Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001503
(PA/50730/2020) [LP/00267/2020]

THE IMMIGRATION ACTS

Heard at Bradford
On 22 July 2022

Decision & Reasons Promulgated
On 7 September 2022

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GMA
(Anonymity direction made)

Respondent

Representation:
For the Appellant: Mr Diwnycz, a Senior Home Office Presenting Officer
For the Respondent: Ms Khan instructed by Parker Rhodes Hickmotts Solicitors

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge T Jones ('the Judge') who in a decision promulgated following a hearing at Bradford on 3 December 2020 allowed the appellant's appeal against the refusal of her application for asylum or for leave to remain in the United Kingdom on any other basis.

2. The appellant is a citizen of Iraq born on the 2 March 1982.

© CROWN COPYRIGHT 2022

3. Having considered the evidence with the required degree of anxious scrutiny the Judge set out his findings of fact from [57] of the decision under challenge.

4. The Judge made an adverse finding pursuant to section 8 of the 2004 Act [58] but found overall that GMA had given a credible account which was not challenged by way of direct inconsistency and which was supported by the background material relied upon by Ms Khan at the hearing and in the refusal letter [59]. The Judge accepted the appellant's evidence [61] and found the appellant's evidence internally and externally consistent despite close cross examination and that, in light of it being accepted she had a fear of her brother, it was found she could not turn to him to redocument the family [62].

5. In relation to the issue of FGM the Judge wrote at [63]:

> 63. The issues concerning sufficiency of protection certainly as far as FGM was conceded by the Respondent in the refusal letter. I can equally accept with reference to background material placed before me at the hearing and to which I have already made reference when noting the parties submissions above, that the authorities would not readily, or effectively, get involved in matters relating to family honour in circumstances such as this, leaving the Appellant and her daughter without a sufficiency of protection.

6. The Secretary of State sought permission to appeal which was granted by another judge of the First-tier Tribunal; the operative part of the grant being in the following terms:

> 2. The five grounds asserts that the judge had made a material error of law in stating the respondent had conceded that there was no sufficiency of protection available to the appellant in respect of the threat of FGM in Iraq which infected the findings in the determination; failed to give adequate reasons for finding that the appellant was credible; failed to state the Convention reason in finding that the appeal be allowed on asylum grounds; failed to give sufficient weight to the country guidance case of **SMO, KSP & IM Iraq CG [2019] UKUT 00400 (IAC)** and failed to make a finding on internal relocation.
>
> 3. The appellant was seeking asylum on two grounds; the first being that she was at risk of an honour crime as she had been involved in a relationship with another man and that her daughter was at risk of FGM from her brother. The risk of honour crime was not accepted by the respondent due to lack of credibility but the risk of FGM was accepted but the respondent stated that there was a sufficiency of protection against this risk in Iraq.
>
> 4. The judge erroneously records at [18] that there was a lack of sufficiency of protection from the authorities as to the risk of FGM to the appellant's daughter and this error is repeated at [24] when he records that it was unlikely that the state could offer a sufficiency of protection.
>
> 5. Insofar as the risk to the appellant from her brother is concerned the respondent had not accepted the appellant credible due to inconsistencies in the screening interview and that the substantive interview and therefore did not deal with the issue of sufficiency of protection in the refusal letter; however in the review the respondent acknowledged that the Kurdish authorities were able but unwilling to provide effective protection to those at risk of honour crimes.
>
> 6. The judge sets out his findings at [59] to [63]. At [63] the judge records that sufficiency of protection as far as FGM was concerned was conceded in the refusal letter but this arguably is not correct. The findings as to credibility were based on the appellant's internal and external inconsistencies but there was

no engagement with the reasons given by the respondent for rejecting the appellant's credibility in the refusal letter. Further there was a failure to engage with the objective material and the CG case before concluding at [61] that return to another part of Kurdistan would be unduly harsh.

7. The judge fails to give adequate reasons for finding the appellant credible and fails to give adequate reasons in rejecting the respondent's assertions.

8. Insofar as the third ground is concerned it was acknowledged in the review that persons at risk of honour crimes may come within the definition of refugee but arguably the judge may have failed to give adequate reasons and failed to specify what grounds the appeal had been allowed.

