



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: LP/00116/2020**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre      Decision & Reasons Promulgated  
On the 23<sup>rd</sup> September 2021                      On the 26<sup>th</sup> October 2021**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**UK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L King instructed by Asylum Justice  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

## **Introduction**

2. The appellant is a citizen of Namibia who was born on 25 April 1997. She arrived in the United Kingdom on 10 October 2019 and claimed asylum. The basis of her claim was that her family were forcing her to marry her cousin, who was 62 years old. She did not wish to do so but her father wanted her to marry him in order to keep the family money within the family. She claimed that if she were to return to Namibia her father would force her to marry her cousin.
3. On 2 December 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

## **The Appeal to the First-tier Tribunal**

4. The appellant appealed to the First-tier Tribunal. Following a hearing, in a decision dated 12 December 2020, Judge Boyes dismissed the appellant's appeal on all grounds. In particular, in relation to her asylum claim, the judge made an adverse credibility finding and did not accept the appellant's claim that she was at risk on return to Namibia of being forced to marry her cousin.

## **The Appeal to the Upper Tribunal**

5. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds, primarily challenging the judge's adverse credibility finding.
6. On 2 February 2021, the First-tier Tribunal (UTJ Martin) granted the appellant permission to appeal.
7. On 10 February 2021, the Secretary of State files a rule 24 reply opposing the appellant's appeal and sought to uphold the judge's adverse credibility finding and decision to dismiss the appellant's appeal.
8. The appeal was listed at the Cardiff Civil Justice Centre on 23 September 2021. The appellant was represented by Ms King and the respondent by Mr Bates, both of whom were present in the courtroom.
9. Ms King relied upon the grounds of appeal and her skeleton argument which she developed in her oral submissions. I heard oral submissions from Mr Bates on behalf of the respondent.
10. At the conclusion of the appeal, I reserved my decision.

## **Discussion**

11. At the hearing, the submissions of Ms King, to which Mr Bates responded, focused the grounds of appeal on two issues concerning the judge's reasoning that led him to make an adverse credibility finding. Ms King

made clear that she no longer sought to rely upon any point concerning the appellant being a vulnerable witness.

12. Ms King's written and oral submissions focused upon two passages in Judge Boyes' reasoning.
13. The first passage at paras 27–30 of his decision concerned his treatment of the evidence given by the appellant at her screening interview, asylum interview and then at the hearing, concerning who she was being forced to marry, namely whether it was her uncle or cousin, and also that she had no explanation for the significant difference between her age and that of her cousin whom she claimed was 62 years old.
14. The second point focused upon by Ms King concerned the judge's assessment of a document in the form of a deposition said to reflect a complaint made by the appellant's father to the local police on 25 October 2019. The judge dealt with this at paras 31–34 of his decision and concluded that the document was not a "genuine document".
15. I will call these two matters respectively "Issue 1" and "Issue 2".

#### *Issue 1*

16. At paras 27–30, the judge said this in relation to the appellant's evidence concerning her claim that she was, and would be, forced to marry her cousin aged 62:
  - "27. Firstly there exists an inconsistency and discrepancy with regards to who it is the appellant is purportedly being forced to marry. In the appellant's screening interview she stated that she was in fear of being married to her uncle. In her witness statement [she] describes the person who was to be her husband as her paternal uncle's son who was, in her view, 62 years old. In addition, in the letter sent by those instructed by the appellant the uncle is described as the maternal uncle and not paternal uncle.
  28. I do not accept that this is a simple mistake to make. Even in his closing remarks, the appellant's Counsel accepted that the difference in claims between uncle and cousin was, to quote, a problem. I am not satisfied taking into account the inconsistency that the appellant is truthful and credible in relation to the claim that she makes with regards to the person she is said to marry.
  29. I am supported in this view by the fact that the appellant was asked, if it was to be her cousin, how he could be 62 years of age. The appellant was unable to provide an answer to explain such a significant difference between her age and her cousin. The appellant in addition was asked in cross-examination about whether it was cousin or uncle and the appellant said it was cousin that she was due to marry. The appellant did not provide any explanation as to why she had on numerous occasions claimed it was her uncle that she was in fear of marrying rather than her cousin.

