



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/03308/2013  
AA/03351/2013

**THE IMMIGRATION ACTS**

**Heard at Stoke  
on 30<sup>th</sup> October 2013**

**Determination  
Promulgated  
on 6<sup>th</sup> January 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**A A M A M  
R A A A M**

**(Anonymity direction made)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Draycott instructed by Paragon Law Solicitors.  
For the Respondent: Mr M Hussain – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Judge Pooler promulgated on the 19<sup>th</sup> July 2013 in which he dismissed the appeal of both appellants, a father and son born on the 1<sup>st</sup> March 1972 and 21<sup>st</sup> June 2001 respectively, against the direction for their removal to

Jordan which accompanied the refusal of their claims for asylum or any other form of international protection.

## **Discussion**

2. Mr Draycott relied upon all the grounds on which permission to appeal was sought.
3. Ground A alleges the Judge erred in finding the claim of an ongoing risk arising from a dispute between the first appellant and his wife's family was not credible and in doing so failed to engage with the evidence of the country expert.
4. The Judge clearly considered the evidence presented to him including the report of Ms Lazier of which there is specific mention in the determination [25, 26, 27, 29]. The fact the evidence was considered was in fact accepted by Mr Draycott before me. In SS (Sri Lanka) [2012] EWCA Civ 155 the Court of Appeal held that the weight to be given to the evidence was a matter for the judge provided it was clear the judge had considered the evidence with the degree of care required and had given adequate reasons for the findings made. I find the first of these criteria to be satisfied as it has not been demonstrated that Judge Pooler failed to consider the evidence with the degree of anxious scrutiny required in a case of this nature. Mr Draycott submitted that the real issue was the legitimacy of the reasons given regarding the issue of future risk.
5. Judge Pooler found the claim to be at risk on return not credible for the reasons set out in paragraphs 32 (a) to (f) of the determination. It is said these are not sustainable, which must be an assertion of perversity or irrationality as in themselves they are adequate, based in part upon the experts report and specifically the opinion set out in paragraph 7 of the grounds. A letter from the elders (A's bundle p17) is also relied upon.
6. Judge Pooler found the expert report failed to provide an adequate explanation for why the appellants would be at real risk from his wife's relatives, yet his wife and daughter are said to be at no risk, when they have returned to Amman and the background evidence relating to honour killings suggest that in general the woman is at risk where the family honour has been impugned. It was found that the expert did not provide an adequate explanation for this.
7. The risk is said to arise as the first appellant married his wife, both of whom are of Palestinian origin, in 2009 despite his request for permission to marry having been refused by her family and the unsuccessful intervention of the tribal elders to resolve the resulting dispute.

8. The grounds quote from paragraph 3 (xvii) of Ms Lazier's report in which she stated that marriage without parental consent is an 'honour' issue for his wife's family and as the couple have gone ahead with the marriage without their blessing and consent is a slight on their 'honour': revenge becomes a permanent issue. Ms Lazier goes on to state that the first appellant plausibly believes that if returned to Jordan he will face revenge killings from members of his wife's family, such as her brothers who still reside in Jordan, and that in some families the woman would also be at risk as recognised by the Home Office.
9. In her conclusion Ms Lazier states that the first appellant could likely face internal family risk in Jordan on honour related issues and that it is unlikely the Jordanian police will intervene to protect him, as a Palestinian, from any threats made, such being perceived to be a family matter [A's bundle, p 13, para 6].
10. It is also said the letter from the elders specifically states that "because of this act the family of Fadwa wants to kill AA and the blood of every male child to him"
11. The reasoning in paragraph 32 (b) is arguably inadequate as although the thrust of the country material is that women are those at risk in relation to honour killing it does not specifically exclude males from being killed, and there is a possible explanation for why the first appellants wife has not been killed in the expert report. In Ms Lazier's report of the 30<sup>th</sup> May 2013 she specifically states that whether a woman will be at risk is dependant upon the nature of her family rather than always being the case. Why this is said to be inadequate is not explained in the determination.
12. The question for the Judge was, however, whether the alleged risk is objectively well founded. The Judge refers at paragraph 32 (c) to inconsistencies in the account relating to when the alleged threats were made and in 32 (d) to the fact the first appellant actually returned to Jordan in 2008 where he renewed his passport and between 7<sup>th</sup> July 2009 to 22<sup>nd</sup> September 2009 with his son after which he returned to the UK with both his children. It was found not to be credible that the first appellant would have taken his son on a sightseeing trip to Jordan if he believed he and his son were at risk of being killed by his maternal relatives were he to be discovered.
13. The Judge also found the first appellant to have been inconsistent with regard to the continuation of the threats claiming for example the threats were ongoing in his oral evidence, which is said to have been "vague", whereas in his interview at question 117 he claimed the last threat was made in 2001 [32 (e)].

