Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/04275/2016
PA/04240/2016

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 1 September 2017	**On 14 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[H A]
[G A]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Wood, instructed by Rochdale Law Centre
For the Respondent: Mr Bates, the Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, [HA] and [GA], are citizens of Iraq. The first appellant is the son of the second appellant. The first appellant's wife and children are dependants on his appeal. By decisions dated 2 April 2016, the appellants were refused asylum by the respondent. They appealed to the First-tier Tribunal (Judge Lever) which, in a decision promulgated on 30 November 2016 dismissed the appeal. The appellants now appeal, with permission to the Upper Tribunal.

2. Granting permission, Judge Plimmer wrote:

> "Whilst both appellants base their claim upon the same facts [21-33] and the First-tier Tribunal made clear credibility findings regarding the first appellant [24] (referred to as "the appellant") there was arguably no clear credibility finding regarding the second appellant and arguable failure to take into account the second appellant's first hand knowledge of the matters predicating the account of the first appellant [*sic*]."

3. Permission was granted on all grounds of appeal but it is fair to say that the submissions before the Upper Tribunal concentrated to a large extent upon that ground which has been summarised by Judge Plimmer in her grant of permission.

4. Judge Lever wrote at [22]:

> "The basis of a claim for asylum rests on a single issue. It is said that the first appellant's sister had run away with a man called Kawa. It had been the intention of the appellant's uncles that she would marry one of their sons (her cousin) and accordingly thwarted in that regard, they had demanded the first appellant kill his sister to restore the family honour and his refusal led to the fear for the whole family that they would be subject to revenge by the relatives and tribe generally."

5. In the preceding paragraph [21] Judge Lever had recorded at:

> "I have carefully considered all the documents in evidence in this case. Whilst the second appellant has her own asylum claim, it was agreed by the representatives that the facts relating to her claim are the same facts as relied upon by the first appellant and therefore the second appellant does not rely upon any separate features in respect of her claim. The first appellant's wife and children are dependent upon his claim."

6. The second appellant had given evidence, with the assistance of an interpreter, at the First-tier Tribunal hearing. The judge recorded what she had said under cross-examination at [15]. The second appellant claimed never to have met Kawa. She denied having gone out to the shops and claimed that she had spent most of her time at home notwithstanding the fact that in her interview record it is recorded that she had gone "to town to do shopping when she had been threatened by her brother-in-law". The judge also noted that, "she said that her brother-in-law had come to the house to threaten her".

7. Having recorded the basis of the appeals at [21] (see above), the judge went on to deal exclusively in his analysis with the evidence of the first appellant which he found to be untruthful. As Judge Plimmer noted, in the judge's analysis, the first appellant rapidly becomes simply "the appellant". The second appellant is referred to later in the discussion but only in relation to her claim to have rarely left the family home and yet they have been in possession of a valid passport. Whilst the judge found inconsistencies in the second appellant's evidence as regards her possession of a passport, he made no findings regarding credibility of her account more generally.

8. Mr Wood, who had also appeared before Judge Lever in the First-tier Tribunal, told me that there had been no agreement or concession

regarding the second appellant's claim and appeal. This raises the unfortunate possibility that the judge has at [21] taken a different view of what was "agreed by the representatives" from that which the representatives or, at least, Mr Wood seemed aware. I concluded, however, that there was no need to seek Judge Lever's clarification on this matter as I find that he did err in law in failing to make findings of fact in respect of the second appellant in any event. Whether or not there was an agreement that "the same facts relied upon by the first appellant" would be adopted entirely by the second appellant in her appeal, I agree with Mr Wood that the judge should, in any event, have made findings in relation to those parts of the second appellant's evidence which directly supported the first appellant's account and, if the judge did not believe the second appellant, then he should have given reasons for not doing so. As it is, there are no findings in relation to the second appellant's claim that she was threatened and assaulted by her brother-in-law in her own home or her claim that she had witnessed the brother-in-law threatening the first appellant with a gun. The nature of the threat to both the first and second appellant may be the same but this does not excuse the Tribunal from making findings of fact in relation to the evidence of all the witnesses. I accept that the judge did consider "all the documents and evidence in this case" as he said he would at [21] but his failure to make findings on the second appellant's evidence fatally undermines the decision in respect of both appeals.

9. I heard submissions in respect of the other grounds of appeal but, in light of the fact that I intend to set aside Judge Lever's decision and that there will need to be a new fact-finding exercise, I do not propose to discuss those grounds in any further detail. I note in his analysis of risk on return [36] that the judge departed from the country guidance of *AA* [2015] UKUT 00544; having carried out a new fact-finding exercise, the Tribunal will need to look at country guidance and relevant background material as at the date of the fresh hearing in order to determine risk on return.

10. In conclusion, therefore, I find that the judge's failure to make findings of fact in respect of the second appellant's evidence undermines his decision in these consolidated appeals. None of the findings of fact shall stand. The First-tier Tribunal is better placed to make new findings of fact and to hear what may prove to be lengthy evidence in court from both appellants and any other witnesses. The appeals are, therefore, returned to that Tribunal to remake the decisions.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 30 November 2016 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Lever) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed Date 13 September 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

Signed Date 13 September 2017

Upper Tribunal Judge Clive Lane