment of its threshold criteria (a genuine and subsisting parental relationship with a qualifying child). He did not however accept that it would be unreasonable for AW to leave the United Kingdom given (a) his age, and (b) our finding that the appellant continues to have family members in Iraq to whom he could turn for support. However, we find it impossible to divorce the best interests of AW from the fact that his parents have settled accommodation and the practical support of his maternal grandparents in the United Kingdom, and that Dunia has settled employment from which she is able to support her family. The prospect of anything remotely equivalent to these advantages being available in Iraq is speculative at best. The current country guidance describes a challenging environment for a family such as this in Iraq even assuming that that the paternal family will be supportive and the appellant will have the benefit of the requisite identification. We thus have no doubt that it is in AW's best interests for him to remain with his mother in the United Kingdom. It follows from this that if the appellant were to be returned to Iraq, Dunia would be left in the near-impossible position of having to choose between her son's best interests in him remaining with her in the United Kingdom and taking him with her to Iraq in order to preserve the family unit. Had the appellant been a 'foreign criminal', the test to be applied would have been one of 'undue harshness'. As it is, we are required to apply the lesser test of 'reasonableness'. For the reasons that we have given, we have little doubt that it would be unreasonable for AW to leave the United Kingdom.

31. If we are wrong to conclude that the application of section 117B(6) of itself determines this appeal in favour of the appellant, then we nevertheless conclude that his removal from the United Kingdom would not strike a fair balance between the legitimate public interest in immigration control and the appellant's right to respect for private and family life when all the above-factors are considered as a whole.

Notice of Decision

1. The appeal against the decision to refuse the appellant's protection claim is dismissed.

2. The appeal against the decision to refuse the appellant's human rights claim is allowed on the ground that his consequent removal from the United Kingdom would be incompatible with his right to respect for private and family life and would accordingly be unlawful under section 6 of the Human Rights Act 1998.

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

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

Signed Date: 22nd August 2022

Deputy Upper Tribunal Judge Kelly