



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

Appeal Number: PA/11897/2018

THE IMMIGRATION ACTS

**Heard at North Shields (Kings
Court)**

On 26 April 2019

Decision & Reasons Promulgated

On 14 May 2019

Before

**UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE HOLMES**

Between

**AO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Iris Law Firm

For the Respondent: Ms Petterson senior PO

DECISION AND REASONS

1. We make an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure of any matter likely to lead to the identification of the appellant and his wife. Breach of this order may result in contempt proceedings.
2. This is an appeal by a national of Jordan, born in 1983. He entered the United Kingdom in September 2016 as a dependent of his wife who had leave to enter as a Tier 4 Student and their two children. The family had

leave to remain until 20 February 2018. The appellant claimed asylum on 21 February 2018.

3. The appellant had married his present wife on 20 June 2010. His protection claim was based on the consequences of a sexual relationship with AS, a female colleague at work in February 2016. He is a Muslim and she is said to be a Christian. The appellant had ended their relationship on moving to the United Kingdom with his wife. In October 2017 the appellant received a call from a friend in Jordan explaining that his family were in a feud with another family over a woman who was pregnant; this it emerged was AS's family. AS subsequently gave birth to his child. Upon AS's family discovering the identity of the appellant, they had set fire to property owned by members of his family. Separately it was said that the appellant's wife had learned about these matters through her own brother in Jordan. Difficulties developed in the relationship between the appellant and his wife in consequence. A restraining order had been obtained by her against him. Subsequently they were said to have resolved their marital issues, but to have concluded that it was unsafe for them to return to Jordan.
4. After considering the reliability of the documents provided by the appellant in support of his claim, the judge made a series of adverse findings at [35] to [37] noting that no Article 8 claim had been pursued:

"35. Even if I accepted that the appellant had embarked upon a relationship with the appellant [sic] and given birth to his child, this does not mean that the appellant is precluded from returning to Jordan and internally relocating. The appellant is highly educated and has a skill set which will enable him to secure employment upon his return to Jordan. His mother has successfully internally relocated to Aman and I see no reason why the appellant, his wife and children could not do likewise. The Tribe have assisted the appellant's mother and have on occasions assisted the appellant; I see no reason why the Tribe would not be willing to assist the appellant upon return. There is no suggestion that [A]'s family are rich and powerful with influences in all areas of Jordan. It is unlikely that they would have the resources and wherewithal to track down the appellant to exact revenge.

36. There is no evidence to suggest that the appellant could not rely upon the police to protect him and his family in Jordan. I recognise that the alleged events only came to light after he and his family had moved to the UK for study purposes. However even by his own limited experiences in Jordan, the police have been of some assistance to the appellant by providing copies of documents when he has asked for them. The appellant said at question 77 that it was his mother who sent the document which purports to be from his Tribe. He also stated that he was able to acquire the complaint document from a friend who worked for the police. When pressed further as to why this police friend would put his career on the line by obtaining this document he then stated that any policeman could get the document.

37. I find that it has not been established to the lower standard of proof that there is a real risk that if the appellant were to be returned to Jordan he would suffer treatment that amounts to persecution or that it is inhuman or degrading. I have also considered Articles 2 and 3 of the European Convention on Human Rights. Article 2 protects the right to life and Article 3 prohibits torture and inhuman or degrading treatment or punishment. The burden and standard of proof in the human rights claim are the same as in the asylum claim and in this case I am satisfied that they are both founded on the same facts. I am also satisfied that the appellant has not demonstrated that there is a real risk of treatment in Jordan that would amount to a breach of Article 2 and 3. I have concluded on the basis of the evidence before me that there is no reasonable degree of likelihood that the appellant would be at risk of serious harm on return to Jordan. I therefore find that the appellant does not qualify for Humanitarian Protection.”
5. Permission to appeal has been granted in response to a challenge based on a failure by the judge to make any findings in relation to the evidence of the appellant’s wife. In addition, it is asserted there was a failure to fully and properly address the documentary evidence with reference to there being a major problem in Jordan obtaining a certificate for an illegitimate child. The approach of the judge to the supporting documentation was flawed; evidence provided by the tribe was the best that could be obtained. By way of relocation the judge had failed to consider it credible the appellant was also wanted by the authorities.
6. In her submissions, Ms Brakaj argued that this was not a case in which the evidence given by the appellant’s wife was limited to the repetition of information she had been given by her husband. Instead the appellant’s wife had first hand evidence to give concerning what she had been told by members of her own family, and, the effect upon her relationship with the appellant when she had shared those disclosures with him. Having reviewed her witness statement we accept that this is an argument with some substance.
7. Ms Brakaj also argued that the judge had erred in her analysis of the sufficiency of protection. As she put the appeal, the argument was that the appellant faced prosecution for criminal conduct as a result of his having enjoyed an extra-marital affair with AS. However when asked to do so, she was unable to identify any evidence placed before the judge to indicate that this was the reality under Jordanian criminal law. The evidence that had been produced, which was said to be a copy of a complaint filed by AS with the Jordanian authorities did not, in our judgement, establish that it could be argued the appellant was perceived in Jordan as potentially having committed a criminal offence. Indeed without further evidence it was impossible to ascertain precisely the nature of the complaint these documents were said to relate to. Even if they were genuine, they could for example relate to a complaint that the appellant had failed to recognize his paternity of the child, thus blighting her future marriage

