Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05737/2013

THE IMMIGRATION ACTS

Heard at Field House
On 20 February 2014

Determination Sent
On 5 March 2014

Before

THE HONOURABLE MR JUSTICE JAY
UPPER TRIBUNAL JUDGE CHALKLEY

Between

HANI AHMED ABED WIHAYBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss F Kadic
For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dated 23 July 2013 whereby the appellant's claims for asylum as well as humanitarian protection were

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dismissed. The appeal is brought against the humanitarian protection part of the determination.

2. The appellant is a national of Jordan of Palestinian origin born on 27 April 1984. Although he had a business visa to come to the United Kingdom, he claimed asylum on arrival. He was interviewed on 29 May 2013 and on 3 June the Secretary of State refused the application. The basis of the application was the appellant's claim that he had a sexual relationship with a woman in October 2012. His request to marry her was turned down by her family in November. In March 2013 the woman's family found out about the relationship and threats to kill ensued. In particular, on 24 March 2013 the woman's brother came to the appellant's family home with five other men carrying a gun. The appellant was out at the time but he came to learn of what happened and started making arrangements to come to this country.

3. The claim could not succeed under the Refugee Convention but the Immigration Judge considered it separately on humanitarian protection grounds. The Tribunal concluded that the appellant was an evasive and unsatisfactory witness and not a man of truth. The judge observed that the claim was unsupported and implausible. The appellant admitted to going out in disguise between 24 March 2013 and his arrival in the United Kingdom on 10 May and that his disguise amounted to a traditional veil for a man. The Immigration Judge was unimpressed by that. He was also unimpressed by the fact that the appellant did not know that the woman's family had filed a complaint against him and that the woman in question had not in fact committed adultery. In any event, the woman was now married to her cousin, according to the Immigration Judge's finding, and there was nothing to suppose that her family would now wish to bring the whole of the family into disrepute by going after the appellant.

4. At paragraph 15 of the determination we see an independent finding on the issue of internal flight where the judge concluded that the appellant could safely relocate internally elsewhere in the Kingdom of Jordan.

5. Permission to appeal was granted by the First-tier Tribunal on two bases. First,

> "The representative's record of evidence attached to the permission grounds supports the claim that the appellant's evidence was not that the girl had married her cousin after the appellant fled, rather that the appellant did not know whether or not she had done so."

6. Secondly, the judge granting permission felt that the First-tier Tribunal had failed to distinguish between that part of the decision relating to the claim for asylum and the removal decision. However we believe that there is nothing in this latter point; the decision making in relation to humanitarian protection is clearly differentiated. As for the first point, we have investigated the issue by reference to the Immigration Judge's Record of Proceedings which do appear to support the proposition that the evidence before him was that the appellant's information was that the woman in

question had now married her cousin, and we have also looked at the Home Office Presenting Officer's note of evidence where, and we are grateful to Mr Jacks for drawing this to our attention, is is clear that on two occasions the appellant said that he did not know if this woman was married or not.

7. In those circumstances we feel that there is merit in the point that the Immigration Judge erred or certainly made a mistake of fact - whether that amounts to a mistake of law is another matter - when he said that the woman in question is now married to her cousin. That goes slightly too far.

8. Mr Jack submitted that the determination can nonetheless be supported on two grounds. The first ground was that the error of fact in relation to the marital status of the woman makes no difference to the reasoning in paragraph 14 of the determination. When one correlates the facts as found with the underlying evidence the position would be exactly the same if this woman were not married. There is some evidence that men may be the subject of honour killings so called but the real issue is the stigma which attaches to these matters coming out into the public domain.

9. The point that the Immigration Judge was making is that the family would not take action against the appellant regardless of whether she was married: we might add, because it would bring public attention to the adultery of the woman and cause not merely shame but diminish her marriage prospects.

10. We are adding that final ingredient, the diminishment of marriage prospects, but the reasoning of the Immigration Judge can be upheld on the basis that it really makes no difference to the issue of shame and stigma and all the related issues of whether the woman has married her cousin or not. So we agree with Mr Jack that the decision can be upheld on this independent ground.

11. There is a further problem for the appellant and it is a fundamental problem and it demonstrates, we regret to say, that really permission in this case should not have been granted at all. Although the appellant below did advance submissions on the ground that internal relocation was not an option in the circumstances of this case, paragraph 15 of the determination makes it clear that the Immigration Judge was of the view that the appellant could safely relocate. There is no challenge to finding in the grounds and so the appellant is bound by that conclusion. It could only be upset in any event if it were perverse and there is nothing we have seen to demonstrate that that could be the position.

12. So it follows that if internal relocation is an option according to the Immigration Judge the rest of the determination, in particular 14 does not really matter even if there is an error of law in it, which as it happens we find that there is not.

13. So for both of those reasons - no error of law in paragraph 14, and once the matter had been investigated in some detail, an independent basis for the overall conclusion in paragraph 15 - this appeal is dismissed.

The Honourable Mr Justice Jay