9. Permission is granted as arguable errors of law have been identified.

7. In her Rule 24 response dated 21 July 2022 Ms Khan writes:

INTRODUCTION

1. The Respondent seeks to respond to the Notice of Appeal submitted by the Appellant challenging the decision of First-tier Tribunal Judge Jones (Judge Jones hereafter) allowing the Respondent's appeal on asylum grounds.

2. The Respondent opposes this appeal and would invite the Tribunal to find that there is no material error of law.

GROUNDS

3. The Respondent would submit that the Appellant's grounds do not disclose a material error of law.

Ground 1 – Concession on protection for FGM

4. The Appellant asserts that Judge Jones made a material error of law in stating that the Appellant had conceded there was no sufficiency of protection for the FGM risk. The Appellant asserts no such concessions were made before Judge Jones.

5. The Respondent's records do not show any concessions being made by Mr MacBurnie at the hearing on the issue of sufficiency of protection on the FGM aspect of the claim. The Respondent accepts this is an error. However, the Respondent would submit that this is not a material error. The Respondent in her review had acknowledge that the authorities were able but unwilling to provide protection in the honour related claim. This position took account of the Respondent's CIPN on honour crimes – see SB p480, para. 9 and SB p33 para. 2.4.2 that said:

"*For these reasons, the Kurdish authorities are able but unwilling to provide effective protection to those at risk from 'honour' crimes. Decision makers must, however, assess each case on its merits*".

6. The Appellant's CIPN on Iraq: FGM dated the 14 February 2020 states:

"*2.5.5 In general, the state may be able but is not usually willing to provide protection. However, the onus will be on the person to demonstrate why they cannot obtain such protection (see Protection and support)".*

7. The Appellant would submit that the Respondent's position was contrary to her published policy and had Judge Jones engaged with this aspect, he would have found that there was no sufficient protection for the Appellant on FGM.

8. The Respondent would further or in the alternative submit that even if the Tribunal found this is an error. It does not affect the Judge's conclusion on the honour related aspect of the claim. It is not material to the outcome of the appeal.

Ground 2 – Adequacy of reasons

9. In relation to the second ground, the Appellant submits that Judge Jones did not give adequate reasons for his findings on credibility. It is submitted Judge Jones properly and fully explained why he accepted the Appellant's account, in particular:

i. He states in line with the submissions made in the ASA he found the Appellant gave a credible account (see para. 59).

ii. He accepted the Appellant's account was supported by background evidence cited by Counsel and the Appellant's own decision letter (para. 59).

iii. He accepted the responses the Appellant gave in her appeal statement (para. 60).

iv. He accepted why the Appellant was reticent in her husband attending and hearing her evidence on her affair (para. 60).

v. He accepted the Appellant would have limited knowledge of her brother's PUK activities given that she was married in 2008 and left the home she had shared with her brother (para. 61).

vi. He accepted the Appellant's brother was abusive towards her physically and controlled her mentally so she would not have asked him questions about what he did, how he earned his money, and what his position was specifically (para. 61).

vii. However, he accepted her evidence that he was in a position of power because it was evident to her he was an official and had a driver when he needed one. He would have reach and influence throughout Kurdistan region (para. 61).

10. The Respondent further relies on the case of *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982 (27 July 2005)

> *"13. The second preliminary matter is this. Adjudicators were under an obligation to give reasons for their decisions (see reg 53 of the Immigration and Asylum Appeals (Procedure) Regulations 2003), so that a breach of that obligation may amount to an error of law. However, unjustified complaints by practitioners that are based on an alleged failure to give reasons, or adequate reasons, are seen far too often. The leading decisions of this court on this topic are now Eagil Trust Co Ltd v Pigott-Brown [1985] 3 All ER 119 and English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409. We will adapt what was said in those two cases for the purposes of illustrating the relationship between an adjudicator and the IAT. In the former Griffiths LJ said at p 122:*
>
> > *"[An adjudicator] should give his reasons in sufficient detail to show the [IAT] the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on [an adjudicator], in giving his reasons, to deal with every argument presented by [an advocate] in support of his case. It is sufficient if what he says shows the parties and, if need be, the [IAT], the basis on which he has acted, and if it be that the [adjudicator] has not dealt with some particular argument but it can be seen that there are grounds on which he would have been entitled to reject it, [the IAT] should assume that he acted on those grounds unless the appellant can point to convincing reasons leading to a contrary conclusion."*
>
> *14. In English Lord Phillips MR said at para 19:*
>
> > *"[I]f the appellate process is to work satisfactorily, the judgment must enable the [IAT] to understand why the [adjudicator] reached his decision. This does not mean that every factor which weighed with the [adjudicator] in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the*

[adjudicator]'s conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the [adjudicator] to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings.

