



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

Appeal Number: AA/11051/2013

THE IMMIGRATION ACTS

**Heard at Birmingham
On 11 January 2016**

**Decision & Reasons Promulgated
On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**S A
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brown of Counsel

For the Respondent: Mr Mills a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for asylum or ancillary protection on 3 December 2013. His appeal against that decision was dismissed by First-tier Tribunal Judge Parker following a hearing on 4 March 2014. That decision was set aside by Upper Tribunal Judge Hanson following a hearing on 1 October 2014. No findings were preserved and the matter was remitted *de novo*. The

remitted appeal was dismissed by First-tier Tribunal Judge Pirrota (“the Judge”) following a hearing on 8 June 2015. This is an appeal against that decision.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the Appellant from the contents of his protection claim.

The grant of permission

3. First-tier Tribunal Judge Holmes granted permission to appeal (7 July 2015) on the ground that;

“There is a clear tension between the contents of paragraph 29 and 30 on the one hand which reject outright the evidence relied upon, and those paragraphs which preceded them which appear to contain a series of findings that accept that evidence.”

Respondent’s position

4. The Respondent asserted in her reply (16 July 2015) in essence that the Judge was entitled to accept some parts of the evidence but not others. Mr Mills relied on the rule 24 notice.

The Judges findings

5. The Judge found as follows;

[21]... I conclude that there are no significant discrepancies, inconsistencies or other anomalies which would suggest that he should not be relied upon to the lower standard of proof required of an Appellant. Therefore his account is more likely than not to be truthful and reliable, and his history concerning the demands by her family that the Appellant marry his widowed sister-in-law is credible ...

[22] The Appellant’s account of refusing to marry her, she also being unwilling, is credible, given the disparity of ages and their mutual disinclination, but he had already taken on the financial responsibility of the widow and orphans, which he did not wish to shirk. It is credible that she may have been forced to marry against her will a person of her own family’s choosing, as her children have been cast out of their home to fend for themselves, whereas they would reasonably have been expected to remain with their mother as they are yet young adolescents she had married within the family. I am not satisfied ... that ... he would be at risk of any untoward behaviour or persecution by her family if he returned because there is no absolute cultural obligation on the man to marry the widow, only that she did not live unmarried with a man, and now she has married, normality is restored.

I am not satisfied ... that the objective country evidence shows retribution carried out against unwilling bridegrooms, no incidents of revenge are recited in the objective evidence in these circumstances.

[23] I am not satisfied ... that ill feeling towards the Appellant would place him at risk of ill-treatment, given that she continued to live for 9 months in the same household as the Appellant after her husband's death. Even if threats and violence had been used to try to force him to marry, he avoided this fate for several months and I am not satisfied... that the family would seek him out for revenge. I am not satisfied ... that a dispute centred on the ownership of land the Appellant would have inherited from his father and brother would engage the Refugee Convention ..., even if he believed he was at risk of being killed to prevent his claim, or that he could not access local civil justice to reclaim the property. I am not satisfied ... that the family would try to defeat his claim or that of his nephews, as they have turned them out rather than keep them close and under control to prevent them scheming to obtain the land ... I am not satisfied that the authorities would not allow the Appellant protection or access to justice.

[24] I am not satisfied ... that there is any political element in the personalities involved, that any member of the family was a high ranking official or had any influence in the government, even if the Appellant were taken to a Police station under duress for persuasion to marry the widow.

[25] The Appellant's claim that his brother's two business partners killed his brother and then tried to extract money from the Appellant, for a purported debt which he could not pay, has been consistent and credible...As the Appellant only needed to complain about the former partners, it is not credible that he could not have lodged complaints against them as he claimed to have done in relation to his brother's death.

...

[28] I am not satisfied ... that he has suffered the ill-treatment claimed or has Post Traumatic Stress Disorder because of the paucity of credible, cogent or reliable evidence to reach even the minimal standards required of an Appellant.

[29] I am not satisfied ... that the documentary evidence is reliable or cogent. I conclude that the accounts have been embellished and the documentary evidence is not reliable. It is not credible that persons demanding the debt would not take a valuable asset such as his house instead if he protested that he had no money but that they would permit him to live there for 9 months after his brother's death without trying to dispossess him by force if need be.

[30] I am not satisfied ... that the events related took place, and if they did that they do not amount to persecution ... The Appellant would be able to relocate ..."

Discussion

6. There are positive findings in [21] regarding his account being "more likely than not to be truthful and reliable", [22] "of refusing to marry

her, she also being unwilling” and that “she may have been forced to marry against her will”, and [25] that the “claim that his brother’s two business partners killed his brother and then tried to extract money from the Appellant, for a purported debt which he could not pay, has been consistent and credible”. These are entirely at odds with the negative findings [29] “that the accounts have been embellished” and [30] it not being accepted “that the events related took place”.

7. In my judgement, as set out in the grounds seeking permission to appeal, this is not just a case of a Judge accepting some parts of the evidence but rejecting others as argued in the rule 24 notice, but of the Judge making core and general findings that are diametrically opposed. The Appellant is entitled to know why he lost, and, given these diametrically opposed findings, he does not.
8. I am therefore satisfied that the Judge made a material error of law. I set the decision aside and preserve no findings.
9. Both representatives agreed that in those circumstances I should remit the matter to the First-tier Tribunal for a *de novo* hearing. In light of that fact that this is the second remittal and the third time the First-tier Tribunal will have considered the case, it may be helpful if the case was heard by a Designated Judge if available. The time estimate is 3 hours and a Dari speaking interpreter is required.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The matter shall be remitted to the First-tier Tribunal for a *de novo* hearing before a Judge other than Judge Parker and Judge Pirota.

Signed:
Deputy Upper Tribunal Judge Saffer
12 January 2016