



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

Appeal Number: PA/06095/2017

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice Centre
On: 4th June 2019**

**Decision and Reasons Promulgated
On: 10th June 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**KA
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Ms Wilkins of Counsel instructed by Duncan Lewis & Co
Solicitors**
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Jordan born on the 10th December 1983. He appeals with permission the decision of the First-tier Tribunal (Judge Mark Davies) to dismiss his appeal on protection and human rights grounds.
2. The substance of the Appellant's claim was that he faces a real risk of harm in Jordan for reasons of his ethnicity (Palestinian) and/or membership of a particular social group (refugee). He avers that in 2006 he met a Jordanian woman who was a

customer at his clothing store. They embarked on a relationship and in 2007 she fell pregnant. He went to her family home to propose marriage but when her family discovered that he was Palestinian, they refused him. By April 2007 they had realised that she was pregnant. The girl's father, brother and uncles arrived at the Appellant's home and took him away at gunpoint. The police were in attendance but they joined in beating the Appellant – the mob believed that he had raped his girlfriend. He was taken to an unknown place and severely beaten. He lost consciousness. After two or three days the Appellant managed to approach a tribal leader for help – a man from the Bani Hassan. There was a subsequent negotiation in which the Appellant agreed to give his girlfriend's family his home, £100,000 and his business. That agreement notwithstanding the threats and animosity continued and by May 2007 the Appellant was forced into hiding when the leader of the Bani Hassan sentenced him to death. That was, the Appellant claims, the reason that he left Jordan. He arrived in the United Kingdom in June 2007 and has lived here ever since. He avers that since his arrival he has been threatened over the telephone and told not to return to Jordan.

3. The Respondent rejected the claim on credibility grounds and the Appellant appealed to the First-tier Tribunal. When the matter came before Judge Mark Davies in January 2019 the Appellant gave oral evidence.
4. Judge Davies found it to be significant that the Appellant spent ten years living in the United Kingdom illegally before he sought protection. He only claimed asylum after he was encountered working in a restaurant, in possession of a French passport to which he was not entitled. The Tribunal was not prepared to accept, in the absence of any documentary evidence, that the Appellant had tried to regularise his position earlier. As to the actual claim the Tribunal found:
 - i) There was no “extraneous evidence” to support the Appellant's contention that he had a relationship with a Jordanian woman;
 - ii) There was no evidence to indicate that he had been sentenced to death by the Bani Hassan;
 - iii) It was “wholly incredible” that the Appellant would go to a Bedouin tribe to seek protection when he was not himself Bedouin;
 - iv) The very nature of the Appellant's application for a United Kingdom visa (i.e. the requirement to produce documents) indicates that he is not under threat of death from Bedouins;
 - v) Although the Appellant has produced a report stating that he has a scar on his hand, “taking into account his credibility” the Tribunal was not prepared to accept that it was inflicted during the assault on him in Jordan;
 - vi) There is no supporting evidence from his mother, who is still in Jordan;
 - vii) The psychology report stating that the Appellant has PTSD and depression is of “no value” when weighed against the findings that the Tribunal has already made;

viii) The report is in any event severely lacking in that the psychologist fails to take into account the Appellant's immigration history – the diagnosis could have arisen from the Appellant's circumstances in the United Kingdom.

5. For those reasons the Tribunal concluded that the account was a fabrication and dismissed the appeal.

Error of Law

6. Permission was granted on the 27th March 2019 by First-tier Tribunal Judge Bristow.
7. The grounds are that the First-tier Tribunal erred:
- i) In its assessment of the scarring and psychology report. The Tribunal failed to weigh this evidence in the round with the Appellant's account, instead rejecting their probative value on the grounds that the Appellant's evidence had already been found to be non-credible. This was contrary to the guidance in Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367;
 - ii) In respect of the psychologist's report the Tribunal erred in fact in stating that the author failed to consider the nexus between the diagnosis and the account given, and in doing so exclude other possible causes. That matter is squarely addressed. That the Tribunal failed to notice that betrays a lack of anxious scrutiny.
8. Before me Mr McVeety offered no resistance to the grounds, accepting that the errors alleged were made out. I agree.
9. I would add that the findings that are made are unhelpfully couched in bald terms with no reference to the country background material. It may be that it *is* 'incredible' that a Palestinian refugee in Jordan would seek help from a Bedouin tribe, but without some support for that statement it is very difficult for the reader to understand why that should be the case. It is trite asylum law that decision-makers should be cautious about characterising something as "incredible" without having any idea whether, in the particular cultural context, they actually are. Similarly evidence given by an asylum seeker cannot lawfully be discounted simply on the basis that it is not corroborated by documentary evidence.
10. Regrettably there are no findings that can be salvaged from this decision. In light of that I agree with Ms Wilkins that the just course would be remittal to the First-tier Tribunal.

Anonymity

11. This is a live protection appeal. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of

2013: Anonymity Orders I am satisfied that it would be appropriate to make an order in the following terms:

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

Decisions

12. The determination of the First-tier Tribunal contains a material error of law and it is set aside.
13. The decision in the appeal will be remade in the First-tier Tribunal by a Judge other than Mark Davies.
14. There is an order for anonymity.

A handwritten signature in black ink, appearing to be 'CBE', written in a cursive style.

Upper Tribunal Judge Bruce
4th June 2019