30. Such an inconsistency on something so fundamental and central to the appellants (*sic*) claim significantly undermines her credibility and the veracity of her claim”.
17. On behalf of the appellant, Ms King submitted that the judge had failed to take into account the explanation concerning the appellant’s reference to the person she was going to be forced to marry as her “uncle” in two letters from her legal representatives on 19 November 2019 and 21 November 2019. The first letter immediately followed the appellant’s screening interview in which she had referred to her “uncle”. At point 5 in relation to question 4.1 of the screening interview, the letter says that:
- “her father was trying to force her to marry her cousin (his father was her mother’s brother)”.
18. Ms King also submitted that, although initially in her asylum interview on 20 November 2019 (the day after this first letter), the appellant referred to the person whom she was being forced to marry as her “uncle” at question 19, she subsequently corrected that in her asylum interview at question 29 and the interview was then conducted on the basis that it was her “cousin” she was being forced to marry. The following day, despite the correction having already been made by the appellant in her asylum interview, her legal representatives nevertheless reinforced the point in their letter of 21 November 2019 pointing out that, in relation to question 19:
- “the appellant is being forced to marry is her cousin, the son of another of her mother’s brothers”.
19. Ms King also pointed out that the appellant had provided the first letter from her legal representatives to the Home Office at the asylum interview as is clear from question 5 of that interview.
20. Ms King submitted that the judge had made reference at para 27 to only one of those letters and, in relation to that, had also noted that her legal representatives referred to her uncle as being her “maternal uncle” when in fact it was her “paternal uncle” who was the father of the cousin she claimed to be forced to marry. Ms King pointed out that English was not the appellant’s first language - she had given evidence at the hearing through an interpreter - and she had not had an interpreter at either of the interviews. She submitted that the appellant had corrected, through her legal representatives, her initial wrong reference to the person she was being forced to marry as her “uncle” the day following her screening interview and had, herself, having made the same reference early in her asylum interview, corrected it thereafter and the point had not been further pursued at that interview. Ms King submitted that the judge erred in law by failing to properly grapple with all of the evidence and explanation before concluding that what the appellant said was not a “simple mistake”.
21. Further, Ms King submitted that the judge had been wrong to draw an adverse inference, including commenting that the appellant had failed to

provide an answer, about the difference in claimed age between her and her cousin aged 62. The judge had not explained why her failure to provide a reason as to their age difference was damaging of her credibility.

22. In response, Mr Bates submitted that the judge had been aware of the interpreter issue because in para 25 he said: "I have paid particular attention to the answers which she gave in the hearing where she was ably assisted by an interpreter in her own language". Mr Bates pointed out that the appellant was legally represented at the hearing and, in relation to the confusion over whether the person she was being forced to marry was her "uncle" or her "cousin", her Counsel had, as the judge noted in para 28, recognised this was a "problem".
23. Mr Bates acknowledged that in para 41 of his determination, the judge accepted on the basis of an expert report that marriages of the type described by the appellant did happen in Namibia but that that did not provide "little if any support" for the claim "when she cannot be consistent with who it is she's intended to be wed".
24. During the course of Mr Bates' submissions, I referred the representatives to Judge Boyes' Record of Proceedings on the Tribunal file. I pointed out that in cross-examination the judge recorded the appellant's evidence in relation to questions concerning the age of her uncle and her cousin. Initially, she had said when asked how old her uncle was that he was "62". She was then asked about her cousin and gave his name and when asked how old he was said "62". She was then asked to explain how if her cousin was 62 her uncle (his father) was also 62 and she said "I misunderstood the question". She was then asked how old was her uncle and said he was "82".
25. Mr Bates acknowledged that the appellant had, in fact, offered an explanation as to why there was an age difference between the appellant and her cousin on the basis that her uncle (her cousin's father) was 82 years of age. Mr Bates accepted that this undermined the judge's reasoning in para 29 when he had relied on the fact that: "the appellant was unable to provide an answer to explain such a significant difference between her age and her cousin".
26. Bearing in mind that intra-family marriages of the sort claimed were, as the judge noted in para 41 of his determination, consistent with the expert evidence, the fact that her cousin was 62 years of age was, to some extent, explained by the fact that she claimed he had a father aged 82 years of age. No further exploration took place at the hearing as to how it was that her own mother and her brother had children of such differing age but Mr Bates acknowledged that was a matter which would have had to have been explored and it could not be said that the appellant had not offered an explanation of any sort as the judge asserted in para 29.