14. The letter from the elders was considered and in paragraph 32 (f) the Judge states:

(f) The appellant relies on a letter received by e-mail and dated 23 December 2011. According to the appellant, it was written by one of the elders. It referred to the dispute between the families of the appellant and his wife which “began in the year 2000, and up to 2001 [sic]”. The tribal elders were said to have tried to mediate but the wife’s family refused to reconcile and the appellant had to move around constantly. Two points arise. First, the appellant provided no explanation when I gave him the opportunity to explain why a letter in these terms had been written in December 2001. Secondly, despite the claimed involvement of the tribal elders in 2009 the letter only refers to an attempt to mediate some eight years previously.

15. Judge Pooler accepted there may have been a dispute in 2000 and 2001 as the letter from the elders refers to that period and in interview the first appellant stated the last threat was in 2001. It was found however that such a threat was not sufficient to deter the appellant from returning to Jordan in 2008 or making the trip with both children in 2009. The Judge was not satisfied on the evidence that the dispute continued beyond 2001 and was not such as to put the appellant or his son at real risk thereafter [33].
16. The challenge to the decision, focusing as it does on the finding in paragraph 32 (b), fails to establish any arguable perversity or irrationality in the conclusion the appellants have failed to substantiate their cases to be entitled to be recognised as refugees or persons entitled to a grant of leave on Article 3 grounds when the evidence is considered as a whole. The finding the claims have not been substantiated has not been shown to be tainted by material legal error and is a finding open to the Judge on the evidence. The challenge is in reality a weight challenge and argument that more weight should have been given to the opinion of the expert when weight is a matter for the Judge.
17. Ground B alleges a procedural error such as to amount to a material error of law in refusing an adjournment application to enable the appellants’ to make an application to renew their passports at the Jordanian Embassy in London. The Judge records at paragraph 13 of the determination that Mr Draycott made such an application. The Judge noted that on 5<sup>th</sup> June 2013 there had been a previous adjournment as a result of Ms Lazier mentioning differing types of Jordanian travel documents which could have been issued but that she was unable to specifically comment as she had not seen the one actually issued. The application made to the Judge was for a delay until after the expiry of the appellants passports to enable enquiries to be made of the Jordanian Embassy and for a further expert opinion. The application was refused for the following reasons:

16. Having taken account of the Tribunal's overriding objective to handle proceedings as fairly, quickly and efficiently as possible I decided that it was not appropriate to adjourn. I took into account the fact that the final hearing had already been postponed or adjourned twice in order to accommodate the provision of two expert reports. I considered that there was no adequate reason why the expert had not been asked to report on this issue if it were to be relied upon. I also bore in mind that if one or both passports could not be renewed, fresh circumstances would arise; these circumstances might result in the respondent's inability to remove the appellants to Jordan or they might give rise to a fresh claim. I considered that the reports before the Tribunal contained no more than speculation with regard to the possibility that the passports might not be renewed.

18. The key principle to be applied by any judge considering an adjournment request is that of fairness. Judge Pooler clearly had this in mind and gave adequate reasons for refusing the application. Mr Draycott was asked why such an application of the nature he sought the adjournment for had not been made prior to the hearing before Judge Pooler but he provided no explanation. The application has been made since but the result not communicated as it is not relevant for the error of law stage of these proceedings. The Judge considered there had been ample opportunity to have dealt with this issue and no procedural error sufficient to amount to a legal error has been shown in the way in which the Judge exercised the discretionary powers conferred upon him in the way in which he did. The finding of an alternative remedy, if the application to renew was unsuccessful, is factually correct.

19. Ground C, relating to Article 8 ECHR/section 55, alleges error in the Judge failing to undertake an individualised assessment of the needs of the child (the second appellant).

20. Before commenting generally upon this issue I will deal with the assertion in paragraph 22 of the grounds that the primary information gathering obligation in respect of section 55 is upon the respondent, particular in light of the Judge's findings at paragraph 45 that there was no evidence as to the availability of medical treatment in Jordan that may in the future be offered in the United Kingdom. This submission appears to be based upon the comments of Judge Thornton QC in R (on the application of Tinizaray) v Secretary of State for the Home Department [2011] EWHC 1850 (Admin) "that decision-makers could not solely rely on information volunteered by a parent, particularly if that information was incomplete. Instead, the decision-maker had a duty to seek further information. That included interviews of the applicant and separate interviews of the child as well as reports from local authority social services, CAFCASS and other child welfare agencies. ". However, the above has no legal standing as an authoritative statement especially following SS (Nigeria) v SSHD [2013] EWCA Civ 550 in which Mr Justice Mann said at paragraph 62:

“in the vast majority of cases the tribunal would expect the relevant interests of the child to be drawn to the attention of the decision maker by the individual concerned” and the judgment of Laws J who said “I would not with respect accept that the decision in Tinizaray should be regarded as establishing anything in the nature of a general principle”.

