



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

Appeal Number: AA/10815/2014
AA/10819/2014
AA/10821/2014
AA/10823/2014
AA/10825/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 29 July 2015**

**Determination
Promulgated
On 28 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**MM AND OTHERS
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Christopher Simmonds, Solicitor, of Duncan Lewis
For the Respondent: Mr Irwin Richards, 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 order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellants are asylum seekers on political grounds who might be at risk just by reason of being identified.

2. The appellants appeal against the decision of the First-tier Tribunal dismissing the appellants appeal on asylum and human rights grounds against a decision taken on 20 June 2014 refusing to grant them leave to remain and to remove them to Mauritius.

Introduction

3. The first appellant is a Muslim citizen of Mauritius born in 1968. The remaining appellants are his wife and children. The first appellant claims that his problems started in the 2005 general election when he supported the then ruling coalition of the Mouvement Militant Mauricien (“MMM”) and the Mouvement Socialiste Militant (“MSM”). He put up posters, handed out leaflets and arranged night-time meetings. The election was won by the opposition Socialist Alliance party (“SA”). Hindus dominated the parliament and cabinet.
4. The appellant claims that he was beaten and harassed by agents of the Labour Party from 2005 onwards and was afraid to travel or go to work. The police took no action because they said that the people were government agents. The windows in his house were broken and his children were frightened and also threatened at school. The family came to the UK via Ireland but all except the first appellant were apparently removed on three occasions before arriving on visit visas in December 2013 and claiming asylum in March 2014. When the family were in Mauritius between 2009 and 2013 they suffered further harassment and the children had to move school. A 58 year old man wanted to marry the daughter and threatened to kill her mother if she did not agree.
5. The respondent did not accept the account of political violence at the time of the 2005 election as it ran contrary to objective evidence. The political involvement of the first appellant was insufficient reason for the alleged continual attacks. Even if the attacks had taken place that was nine years ago, the first appellant has renounced interest in politics and the MMM are now in power. The family immigration history was poor and involved deception. The asylum claims were long delayed.

The Appeal

6. The appellants appealed to the First-tier Tribunal and attended an oral hearing at Columbus House on 18 March 2015. They were represented by Mr Tuburn, Solicitor. The judge found that the appellants were not entirely credible witnesses, particularly in relation to the delay in claiming asylum and their claim that all of their travel documents had been lost. The first appellant’s account of his political activities and their consequences was not particularly compelling and while it was possible that there were incidents in 2005 or thereafter they could not have been that serious because the first appellant remained in Mauritius for another three years and left his family there. He had not taken part in political activity since

2005 and it was not plausible that after a space of ten years he would still face persecution for whatever took occurred in 2005, particularly as the party he said he supported is now in power.

7. In relation to the threat from the 58 year old man, the accounts were vague and if such approaches were made it may be that was because the first appellant was not there to speak up for his daughter. There is a functional if flawed police force in Mauritius and a sufficiency of state protection.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal on 15 April 2015 on the basis that the judge had made a material error of fact because the MMM are not in power. The election results were clearly set out in the appellants' bundle and the judge failed to properly consider the evidence. The judge found that the appellants were not at risk because the MMM were now in government and that is a material error of law.
9. Permission to appeal was granted by First-Tier Tribunal Judge McDade on 27 April 2015 on the basis that it was arguable that the judge failed to understand any current risk to the appellants, the judge erroneously considering that it was MMM - the party that the appellant claims to be at risk from.
10. In a rule 24 response dated 15 May 2015, the respondent sought to uphold the judge's decision on the basis that the credibility of an appellant's account is primarily a question of fact and the findings of fact in relation to credibility were properly open to the judge. In any event the grant of permission to appeal was not valid because the first appellant fears the Labour Party and not the MMM.
11. Thus, the appeal came before me.

Discussion

12. Mr Richards helpfully did not seek to rely upon the submission that the grant of permission to appeal was somehow invalid. The judge granting permission did err in referring to the MMM as the party that the first appellant fears (in fact it was his own party) but the grant of permission is otherwise correct.
13. Mr Simmonds submitted that the ruling coalition won 41 seats in the 2010 elections and the MMM won 18 seats. The MMM are not in power. That is a glaring error of fact and goes to the core of the claim. The important word in paragraph 22 of the decision is *particularly* and there is a clear error of law.

14. Mr Richards submitted that there were further elections in 2014 when the MMM were in alliance with the Labour Party but they still lost. The judge was wrong to say that the MMM were in power but the error is not material. If the judge had found the first appellant to be credible i.e. at risk in the past but not now that would be a material error of law. However, the judge found that the account was not credible and there was a sufficiency of protection. The decision is not infected by a minor error of fact and the appeal should be dismissed.
15. Mr Simmonds replied that the MMM lost the 2014 elections as well. The sufficiency of protection finding was based on the MMM being in power.
16. The objective evidence before me submitted by Mr Richards indicates that the Alliance de L'Avenir (including the Labour Party and the MSM) won the 2010 elections and the MMM were not part of that coalition. During the period 2010-2014 the MSM and another party left the coalition and the Labour Party continued alone. In September 2014 the Labour Party and the MMM entered into a coalition but the MMM then broke up with a breakaway Muvman Liberator party forming a coalition (Alliance Lepep) with the MSM and another party. Alliance Lepep won the 2014 election.
17. It is common ground that the judge erred by finding that the MMM were in power from 2010. The real situation is much more complex including an alliance between most of the MMM (the first appellant's party) and the Labour Party (the alleged persecutors in this appeal). The Labour Party is not currently in power. I accept Mr Simmonds' submission that the use of the word *particularly* in paragraph 22 of the decision indicates that the judge placed considerable weight on the finding that the MMM came to power in 2010. That conclusion is reinforced by the somewhat vague nature of the other findings set out at paragraph 6 above. There are no clear findings as to what factual elements of the claims are accepted and I reject Mr Richards' submission that the judge simply found that the account was not credible. The phrases "*not entirely credible*" and "*not particularly compelling*" are not an adequate basis for dismissing an asylum claim. I accept that the finding in relation to sufficiency of protection is infected by the error as to the party in power from 2014.
18. I have considered R (Iran) & others v SSHD [2005] EWCA Civ 982. I find that the judge has made a mistake as to a material fact which could be established by objective and uncontentious evidence where the appellant and/or his advisors were not responsible for the mistake; it being clear from the objective evidence within the appellants' bundle that the MMM were not in power from 2010. I am satisfied that unfairness has resulted from that mistake because the finding was central to the judge's decision. There is no certainty that the appellants' position will improve at a rehearing in light of the coalition between most of the MMM and the Labour Party but the complex political situation should be fully considered

and the appellants are entitled to clear and untainted findings of fact in relation to the core of their claim.

19. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

Decision

20. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.
21. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed 

Date 26 September 2015

Judge Archer

Deputy Judge of the Upper Tribunal