Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04087/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 October 2014 and 23 March 2015	**On 31 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

M B H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chelvan of Counsel
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 10 March 1980. He appealed against the respondent's decision dated 3 June 2014 to remove him from the United Kingdom as an illegal entrant.

2. The appeal on asylum grounds was heard before Judge Afako who dismissed the asylum appeal and on human rights grounds in his decision dated 3 August 2014. He did not find the appellant to be credible regarding his conversion to the Shia faith or that he suffered persecution as a result. As regards the claim that the appellant would be at risk of honour killing for reasons not associated with his faith, the judge said he was unable to conclude that the appellant was in need of international protection. The grounds argued that the judge erred in two respects, his failure to make a finding on whether the appellant was at risk of honour killing as a result of his marriage and the judge's findings on the appellant's risk from Sunni to Shia were flawed for the reasons set out at [12] – [27] of the grounds.

3. Judge Foudy in her permission to appeal dated 2 September 2014, rejected the claim that the judge had failed to properly consider the evidence of risk to the appellant as a Shia convert. She found the judge made well-reasoned findings on the evidence such that no error of law was disclosed with regard to that aspect of the determination. Nevertheless, Judge Foudy found the judge erred in refusing to make a finding as to the risk faced by the appellant due to his marriage and the prospect of a possible honour killing particularly because he had made no findings in relation to the issue, even though it was a part of the appellant's asylum claim.

4. When this matter first came before me at an error of law hearing on 22 October 2014, Mr Bazini represented the appellant. I adjourned that hearing to enable the parties to file and serve skeleton arguments addressing Mr Bazini's claim that the judge's failure to make a finding as to the risk faced by the appellant due to his marriage and the prospect of a possible honour killing, infected the determination as a whole such that the appeal should be heard de novo in the First-tier. On 5 February 2005, Upper Tribunal Judge Pitt issued the following direction:

> *"By 28 February 2015 the appellant is directed to file with the Tribunal and serve on the respondent a skeleton argument addressing the conceded error of law on the part of the First-tier Tribunal Judge in failing to make a finding as to the risk faced by the appellant due to his marriage and the prospect of a possible 'honour killing' and how this might have infected the determination as a whole, such that the appeal should be heard de novo in the First-tier Tribunal."*

Submissions on Error of Law

5. Mr Bramble conceded that the judge had erred in failing to make a finding as to the risk faced by the appellant due to his marriage and the prospect of an honour killing, which was a part of the appellant's asylum claim.

6. Mr Chelvan submitted that the material error with regard to the failure to make a finding as to the risk faced by the appellant due to his marriage

and the possible honour killing intrinsically included the corroborative evidence of the appellant's wife with respect to a contemporaneous corroborative account of why the appellant fled his home area on account of his Shia faith and that his conversion led to the risk to him on return. My attention was drawn to [7.2] of the Tribunal Practice Statement in force from 13 November 2014:

> "*7.2 The Upper Tribunal is likely on each occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:*
>
> *(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
>
> *(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal."*

7. Mr Chelvan submitted that the judge made a clear finding at [39] that there was no independent witness evidence corroborating the reasons why the appellant left Pakistan in 2003 but that was in error. Those issues were raised in the appellant's grounds at [24] – [27] in particular that there was corroboration from the appellant's wife. She said at [5] of her statement (see page 106 of the appellant's bundle):

> "*I met MBH around the beginning of 2003 at his cousin's house in Rawalpindi in Pakistan. I was visiting one of my close friends, M, who is MBH's cousin's wife. A lot of the problems that MBH faced in Pakistan occurred before we met, therefore I did not personally witness these problems; I found out about them from him. MBH explained how he converted to Shia Islam and the consequences of this conversion. He also told me about the horrific way in which his friend, Z, was killed in August 2000; an incident where MBH was also brutally attacked and his shoulder was injured.*"

8. At [12] of the appellant's wife's statement at page 109 of the bundle, she said inter alia "…… *My family told me that I had brought shame and disgrace upon them by marrying a man that was not their choice, and to make matters worse, I had married 'a Shia infidel'* ……".