27. Nevertheless, Mr Bates submitted that the judge's reasoning in para 29 did not materially affect his finding based upon the appellant's evidence relating to whether she was being forced to marry her uncle or cousin. In particular, he relied upon the opening words in para 29 of the judge's decision, namely that the judge said: "I am supported in this view ...".
28. Mr Bates submitted that the judge had already made his adverse credibility finding based upon his reasoning as to the discrepancy in the appellant's evidence as to who she was marrying - uncle or cousin - before making reference to her offering no explanation why there was an age difference between her and her cousin.
29. Mr Bates accepted that if this was not the case, given what the judge said at para 30 as to the fundamental nature and significance of the inconsistency that judge recognised in paras 27-29, for that reason alone the judge's adverse credibility finding could not be sustained.
30. In the result, I accept the submissions of Ms King that the judge's reasoning in paras 27-29 was inadequate and amounts to an error of law. First, the judge failed properly to grapple with the evidence from the appellant, supported by her legal representatives, that she had mistakenly referred to her "uncle" rather than her "cousin". The initial "mistake" in her screening interview was corrected the very next day and prior to the asylum interview which took place one day later when that letter was provided to the Home Office. It is, of course, the case that the appellant again referred to her "uncle" in question 5 of her asylum interview but that was also corrected (and any potential discrepancy not pursued) subsequently in that asylum interview. It was, again, immediately pointed out by the appellant's legal representatives in a letter the day following the asylum interview that the appellant had made a mistake when she had at question 5 referred to her "uncle". I acknowledge, as Mr Bates submitted, that the legal representatives' letters themselves misstate the appellant's case that her cousin was the son of her mother's brother rather than her father's brother. However, that was not the appellant's evidence and was not a discrepancy in it which was, so far as I am able to tell, relied upon until the judge made reference to it in para 27 of his decision.
31. I do not accept Mr Bates' submission that the judge had well in mind that the appellant, conducting her interview in her second language of English, had no interpreter. Whilst the judge states at para 25 that he has paid "particular attention" to her answers given at the hearing because she was assisted by an interpreter. He counted against the appellant what she is claimed to have said inconsistently at those interviews (without an interpreter) when subsequently her evidence was different. In doing so, he did not have regard to the fact that her interviews were conducted without an interpreter. It may be that the judge was not assisted by the appellant's (then) Counsel stating that the discrepancy in the appellant's evidence was "a problem" as the judge records in para 28 of his decision. It is not clear from the judge's Record of Proceedings precisely what were

Counsel's submissions on this issue other than his recognition that there was a confusion between uncles and cousins.