21. The burden is upon the appellants to adduce the evidence to prove that what they are alleging is the case. There is no obligation upon the Tribunal in a case such as this to do more. Also in SS (Nigeria) Mr Justice Mann said “...the circumstances in which the Tribunal will require further inquiries to be made, or evidence to be obtained, (about the children's best interests) are likely to be extremely rare. In the vast majority of cases the Tribunal will expect the relevant interests of the child to be drawn to the attention of the decision-maker by the individual concerned. The decision-maker would then make such additional inquiries as might appear to him or her to be appropriate. The scope for the Tribunal to require, much less indulge in, further inquiries of its own seems to me to be extremely limited, almost to the extent that I find it hard to imagine when, or how, it could do so”.
22. In Azimi-Moayed and others (decisions affecting children; onward appeals)[2013] UKUT 197(IAC) (Blake J) the Tribunal held that although in some cases this may require a judge to explore whether the duty requires further information to be obtained or inquiry to be made, the judge primarily acts on the evidence in the case. Where that evidence gives no hint of a suggestion that the welfare of the child is threatened by the immigration decision in question, or that the child's best interests are undermined thereby, there is no basis for any further judicial exploration or reasoned decision on the matter.
23. The Judge was clearly aware of the need to treat the needs of the child as a paramount consideration. It is noted in paragraph 47 that there was no expert evidence regarding the needs of the child and that the child's mother and sister have returned to Jordan and that the best interests of the child is to be brought up by family members. The fact the best interests are met by being brought up by both parents is in accordance with established child care practise and the Tribunal case law. In paragraph 48 the Judge concluded;

48. Accordingly the best interest of the son will be met by his remaining with his father whether or not his father is removed to Jordan. The best interests of the child are not a significant factor pointing one way or the other to the ultimate decision on proportionality. I take account of the length of time which the appellants have spent in the UK and that for most of that time they had leave. I have to recognise however that the appellants came to the UK on a temporary basis and can have no expectation that they should have been allowed to remain indefinitely: see MM (Tier 1 PSW; Art 8; “private life”) Zimbabwe [2009]

UKAIT 00037. Taking into account all of the factors which I have identified, I am satisfied that the decision is proportionate and that the Article 8 appeal must fail.

24. On the basis of the evidence made available at the date of the hearing this is a sustainable decision. The Judge considered the specific facts, including the medical needs of the child, and noted in paragraph 46 that “the Tribunal can only make findings on the basis of the evidence and the appellants have failed to adduce evidence of the significance of the treatment received by or offered to the son”. No legal error is proved in relation to the assessment of the best interests of the child. On the available evidence the finding the decision is proportionate and that there will be no breach of any ECHR rights if the appellants are returned is within the range of findings the Judge was entitled to make on the evidence. No perversity or irrationality is proved.
25. Finally I have seen within the file two letters dated 18<sup>th</sup> and 19<sup>th</sup> July 2013 providing additional evidence relating to matters that arose during the hearing. One can only assume that Mr Draycott reported back to those instructing him after the hearing and such evidence was obtained in an attempt to bolster the case. The determination is dated 18<sup>th</sup> July 2013 which is the date Judge Pooler approved it and would have sent it for promulgation. He did so unaware of the additional evidence as the letter dated 18<sup>th</sup> July 2013 has a fax transmission time of 23:17 hours and a date received stamp of 19<sup>th</sup> July 2013 at the First-tier Tribunal office in Stoke. The letter dated 19<sup>th</sup> July 2013 was sent at both 16:43 and 18:05 hours, after the determination was formally promulgated, which is an administrative task in which Judge Pooler is not involved.
26. In SD (treatment of post-hearing evidence) Russia [2008] UKAIT 00037 the Tribunal said that, in the rare case where an immigration judge, prior to the promulgation of a determination, receives a submission of late evidence, then consideration must first be given to the principles in Ladd v Marshall [1954] 1WLR 1489. Under those, a tribunal should not normally admit fresh evidence unless it could not have been previously obtained with due diligence for use at the trial, would probably have had an important influence on the result and was apparently credible. If, applying that test, the judge was satisfied there was a risk of serious injustice because of something which had gone wrong at the hearing or this was evidence that had been overlooked, then it was likely to be material. In those circumstances, it will be necessary either to reconvene the hearing or to obtain the written submissions of the other side in relation to the matters included in the late submission.
27. Not only was some of the additional information received post promulgation, no explanation has been provided for why it could not have been obtained earlier or it established why the evidence should be admitted. The Ladd v Marshall test is not satisfied.

**Decision**

28. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

29. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....  
Upper Tribunal Judge Hanson

Dated the 20<sup>th</sup> December 2013