



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002266

First-tier Tribunal No: PA/52054/2021
IA/11408/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

H N
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 24 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Mack promulgated on 8th March 2022, following a hearing in Manchester on 4th March 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Iraq, who was born on 25th June 1997. She appeals against the decision of the Respondent, dated 30th October 2020 to refuse her asylum and leave to remain in the United Kingdom under the Refugee Convention 1951.

The Appellant's Claim

3. The essence of the Appellant's claim is that she fears being killed at the hands of her family for having entered into a relationship with a Mr Bakhtar Hama, which was without the knowledge of her family, and who is a person dependant on her current claim. The couple had met in 2015. They entered into communications with each other. By 2017 they were in a physical relationship. Her family had already made arrangements for her to marry somebody else. This resulted in a blood feud. Mr Hama's family has sought the hand of the Appellant on his behalf but they were told she was promised to somebody else. The Appellant alleges that the couple met secretly one day and had sexual intercourse in an orchard, when the Appellant finished an exam early. They now fear an honour killing to cleanse the shame that they are alleged to have brought upon the Appellant's family. Her father is a member of the Peshmerga and has powerful connections. The Appellant also now had two children, had no CSID, and claimed to be at risk on return, together with her partner, Bakhtar Hama, and their two children. On the other hand, the Respondent counted this by referring to the fact that there had been a previous decision, so that **Devaseelan [2002] UKIAT 00702**, applied. The Appellant's fear of a blood feud had already been considered previously together with sufficiency of protection and the availability of internal relocation. She had not been found to be credible with respect to her core claim.

The Judge's Findings

4. The judge began by observing that the starting point to her determination would be the principle in **Devaseelan**, given the first judge's decision. The judge referred to the consideration of the Appellant's claim previously by Judge Malik (at paragraphs 33 to 45) who she said had "found the evidence of the Appellant incredible" (at paragraph 44), and turned to address the appeal before her presently with the words "I asked myself what has changed since the decision of Judge Malik" (at paragraph 46). The judge observed that the Appellant now asserted "that her father had sent a Facebook message where her life was threatened" (at paragraph 46). The Appellant had been to the embassy "but they could not help her and she has no ID. (Paragraph 47). The judge concluded with the observation that the Appellant and her witnesses were not truthful witnesses and that their core evidence was not credible and that this was in line

with Judge Malik's findings in 2019 as to the Appellant and Mr Hama, her partner (at paragraph 59).

The Grant of Permission

5. On 24th August 2022, the Upper Tribunal granted permission on the basis that, with reference to paragraphs 57 and 58 of the determination, the judge had wrongly disbelieved the witness without consideration of the documents, and then disbelieved the documents in part because the judge disbelieved the witness. That approach was difficult to reconcile with the principle in **Tanveer Ahmed**.

Submissions

6. At the hearing before me on 24th May 2023, the Appellant was unrepresented, and did not appear, and nor was any explanation given for no-one having turned up on her behalf. Mr McVeety, appearing on behalf of the Respondent, submitted that the principal in **Tanveer Ahmed** had not been misapplied. If one looked at paragraph 57 of the judge's determination, it is clear that the judge at that stage is undecided as to her decision. She referred to the evidence of her new witness, Mr Bakir, who had said in oral evidence that "he was not told how Mr Hama's family got the documents which contradicted his statement, at paragraph 8, when he stated that he was told that the police had visited." When the Appellant's representative pointed it out to the witness that this was the case, the witness just said "the police dropped the letter." He had said they had dropped that, "the girl's father with the police", so that, "I am satisfied he was deliberately vague and he knew he had given contradictory evidence" (at paragraph 57). In fact, the judge went on to say, "Overall I found that this witness had significantly moved his evidence from statement to oral evidence" (at paragraph 57), which Mr McVeety submitted, the judge was entitled to conclude. What was important was that this was just the testimony of the person who had got the document. It was not the overall evidence in the appeal. At paragraph 57, the judge is looking at the witness's explanation about how he got the documents and he found him to be untruthful.
7. Mr McVeety submitted that it is only after this that the judge then moves on (at paragraph 58) to apply the established rule in relation to documentary evidence and asserts, "I viewed them in line with **Tanveer Ahmed** and cannot consider them in isolation from the credibility findings against the Appellant and witnesses" (paragraph 58). Given that the Appellant's representative had made it clear that the essential issue in this appeal was that of the credibility of the witnesses, the judge having found that the testimony was not credible, was entitled to conclude that the evidence presented was not reliable. It is after this, submitted Mr McVeety, that the judge goes on (at paragraph 59) to draw a conclusion. She states that, "I have found that the Appellant and witnesses were not truthful witnesses and that their core evidence is not credible. This is in line with Judge Malik's findings in 2019 as to the Appellant and Mr Hama." She had rejected the new evidence produced by the Appellant. "I have found that upon scrutiny surrounding the circumstances of the documents, that these are not genuine and the Facebook evidence is remarkably poor and incredible" (at paragraph 59). The judge was entitled, submitted Mr McVeety, to make her findings in this way.

No Error of Law

8. I have approached this appeal on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am satisfied that the decision of the judge below did not comprise an error of law. The nature or extent of any judicial fact-finding is fully sustainable. The judge's approach has been clear and methodical. When the issue of threats to the family of Mr Hama was addressed in a short statement by Mr Bakir, the judge observed that in his statement Mr Bakir said that he had spent "about an hour or so" with Mr Hama's family who were, "welcoming". However, in cross-examination he said he could not remember how long he was there. He had said that he was not comfortable with his mother crying and took the documents and left. It is on this basis that the judge concludes that, "I find that this narrative moved significantly from statement to oral evidence" (paragraph 56). By the time one gets to paragraph 57, Mr Bakir has to be reminded by his representative that the evidence he is giving is inconsistent and this leads the judge to record that, "I am satisfied he was deliberately vague and he knew he had given contradictory evidence" (paragraph 57). The judge was entitled in the circumstances to say that she could properly place reliance upon the principle in **Devaseelan** and conclude in a manner that was consistent with an earlier finding by a judge.

Notice of Decision

9. There is no material error of law in the original judge's decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st July 2023