9. Mr Chelvan submitted that the honour killing claim included inter alia the account of the appellant with regard to his religious conversion as his relocation to Rawalpindi, his wife's home area, was precipitated by him fleeing his home area due to the religious conversion. The reference to the conversion was reinforced as being linked to the real risk of honour

killing at [12] of the appellant's wife's statement at page 109 of the bundle, which I have referred to at [8] above.

10. What Mr Chelvan says is that **JD (Congo) [2012] EWCA Civ 327; [2012] 1 WLR 3273** made clear that the Upper Tribunal would take the particular circumstances of the case into account when it assessed whether to remit under [7.2] of the Practice Statement. The evidence with respect to the marriage and the honour killing intrinsically included the corroborative evidence of the appellant's wife which was not considered with anxious scrutiny such that the appellant was denied a fair hearing.

11. Mr Bramble submitted that the re-hearing should focus solely on the issue of whether the appellant and his wife would be at risk from her family if returned to Pakistan. Judge Foudy's decision of 9 September 2014 followed the Asylum and Immigration Tribunal (Procedure) Rules 2005 (see [25]), in terms of the Tribunal's consideration of an application for permission to appeal to the Upper Tribunal. The appellant had been given permission to appeal on limited grounds, that is, that the judge had erred in failing to make a finding as to the risk faced by the appellant due to his marriage and the prospect of a possible honour killing. That was why the respondent's position was that the judge's findings at [48] that he was not able to accept the appellant's claim that he converted to the Shia faith and thereby suffered persecution, should stand. There was no further application made by the appellant under the Tribunal Procedure (Upper Tribunal) Rules 2008 [21] to the Upper Tribunal on the ground that was previously refused.

12. The only issue conceded by the respondent was that the judge had made an error in failing at [51] to make any findings on whether the appellant and his wife would be at risk from his wife's family if returned to Pakistan on the basis that she had married a man that was not their choice. (See [12] of the appellant's wife's statement at page 109 of the appellant's bundle).

13. There was no issue that the appellant had been given permission to appeal only on limited grounds, that the judge had failed to make a finding with regard to the appellant's marriage and possible honour killing. No further application was made to the Upper Tribunal with regard to the ground that was previously refused. What Mr Chelvan claimed is that the appellant's faith was bound up in the issue of risk on return from his wife's family and would therefore need to be re-argued.

Conclusion on Error of Law

14. I do accept that the judge erred at [37] when referring to the evidence of the appellant's wife. He said *"I note that in her evidence about the appellant's Shia conversion she does not include any mention of the death of his friend".* That was in error as she reported Z's death as told to her at [5] of her statement at page 106 of the appellant's bundle.

15. What Mr Chelvan claims is that the judge's error in not making a finding with regard to risk to him because of the marriage and possible honour killing infected the whole decision such that in terms of the Tribunal Practice Statement at [7.2], it should be heard de novo.

16. The judge made careful and comprehensive findings with regard to the appellant's claim to have converted and with regard to the claimed attack upon himself and Z. (See [19] – [39] of the decision). The appellant was not found to be credible.

17. The judge referred to issues he would have expected to have been developed with regard to the alternative risk to the appellant at [49]-[51]. The judge considered at [51] that given he had rejected the appellant's Shia conversion narrative, what was left of the claim was insufficient to find in his favour with regard to his mixed marriage and the possible honour killing.

18. I find there is nothing to suggest the appellant had anything other than a fair hearing. I do not accept that the conceded error of law infected the whole decision and nor do I accept the judge's error at [37] of his decision in failing to mention the appellant's wife's reference to Z's death was material. That is because I find the judge made well-reasoned findings at [19] – [39] of his decision that the appellant was not credible with regard to his conversion to the Shia faith; the errors of law did not infect his decision in that regard which shall stand.

Notice of Decision

19. The decision of the First-tier Tribunal is set aside. I preserve the adverse findings of the judge made in relation to the risk arising from the appellant's claimed conversion to the Shia faith. Judge Afako must now hear evidence and make a decision with regard to risk to the appellant for reasons not associated with his faith, that is, his marriage and honour killing. Remit to Judge Afako, First-tier Tribunal, Taylor House.

Anonymity direction made.

Signed Date 31 March 2015

Deputy Upper Tribunal Judge Peart