



IAC-AH-CO-V2

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

Appeal Numbers: AA/06647/2014
AA/07897/2014
AA/05884/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th June 2015**

**Decision & Reasons Promulgated
On 24th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR NASEER ASHER (FIRST APPELLANT)
MISS MEERUB ASHER (SECOND APPELLANT)
MR ARPHAXAD ASHER (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Afzal

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. The first Appellant was born on 26th August 1958. The second and third Appellants are his children born respectively on 9th November 1992 and 5th June 1986. The children are therefore adults. The Appellants had all claimed asylum on the basis that if returned to Pakistan they would face mistreatment due to their religion

in that they feared Islamic fundamentalists on account of being Christian. Those applications were dismissed in three separate Notice of Refusals dated respectively 26th August 2014, 16th September 2014 and 30th July 2014.

2. The appeals were consolidated and came for hearing before Immigration Judge Herwald on 9th February and 23rd February 2015. In a decision promulgated on 3rd March 2015 the Appellants' appeals were allowed under the Immigration Rules.
3. On 6th March 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. In those Grounds of Appeal it was accepted by the Secretary of State that the Appellants were Pakistani and Christian. It was however submitted that the determination failed to make clear its findings on the appeal at paragraphs 17 to 22 to support the overall finding at paragraph 22 that the appeal is allowed under the Immigration Rules and that that was a material misdirection of law.
4. On 16th March 2015 First-tier Tribunal Judge Shimmin granted permission to appeal. Judge Shimmin noted that the grounds argued that the judge had erred in making inconsistent findings and that it was arguable that the judge had made findings which are not mutually sustainable as to the Appellants' claim as a refugee and in respect of internal relocation (paragraphs 19, 21 and 22). It was also considered arguable that the judge had erred in failing to follow the country guidance case of *AK and SK (Christians: risk) Pakistan CG [2014] UKUT 00569*.
5. On 9th June 2015 the Appellant's solicitors filed a Rule 24 response contending that the errors on behalf of the First-tier Tribunal Judge were not material. Within that Rule 24 response firstly it was pointed out that it was not disputed that at paragraph 21 of the determination the First-tier Tribunal Judge said that in this case he was satisfied that the Appellant may reasonably be expected to relocate within their homeland and secondly that he had allowed the appeal under the Immigration Rules. It was contended that they were typographical errors and that what was stated was that the judge must have meant to say "not reasonably expected to relocate" and also that when he held that the appeal was allowed under the Immigration Rules he must have meant under the Refugee Convention.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed legal representative Mr Afzal. Mr Afzal is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison. I note that this is an appeal by the Secretary of State but for the purpose of continuity about the appeal process the Asher family are named as the Appellants and the Secretary of State as the Respondent.

Submissions/Discussions

7. Mr Harrison indicates that the Secretary of State maintains his position pointing out that it is not possible to be certain of the intention of the judge. He takes me to the three main areas where there is concern. Firstly he points out the inconsistencies to be found at paragraph 19 and paragraph 22 namely that the Tribunal found that the Appellant had not established any subjectively genuine or objectively well-founded fear of persecution by the state, or its agents or any other person and is not a refugee and not entitled to humanitarian protection under the Immigration Rules and that that is inconsistent with the findings at paragraph 22 that the appeal was allowed under the Immigration Rules.
8. Secondly, having then considered the issue of internal relocation in line with the authority of *Januzi & Others* and *AH & Others*, paragraph 21 goes on to state that the Tribunal is satisfied that the Appellants may reasonably relocate within their homeland which is inconsistent with the subsequent finding at paragraph 22 that the appeal is allowed under the Immigration Rules.
9. Finally it is noted that even if the Tribunal accepts the credibility of the Appellants' account it is incumbent upon the Tribunal to then make findings with reference to the country guidance case of *AK and SK (Christians: risk) Pakistan CG [2014] UKUT 00569* and that the Tribunal had failed to do so despite drawing both representatives' attention to this case which is noted at paragraph 15(d).
10. Mr Afzal accepts what is set out at paragraph 90 that the events do not constitute state persecution but that it is non-state persecution that the Appellants have suffered but that notwithstanding systemic sufficiency of state protection the claimant may still have a well-founded fear of persecution if the authorities know or ought to know the circumstances particular to his or her case giving rise to the fear but are unlikely to provide the additional protection the particular circumstances reasonably require. He submits that on any rational explanation the judge when considering paragraphs 21 and 22 of his determination came to the decision that the Appellant could not reasonably relocate and that the correct interpretation would be to conclude that the Appellants may not reasonably be expected to relocate within their homeland and that there is a typographical error at paragraph 21.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational

conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

13. It is essential in a judicial determination that there is clarity. The decision of the First-tier Tribunal Judge in this matter has been given the very closest of scrutiny by both legal representatives and by myself and we are all in agreement that it is impossible when looking at the relevant paragraphs to extrapolate the intention of the judge and that in itself must constitute a material error of law. It is important that I set out where the difficulties arises. These are to be found at attempting to reconcile the findings in paragraphs 19 to 22. At paragraph 19 the judge has quite clearly stated the Appellant has not established a well-founded fear of persecution, that the Appellant is not a refugee and is not entitled to humanitarian protection. At paragraph 21 he states that the ill-treatment suffered is of sufficient severity as to cross the threshold of persecution.
14. Thereafter the judge goes on to give consideration to the ability of the Appellant to relocate. He considers two authorities, quite properly, and makes a finding that the Appellants may reasonably be expected to relocate within their homeland as his conclusion paragraph 21. He then goes on to conclude as his decision that the Appellants have discharged the burden of proof and have a well-founded fear of persecution for a Convention reason. Finally he goes on to allow the appeal under the Immigration Rules rather than the Refugee Convention.
15. When looked at as a whole it is not possible to construe whether there are or are not typographical errors in the determination. If it was just a matter of one word missing then that would almost certainly, it is accepted by the legal representatives, be a matter that could be adjusted under the slip rule and be agreed between the parties. That is not the case here as

there are fundamental contradictions which need clarification and explanation by the judge. Further albeit that it is a far minor consideration it is incumbent upon the Tribunal to make findings with reference to AK and SK (*Christians: risk*) *Pakistan CG [2014] UKUT 00569* and the Tribunal has failed to do so despite that authority being drawn to the attention of the legal representatives the authority rather than they referring it to him.

16. In such circumstances the correct approach is to find that there is a material error of law. However it is the agreed approach by both legal representatives, which I endorse, that the appeal should be sent back to the First-tier Tribunal Judge not for rehearing but for clarification on the papers and that thereafter the judge should produce a further decision which will form the finding of the First-tier Tribunal. It may well be once that decision is set out with due clarity that both the Secretary of State and the Appellant's legal representatives will be satisfied with the outcome and if they are not they will then on the basis of that determination be entitled to give due and proper consideration as to whether that decision is one that has any merit for making an appeal.

Decision and Directions

The decision of the First-tier Tribunal discloses a material error of law and is set aside to the following extent.

- (1) That the appeal be remitted to the First-tier Tribunal reserved to First-tier Tribunal Judge Herwald sitting at Manchester on the first available date 28 days hence.
- (2) That the remitted decision is to be considered by the learned First-tier Tribunal Judge on the papers.
- (3) That the First-tier Tribunal Judge is requested to consider the discrepancies, as described above, in his original decision and thereafter to provide a written revised decision taking account and correcting the discrepancies therein.
- (4) One hour is to be allowed for judicial consideration at the remitted hearing.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris