



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06027/2018
PA/06028/2018
PA/06029/2018
PA/06030/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10th September 2018

Decision & Reasons Promulgated
On 13th September 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

WSK; CCS; WS; SS
(Anonymity order made)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Chimpango of Crown and Law Solicitors
For the Respondent: Ms Peterson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants in this determination identified as WSK,

CCS, WS or SS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. WSK is the main appellant in this appeal. CCS is his wife and WS and SS are his and CCS' children; they are now both adults.
2. In a decision promulgated on 22nd June 2018, First-tier Tribunal Judge M A Hall dismissed their appeals against the decision of the respondent to refuse their international protection and human rights claim.
3. First-tier Tribunal judge Scott- Baker granted permission to appeal on 26th July 2018 on the grounds that it was arguable the judge had failed to give adequate reasons for rejecting the main appellant's claim that he had been a victim of a politically motivated attack, had made insufficient/inadequate findings on the background material evidence and that there had been insufficient consideration of the private life of the two 'children' in assessing the proportionality of return to Malawi.
4. The grounds themselves raise three protection issues:
 - (i) The First-tier Tribunal judge failed to recognise that being a member of Parliament (as accepted by the respondent and the judge) and campaigning against the Third Term Bill (as accepted by the respondent and the judge) was a sufficient risk factor.
 - (ii) The First-tier Tribunal judge placed undue weight upon the ability of the first appellant to travel back to Malawi, failing to acknowledge and take account of the fact that the appellant was in fear of individual politicians and not the Government and that living discretely he had been able to avoid problems.
 - (iii) The First-tier Tribunal judge placed undue weight on the failure of the appellants to claim asylum on arrival or earlier than they did.
5. The grounds raise two human rights issues:
 - (i) That the First-tier Tribunal judge failed to give adequate weight to the first and second appellants private life which included very strong religious, community and social ties and his unique academic research.
 - (ii) That the First-tier Tribunal judge failed to sufficiently consider the private life of the third and fourth appellants.
6. Although characterised by First-tier Tribunal Judge Scott-Baker as a "reasons" challenge, it will be seen, as indeed it was argued by Dr Chimpango before me, that the challenge is based on a claimed failure to place adequate weight upon various elements of the evidence that was before the First-tier Tribunal judge. Dr Chimpango drew my attention to five newspaper articles which, he submitted, indicated the level of violence perpetrated in Malawi against political opponents of the president and to which it was submitted the main appellant and his family would be subjected if removed to Malawi. He referred to the personal security measures put in place by the main appellant whilst he was in Malawi.

7. The main appellant led the campaign against the Third Term Bill which was narrowly defeated by three votes in Parliament. He claims that a bout of food poisoning after the Bill's defeat and an attack on him in a hotel room in 2003 were politically motivated. He left his political party but remained an MP. In 2004, he stood for re-election as an independent but was not elected. He first came to the UK as a student in September 2005, returning to Malawi 3 times after that. His leave to remain in the UK expired on 7th November 2015. An application for further leave to remain was refused in December 2015. They were notified of their liability to removal in February 2016. An application for judicial review was refused on 22nd July 2016 and it was then that the asylum application was made.
8. The newspaper reports relied upon are not specifically referred to by the First-tier Tribunal Judge. They are reports of violence perpetrated against individuals who are politically active. There is no report of others who were involved in opposition to the Bill being targeted. There is no report of others who may have been active politically at the same time as the main appellant being violently targeted.
9. The main appellant in his evidence said that he had both been living in a rural area and thus escaped notice when he returned to Malawi and that he had worked from his office (in his family home) in Blantyre for 6 months on one of his trips home.
10. Although the First-tier Tribunal judge did not refer to the newspaper reports directly, there was nothing in them that was of particular significance to the appellants. The judge correctly considered the evidence in the round and, taking the appellants' evidence into account concluded that the ability to return home and work unmolested for six months, that the main appellant did not seek to bring his wife and children to the UK for some time, that there was a lack of country material indicating a level of violence targeting opposition political activists, that he had remained in Malawi and sought re-election as an MP, that he had remained in Malawi after his electoral defeat with no identified problems, that they had delayed claiming asylum until after a judicial review challenge removal had failed, all combined to result in a finding that the main appellant was not at risk of being persecuted on return to Malawi. The other appellants were dependents on the main appellant and their claim failed accordingly.
11. Although the grounds set out specific matters that it was alleged the judge had failed to accord adequate weight, this is incorrect. Matters of weight are for the judge absent an error of law in his approach to that evidence. The judge in this appeal plainly had in mind the evidence as a whole. He was justified in taking account of the lengthy delay in claiming asylum in the context of the basis of claim and that the main appellant had travelled back to Malawi and remained there working in Blantyre, on his evidence, with no difficulty. The background material did not indicate a targeting of political opposition members or activists and the appellant remained involved in political activity after the defeat of the Bill, the campaign against which he claimed was the root cause of his fear of persecution. He was not re-elected and there were no further attacks upon him. The judge was entitled to find that the attack on him, dreadful as it was, was not politically motivated. He has undertaken no political activity whilst in the UK and cannot be perceived as an active political opponent of the present government or President.

12. The decision by the First-tier Tribunal judge on the claim for international protection considered the evidence before him and reached conclusions that were open and sustainable on the evidence before him. There is no material error of law in the conclusion that the appellants' claim for international protection is dismissed.
13. In so far as the human rights claim is concerned, the appellants came to the UK as students/student dependents. The two younger appellants are adults. Although permission was granted because it was arguable that there had been inadequate consideration of their private life, the First-tier Tribunal judge considered the evidence of their private life in the UK in accordance with the immigration Rules and s117B nationality Immigration and Asylum Act 2002. There was no sustainable evidence that there were significant obstacles to their return to Malawi – a finding the judge was entitled to reach based on the evidence before him. At most the younger appellants have been in the UK for a considerable period including as teenagers, during which they have been educated and achieved qualifications and life skills. The grounds state they have spent most of their adult life in the UK. They arrived in 2008 aged 13 and 14. Dr Chimpango accepted they would be returning to Malawi as a family unit although there was in any event no significant evidence that the two younger appellants were dependant on their parents. The weight placed by the judge on the main appellant's community and religious and academic ties was weight he was entitled to place.
14. It is correct that the judge did not give specific extensive reasons relating to the human rights claim of the two younger dependants. But the acceptance by Dr Chimpango that they would be returning with their parents as a family unit, the fact that they have been in the UK for about 10 years including 4-5 years as children, that there are no significant obstacles to their re-integration into Malawi, that they do not meet paragraph 276ADE of the Immigration Rules were all matters considered by the judge. That the two younger appellants have established private life in the UK, albeit as overstayers since 2015 when they were adults, was considered by the Judge.
15. It is possible that the judge could have given more extensive reasons for his conclusion that the appellants failed in their human rights claim but the fact is that none could in any event have succeeded. Although the judge can therefore be said to have erred in law in failing to give more extensive reasons for his dismissal of the human rights appeals, the conclusion drawn by him was the correct and sustainable conclusion; the error is not material.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The decision of the First-tier Tribunal judge stands – the appeals are dismissed.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 11th September 2018

A handwritten signature in black ink, appearing to read 'Jme Coker', written in a cursive style.

Upper Tribunal Judge Coker