



IAC-FH-AR-V1

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

Appeal Numbers: AA/09071/2015  
AA/09072/2015  
AA/09074/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 March 2016**

**Decision & Reasons  
Promulgated  
On 13 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MS K P (FIRST APPELLANT)  
MR A A (SECOND APPELLANT)  
MISS S A (THIRD APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr J Wells, Counsel, instructed by M & K Solicitors  
For the Respondent: Miss A Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Nature of Appeal**

1. The appellants are citizens of Pakistan, born on [ ] 1969, [ ] 1995 and [ ] 1996 respectively. The second and third appellants are the children of the first appellant. The appellants appealed against the decisions of 7 July 2014 to remove the appellants from the UK and also appealed against the decisions of 3 June 2015 refusing their protection claims.
2. The appeals were heard by Judge of the First-tier Tribunal Anthony on 10 December 2015. On 30 December 2015 Judge Anthony dismissed the appellants' appeals on all grounds.
3. The appellants appealed against the dismissal of their appeals with permission. The appeals came before me.

### **Ground 1**

4. The appellants' first ground of appeal was on the basis that the judge had misdirected herself in relation to Section 8 of the Immigration and Asylum (Treatment of Claimants etc) Act 2004 at [20] to [23] of the decision. The judge considered section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 and it was contended by Mr Wells that the judge gave a separate consideration to Section 8 rather than applying the correct approach as set out in **JT (Cameroon) [2008] EWCA Civ 878**. In addition it was submitted that the judge erred in concluding that the appellants' behaviour engaged Section 8 as it was contended that the factual basis of their claim had been advanced in a human rights claim made in 2013, well before the immigration decision had been taken and therefore section 8(5) did not apply; it was further contended that even if it did, the judge erred in concluding that the appellants' behaviour damaged their credibility as they had not sought to mislead as the factual basis of their claim had already been asserted.
5. I find no merit in this ground. The judge made clear findings at [21] of the Decision and Reasons as to why she did not accept the submissions that the basis of the claim had been made earlier, in their 2013 applications. The judge made clear findings that the appellants did not present their claim as such and had legal advice when doing so and that there was no explanation as to why they did not claim asylum at that time. The judge was entitled to make the findings that she did.
6. I am further not satisfied that the judge erred in relation to **JT (Cameroon)** as it is clear, looking at the decision in its entirety, that the findings of fact addressed all the evidence in the round. The judge also reminded herself at [23] that despite credibility being undermined this does not mean the account is untrue. I am not satisfied that there is any error in ground 1.

## **Ground 2**

7. This related to the standard of proof applied; the grounds of appeal and the oral submissions from Mr Wells referred to the judge's references at [30] to matters being "unlikely" and at [35] to being "not probable". It was submitted that the judge had confused the standard of proof.
8. However, I am satisfied at [30] that the judge's use of the word "unlikely" related to the plausibility of the first appellant's statements rather than to the standard of proof applied. The judge clearly directed himself as to the correct legal provisions including at [16] that the appellants had to establish that they have a well-founded fear of persecution or that they face a real risk of serious harm. The judge also set out at [19] that the appellants had to show a "real risk or reasonable likelihood".
9. The judge also at [34] and [46] directed herself as to the correct standard of proof and reminded herself at [46] that she had "already rejected the appellants' accounts of past harassment and threats and risks on return. In so doing I apply the lower standard of proof." The fact that the judge referred to the events being unlikely and again at [35] to something not being "probable" is not determinative. Although it might have been clearer had the judge not used these phrases, on a reading of the entirety of the judge's Decision and Reasons it is evident that she had the correct standard of proof in mind, in relation to both past events and future risk, when assessing the appellants' claim. There is no error of law disclosed in this ground.

## **Ground 3**

10. This was the main thrust of the appellants' argument before me in oral submissions from Mr Wells. It was submitted that at [32] Judge Anthony expressed her conclusion that the appellants' account was unreliable and therefore she could not attach any evidential weight to the written statements of Mr Nasar and Mr Jahangir or Mr Jahangir's oral evidence.
11. At [33] the judge found:

"Because I find the appellants' accounts are unreliable, I am unable to ascribe any evidential weight to the Bedfordshire police compliment slip and letter or to the oral evidence given by the appellants' brother Mr Jihangir and the written evidence of Mr Nasar."
12. It was submitted that the judge had misdirected herself in the manner described in **Mibanga [2005] EWCA Civ 367; [2005] INLR 377**. It was submitted that the first appellant's brother's evidence was corroborative of the account and should have been considered in the round with the remaining evidence including the Bedfordshire police compliment slip and letter.

13. However, it is clear, including from the witness statements, that the evidence from Mr Nasar and Mr Jahangir related to what the first appellant had told her brothers, Mr Jahangir and Mr Nasar. (Mr Nasar was not present at the hearing, being in Turkey).
14. However, both of the first appellant's brothers were providing evidence as to what their sister, the appellant, had told them in relation to her claimed difficulties in Pakistan. Both the appellants' brothers are resident in the UK and it was not argued that they were not resident in the UK at the relevant time that the first appellant claims these events occurred in Pakistan.
15. In this context, I am not satisfied that there is any error in the judge's consideration of the evidence. The judge found the first appellant not to be credible and was entitled not to attach any weight to what her brothers' stated that she had told them.
16. **Mibanga** reminds that all the evidence must be considered in the round. Although this issue might have been expressed more clearly, I am satisfied that the correct approach was followed. There is no error in the judge's findings in their entirety.

### **Notice of Decision**

17. The appellants' appeal is dismissed. The decision of the First-tier Tribunal shall stand. No error of law is disclosed.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Hutchinson

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

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Deputy Upper Tribunal Judge Hutchinson