prospects, and her ability to acquire identity documentation. Alternatively it could have been a complaint that the appellant had failed to provide adequate financial support for his child. Whilst it is clear that the judge must have received little assistance with the true nature of this evidence we are in the circumstances satisfied that the judge failed to make appropriate findings in relation to this material, before reaching her conclusions in [37].

8. In the course of argument on this aspect, we noted paragraph 46 of the refusal letter which is in the following terms:

“With state evidence further supporting this approach to alleged female adultery:

‘Text for Article 340 of the Jordanian Penal Code No. 16 of 1960: ‘He who discovers his wife or a female relative committing adultery and kills, wounds or injures one or both of them is exempted from any penalty.’”

This could be read as suggesting the respondent accepted the possibility that the police would not intervene should a male member of AS’ family pursue an “honour crime” against the appellant, so that in law and practice there may be impunity for such crimes by non state agents in Jordan. It is common ground before us that the judge’s decision did not engage with this evidence, or this possibility. No doubt that was because the appeal was then argued on behalf of the appellant, as it was before us, not on the basis of a risk of harm from non state agents by way of an “honour crime” raising the issues of the ability to relocate to avoid it, and, the sufficiency of state protection against it – but rather on the basis that the appellant faced a risk of harm from the state. With the benefit of hindsight, we understood Ms Brakaj to accept that given the opportunity to do so she would entirely re-evaluate the way in which the appellant’s appeal should be presented, and indeed seek to obtain expert evidence to shed light upon the position faced by the appellant upon return, in the event that he was indeed the father of an illegitimate child born to an extra-marital affair.

9. With sensible focus and candour, Ms Petterson accepted that at the heart of the appellant’s challenge to the judge’s decision was the complaint that no express findings had been made upon the credibility of the evidence offered by the appellant’s wife. Indeed she accepted that it did not appear to have received any separate consideration. Whilst the appellant’s own evidence had been robustly dismissed, she accepted that these adverse findings of fact were in the circumstances unsafe, and that the decision under appeal should be set aside. We agree. Properly directed, a differently constituted First-tier Tribunal will have to decide whether the appeal is based upon a fiction, or, whether there is in any event a sufficiency of state protection against any risk of harm that may exist from non state agents, or, that the risk of harm may be avoided by relocation within Jordan. Conclusions on these matters cannot be reached without a

proper evaluation of the evidence relied upon by the parties. We are satisfied that this has not yet occurred, and indeed that is now common ground. Thus the only course available to us is to remit the appeal to the First-tier Tribunal with no findings of fact preserved for a hearing de novo.

10. In the light of the matters which arose in the course of argument before us we concluded that it would be of benefit to both the parties and to the First-tier Tribunal that the parties should now agree a statement of issues requiring resolution by the First-tier Tribunal upon the hearing of the remitted appeal. That exercise should help focus minds upon what, if any, further evidence is to be relied upon by both parties. We make the following directions;
- i) The appeal is to be heard at the North Shields hearing centre before a differently constituted Tribunal
 - ii) An Arabic interpreter is required
 - iii) A statement of issues is to be filed by the appellant with the First-tier Tribunal by 5pm 30 May 2019.
 - iv) Any directions required as to timetabling or listing should therefore be requested of the First-tier Tribunal in writing by 5pm 30 May 2019
 - v) The appeal is not to be listed for hearing before 1 June 2019

Notice of decision

The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

10 May 2019

Deputy Upper Tribunal Judge Holmes