16. What we have said does not absolve an adjudicator of his/her duty of devoting the intense scrutiny to the appellant's case that is required of a decision of such importance. What we wish to make clear, however, is that the practice of bringing appeals because the adjudicator or immigration judge has not made reasoned findings on matters of peripheral importance must now come to an end".

11. The Respondent relies on the case of *HS (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 771 (18 June 2009) wherein the Court of Appeal stated:

27. … In that context it is important to have in mind that both challenges were reasons challenges. For that we have been referred to the helpful guidance given on this, as on most subjects, by Brooke LJ in R (Iran) v SSHD [2005] EWCA Civ 982. In that judgment he referred to the well-known cases in the Court of Appeal, indicating the limited circumstances in which one should set aside the judgment for inadequate reasons. I note in particular the emphasis that the reasons are required to explain why the judge reached his or her decision, but that it is not necessary in every factor in the balance is to be examined or set out.

28. Brooke LJ referred to the judgment of Lord Phillips, MR, in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, which revealed the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he or she was making material findings.

29. A claim that the reasons are inadequate must be distinguished from a claim that the reasons are wrong. That is only permissible in this jurisdiction if it can be shown that the reasons are not merely wrong, in the sense that the conclusions are not ones with which the appellant or indeed the court might agree, but that they are irrational. In this case, as I say, the challenge is to the adequacy of the reasons. So we have to ask ourselves whether we have any serious doubt about Immigration Judge Martins, thought processes leading to her decision…."

12. Judge Jones' determination as a whole provides clear and adequate reasons why he allowed the Respondent's appeal and why he accepted the Respondent's credibility. There is no obligation on a judge to specifically mention each and every point taken on credibility. The Appellant is merely seeking to reargue her case.

Ground 3 – the Judge had not specifically made reference to the convention reason he was allowing the appeal on

13. The decision letter did not take any issue with whether there were convention reasons applicable to the Respondent's case (see para. 18, SB p455). It is

submitted that there is no error in the Judge not specifically mentioning the convention reason.

Ground 4 – Findings on documents

14. At para. 62 of the determination the Judge found the Appellant was credible in her claim and could not be expected to seek the assistance of her brother to obtain replacement documents. The Judge was clearly accepting the Appellant's evidence that her CSIDs were taken by the agent. The Appellant would submit that there is no error on this point.

15. In the alternative, the Appellant would submit that even if this point is made out, it is not material per se.

Ground 5 – Internal Relocation

16. The Appellant asserts Judge Jones had failed to make findings on internal relocation. However, the Respondent would submit that Judge Jones made clear findings on internal relocation in para. 61. In particular:

i. He accepted the Appellant's evidence on the influence her brother had.

ii. He accepted the Appellant's evidence of how little influence her husband had.

iii. He expressly stated: "*even to return them to another area within Kurdistan without sponsorship support or employment may indeed by unduly harsh as Ms Khan highlights at the hearing given the economic and parlous state of the country*".

17. Contrary to the assertion in the grounds, Judge Jones did make findings on internal relocation.

DISPOSAL

18. The Respondent invites the Tribunal to find that Judge Jones has not made a material error of law and to dismiss the Appellant's appeal.

Shazia Khan

Kenworthy's Chambers
Bloom Street
Salford
Manchester
M3 6AJ

21 July 2022

Error of law finding

8. Appellate courts have been cautioned by the Court of Appeal about unduly interfering with the decisions of judges whose judgments they are considering on appeal.

9. It is not legal error for the Judge not to set out every aspect of the evidence or not to make findings upon the same, provided the material was considered with the required degree of anxious scrutiny.

10. It is accepted before me that the Judge has made an error of fact in relation to the question of whether the Secretary of State made a concession, as she did not, but it is argued such error is not material.

11. The requirement is for the Secretary of State to identify an error or errors of law made by the Judge that is material to the decision to allow the appeal, i.e. that if corrected it would make a difference.

12. Ground 2 relied upon by the Secretary of State is a reasons challenge. The Judge found the appellant to be credible because he believed what she was saying. The reason the Judge believed the appellant's account was because it was consistent with a background material and the Secretary of State's representative had not been able to shake the core of that account in cross examination. A reader of the decision can therefore understand what the Judge found on this issue and why the Judge found the appellant to be credible. The grounds do not establish this was a finding not reasonably open to the Judge on the evidence, particularly when the Judge had the benefit of reading the written material and seeing and hearing the oral evidence.

13. The appellant's home area is within Sulamaniyah District within the IKR. Two reasons were relied upon within the appellant's evidence, first relating to the risk of being a victim of an honour killing and the second a risk to the appellant's daughter of FGM.

14. As identified in the Rule 24 response, it cannot be said that the Judge's findings in relation to FGM are outside the range of those reasonably available to him on the evidence. That evidence showed that the authorities in the IKR were not usually willing to provide protection even if they were able to do so. Part of the accepted appellant's evidence related to her claim that her brother had influence within the IKR and that in relation to whom she had a genuine fear. The risk of FGM originated from that source.

15. The alternative pleading in the Rule 24 response is that even if the Judge was wrong on the FGM point that did not impact or effect the overall findings on the honour killing claim.

16. I accept the materiality line of argument as the Judge's findings which have not been shown to be infected by arguable material legal error.

17. It is also important when considering the question of internal relocation to note the Judge's findings regarding the appellant's CSID. The Judge does not find the appellant has access to this document and at [62] that as she is in fear of her brother she could hardly turn to him to redocument the family.

18. The Secretary of State's own guidance in the Country Policy and Information Note: Internal relocation, civil documentation and returns, Iraq, May 2022 at 2.4.4 reads:

> 2.4.4 Decision makers must therefore first determine whether a person would face any harm on return stemming from a lack of CSID/INID before considering whether their return is feasible. In cases where a person would be at risk on return due to a lack of documentation (i.e. facing destitution or possible ill treatment due to the requirement to travel internally within Iraq to obtain a CSID/INID) a grant of HP would be appropriate.

19. It is not made out the Judge's finding that the appellant is undocumented and would not be able to seek the assistance of her only male relative in Iraq to enabled her to redocument herself and her family is outside the range of findings reasonably available to the Judge on the evidence.

20. It is not legal error for the Judge not to set out the Convention reason. The Judge has set out the basis on which he considers the appellant is entitled to succeed with her appeal. It is for the Secretary of State to

determine on the basis of the findings the nature of the leave to be granted to the individual concerned. The Judge allowed the appeal without specifically stating on what basis at [64]. If no Convention reason is identified then it will be a grant of Humanitarian Protection or pursuant to article 3 ECHR but, as Ms Khan identified in the Rule 24 response, the Convention ground was not addressed in the refusal letter either.

21. As an aside, those liable to FGM have in some societies been held to be members of Particular Social Group (PSG) with forcible circumcision always being persecution – see K and Fornah [2006] UKHL 46, and that in relation to a mother whose daughter was at risk of FGM, in FM (FGM) Sudan CG [2007] UKAIT 00060 it was found in such circumstances that “given the first appellants abhorrence of FGM, any infliction of it upon either of her daughters is, we find, reasonably likely to have so profound an effect upon the first appellant as to amount to the infliction on her of persecutory harm”. That principle is equally applicable to the appellant in this case in light of the Judge’s findings.

22. Sitting back and considering matters in the round, I find the Secretary of State has failed to establish that the Judge’s findings are outside the range of those reasonably available to him. The respondents representative, despite his best endeavours, has failed to establish that it is appropriate for the Upper Tribunal to interfere any further in this matter.

23. The appeal is dismissed.

Decision

24. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.

Anonymity.

25. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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 the appellant. Failure to comply with this order could amount to a contempt of court.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated 25 July 2022