32. In my judgment, the judge erred in law by failing properly to take into account the full context of the appellant's evidence as to the person whom she claimed she was being forced to marry in counting against her a perceived inconsistency in who that person was.
33. Further, the judge also erred in law in taking into account that the appellant had offered no explanation as to the "significant difference between her age and her cousin" because, as Mr Bates accepted and is clear from the Record of Proceedings, the appellant said (and therefore began to give the beginnings of an explanation) that her cousin's father was aged 82. That might explain why, on her evidence, he had a 62 year old son. No doubt, if this issue had been further addressed, there would have been questions as to the basis upon which two brothers (namely her own father and her cousin's father) had children with a significant difference in age but that issue was never explored and, as a matter of common sense, there could be entirely plausible explanations for that.
34. I do not accept Mr Bates' submission that the judge, in finding that there was an "inconsistency" which "significantly" undermined her credibility (at para 30), did not take into account the entirety of his reasoning in paras 27-29 including, therefore, his view that there was no explanation for the age difference. When those paras are read as a whole, I do not accept that the judge's opening words in para 29 show that he isolated that issue as an afterthought and did not take it into account in reaching his conclusion at para 30. That conclusion was, as Mr Bates accepted, a strong conclusion which if the reasons for it were unsustainable meant that the adverse credibility finding of the judge could not stand.
35. For the reasons I have given, the judge's reasons in paras 26-29 leading to his conclusion in para 30 are inadequate and amount to an error of law which I am satisfied materially affected the judge's ultimate adverse credibility finding and make that finding legally unsustainable. For that reason, the judge's adverse finding cannot stand and the decision to dismiss the appellant's appeal on asylum grounds must be re-made.

### *Issue 2*

36. In the light of my conclusion on Issue 1, it is not strictly necessary to resolve Issue 2 concerning the judge's reasoning that led him to find that the complaint document to the police, said to support the substance of the appellant's claim, was not a genuine document. Suffice it to say, had it been necessary for me to decide, there are difficulties with the judge's reasoning.
37. First, his reference to the document being self-serving probably adds nothing to the issue of whether it is a genuine document (see, R (SS) v SSHD ("self-serving" statements) [2017] UKUT 164 (IAC)).

38. Secondly, the judge, having looked at the document, took into account, when finding it was not genuine but simply a “manufactured document”, that it explained the traditions and customs of the Ovaherero people. He commented that: “there would be simply no need to place such a scenario or information in such a complaint as the Namibia police would need know that”. As Ms King submitted, that was an assumption not based upon any evidence. There was no evidence before the judge as to what form such complaint documents took and what information they might contain. Without such evidence, in my judgment, that reasoning was not properly open to the judge (see, HK v SSHD [2006] EWCA Civ 1037).
39. Thirdly, however, I do not accept, as Ms King submitted, that the judge was not entitled to take into account as relevant that the appellant was unable to say how her aunt – whom she claimed had obtained and sent her this document – acquired it. It was a document, on the face of it, within the control of the police and the appellant was unable to offer any explanation as to how her aunt obtained it.
40. Fourthly, there was an inconsistency between the appellant’s evidence and that in the letter as the judge pointed out in para 33. In her evidence, she said she had met her cousin and he had spent time at her house and she had spent time at his house. However the letter, written by her father, said that she did not know her cousin. That was, also, a matter which the judge could properly take into account.
41. These were all matters which, in truth, went to the ‘reliability’ of the document. In para 32, however, the judge did not find that the document was unreliable but rather that it was not genuine – it was a fraudulent document that had been “manufactured” to support the appellant’s claim. As far as I can see, and the contrary was not suggested to me, the respondent did not assert that the document was not genuine but rather that it was ‘not reliable’. As I have said, it is not strictly speaking necessary to resolve Issue 2. I do, however, have considerable doubts whether the reasoning of the judge in paras 31–34 taken as a whole, in particular the points I have identified, justified the judge making the positive finding, upon which the respondent bore the burden of proof on a balance of probabilities, that the document was not genuine.

### *Conclusion*

42. For the reasons I have given in relation to Issue 1, the judge materially erred in law in reaching his adverse credibility finding and in dismissing the appellant’s international protection claim.

### **Decision**

43. The decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of an error of law. That decision cannot stand and is set aside.



44. Given the extent and nature of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Boyes.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
28 September 2021