



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

Appeal Number: AA/03732/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30<sup>th</sup> June 2015**

**Decision and Reasons  
Promulgated**

**On: 2<sup>nd</sup> July 2015**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**A K  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Kiai, Counsel instructed by Wick & Co Solicitors

For the Respondent: Ms E Savage, Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Albania born on 10<sup>th</sup> March 1996. She came to the UK on 29<sup>th</sup> September 2012 and was put into the care of Social services. On 23<sup>rd</sup> November 2012 she claimed asylum. Her claim for asylum concerns an allegation of forced marriage arranged by her father to an older man. On 22<sup>nd</sup> May 2014 the respondent refused her asylum

claim and she appealed. On 12<sup>th</sup> January 2015 Judge of the First-tier Tribunal Clayton dismissed her appeal on all grounds. However on 5<sup>th</sup> February 2015 permission to appeal was granted on all grounds submitted by the appellant by Judge of the First-tier Tribunal R A Cox. Rule 24 and Rule 25 letters submissions were made by the parties. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions*

2. Ms Savage explained that she had not been able to contact the Home Office Presenting Officer who was on holiday and that while she could not concede that there had been procedural errors of law she did not have much to say on the matter, and if I were to find that the First-tier Tribunal had erred in law on the basis of procedural unfairness she was content that the matter should be remitted to the First-tier Tribunal. I did not require any evidence to be put by Ms Kiai as I had read the grounds of appeal and was content that there had been an error of law on the basis of procedural unfairness for the reasons set out below.
3. I was also concerned by other grounds of appeal that contended supporting evidence in the form of reports had not been properly placed in the balance. However it is not necessary to make findings on these grounds, and the further ones, given my conclusion on the lack of fairness of the proceedings.

### *Conclusions - Error of Law*

4. The grounds of appeal set out that there had been a number of procedural irregularities in the hearing before Judge Clayton. There had been issues with Judge Clayton requiring material to be taken from the bundles. There had been issues with Judge Clayton preventing the interpreter from making eye contact with the appellant whilst she was giving her evidence. The judge had also prevented simultaneous interpretation by the interpreter, thereby preventing the appellant from understanding the hearing in full. The judge had interrupted the appellant telling her to answer yes or no to questions and not give full answers. The judge had also prevented the Presenting Officer from asking open questions and attempted to sign off the interpreter and tell the appellant to "go shopping for the afternoon" when it came to submissions. Judge Clayton was also said to have commented that if the appellant was suffering from depression she would not be sat here smiling.
5. These allegations were supported by evidence from Counsel (Ms Priya Solanki) in the form of a witness statement who had represented at the hearing and a further witness statement from Counsel, Mr Iain Palmer, who was also present in Taylor House on that day. The witness statements of the two counsel are also supported by a statement by the appellant herself and by an email from Arvinder Karda who is the appellant's social worker. Counsel has also appended her original contemporaneous notes of the hearing and note to her instructing

solicitors dated three days after the hearing (23<sup>rd</sup> November 2014), and thus prior to the result of the hearing being known, in which she describes the hearing as “extremely absurd” and the judge’s behaviour as “very strange”. Judge Clayton was given the opportunity to provide her views on the hearing in the light of the grounds of appeal but has chosen not to do so.

6. Considering all of the evidence before me I am satisfied that the hearing was not conducted in a way which enabled the appellant to give her evidence in full, particularly as she was and is a young adult aged just 19 years old who has provided some evidence of being anxious and depressed.
7. In the circumstances it is appropriate in accordance with Practice Statement on Remittal 7.2 to remit the case to the First-tier Tribunal for the further conduct of the hearing as the error was such to deprive the appellant of a fair hearing.

### **Decision**

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The decision of Judge of the First-tier Tribunal Clayton is set aside in full.
3. The decision is remitted to be re-made de novo in the First-tier Tribunal.

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

I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings or any other form of publication thereof shall directly or indirectly identify the original 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 her protection claim.

Signed

Date 1<sup>st</sup> July 2015

Judge Lindsley  
Upper Tribunal Judge