Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02157/2013

THE IMMIGRATION ACTS

Heard at Stoke	**Decision and Reasons Promulgated**
on 20th July 2015	**On 22nd July 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IM
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Draycott instructed by Paragon Law Solicitors.
For the Respondent: Mr McVeety – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge V A Osborne promulgated on the 23rd December 2013 in which she dismissed the Appellants appeal against the removal direction to Pakistan that accompanied the refusal of his claim for asylum.

Discussion

2. The Judge noted at paragraph 51 of the determination:

> "In respect of the Appellant's fear that he is likely to be made the subject of an honour killing because he has breached the family honour by failing to pursue his proposed marriage to WB I find that there was some sort of an agreement between the two families that a marriage, in due course would take place. This, in any event is conceded by the Respondent and I am satisfied that the arrangements described by the Appellant are in accordance with cultural norms. He described how his father's uncle, AI, had brokered the agreement with a view to uniting two parts of the same extended family."

3. Notwithstanding the above the Judge made the following findings: "I therefore find that, at most, there was some sort of informal agreement between the two sides of the family about the marriage at some point in the future but there had been no formalities in connection with the arrangement" [para 52]. "I have therefore formed the view and find that some preliminary negotiations had taken place with regard to a marriage between the Appellant and WB but nothing had been finalised or formally agreed. On that basis I am not satisfied that the Appellant would have been seen as dishonouring WB's family by indicating some time later than he did not wish to go through with the arrangement."[para 54]. "It is Professor Bluth's opinion that a verbal agreement would suffice but I am not satisfied that the formal introductions had even taken place and thus neither family were in a position to regard the engagement as having been formalised" [para 56].

4. Failure to follow a concession can amount to legal error. In SS v Secretary of State for the Home Department [2010] CSIH 72 the Secretary of State considered that it was credible that the Claimant had been involved in film production. The Judge did not accept that the Claimant was a filmmaker. The Court of Sessions noted that the Judge had before him, as a starting point as to the veracity of the Claimant's version of events, an acceptance by the Secretary of State that the Claimant was a filmmaker. Although the Judge was not bound to accept that conclusion, any departure from a position established as true by both parties would require explanation. In its absence, the reasonable inference was that the Judge had misunderstood or left the evidence out. The error was therefore properly categorised as one of law.

5. Permisison to appeal against the determination of the Judge was refused by both the First-tier and Upper Tribunal on the papers. The matter was renewed on a Cart challenge to the High Court where permission was granted by Mr Justice Holman whose observations are record as follows:

> "It is arguable that at paras. 52 and 54 FTT Judge Osborne did impermissibly go behind the concession of the SSHD that there had been a verbal agreement to marry: and, as a result, side stepped at paras. 56 and 57 the clear evidence of the danger of honour killing in the unchallenged report of Professor Bluth. The judge's treatment of safe relocation in para. 72 seems completely to ignore the clear opinion of Professor Bluth at para 5.2.13 that the C. could not be

safe anywhere in Pakistan. This would render the decision of the FTT, and of the judges who refused PTA, wrong in law. The gravity of the case is such that CPR rule 54.7.A(7)(b) (ii) is satisfied ("some other compelling reason").

6. Permisison to appeal was granted by the Upper Tribunal accordingly.

7. I find the Judge has made an arguable material legal error. The Respondent conceded the marriage issue and has not challenged the experts report although that is not determinative. There was no notice to the parties that the Judge intended to go behind the concession and, even though some reasoning is given, it is arguable that it is insufficient.

8. The Appellants case was supported by an experts report. The fact the report was not specifically challenged does not mean it is agreed. In **SI (expert evidence - Kurd - SM confirmed) Iraq CG [2008] UKAIT 00094** the Tribunal held that failure by the respondent to adduce her own expert evidence cannot imbue expert evidence submitted by an appellant with any greater value than it merits when considered alongside the rest of the evidence.

9. The opinion of the expert is that in light of the honour issue the Appellant will be at risk, there is no sufficiency of protection, and no internal flight option. The Judge failed to adequately explain why such conclusions were rejected although it maybe as a result of the findings in relation to the marriage issue.

10. In all the circumstances I find the Judge has materially erred in law. The determination is set aside. There shall be no preserved findings.

11. The parties agreed that the best course is for the matter to be remitted to the First-tier Tribunal sitting at Stoke to be reheard by a salaried judge other than Judge Osborne.

Decision

12. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is remitted.

Consequential Directions

13. The appeal shall be remitted to the First-tier Tribunal (IAC) sitting at Stoke to be heard by a salaried judge of that Tribunal. Time estimate 3 hours taking into account the availability of Mr Draycott, and for a CMR no later than 28 days before the date of the final hearing before the nominated salaried judge with conduct of the substantive hearing, if possible.

14. A Punjabi (Pakistan) interpreter is required.

15. The Respondent shall, no later than 28 days from the date of the sending of this determination, on the basis of the concession:

a. Confirm to the Tribunal and Appellants representatives what elements of Professor Bluth's report are accepted/conceded and in relation to the elements in dispute, the reasons why by reference to country material and applicable case law.

b. Whether it is accepted that the Appellant has suffered past persecution in Pakistan on the facts.

Anonymity.

16. 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 21st July 2015