



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

Appeal Number: HU/13816/2019
HU/13823/2019
HU/13828/2019

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 April 2021**

**Decision & Reason Promulgated
On 13 May 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**SHIRAMAN KHAN (aka SAJJAD ALI KHAN) SAJAD ALI
GUL RANA**

[M S]

(Anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan instructed by Goldmark Solicitors

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellants, a family of two adults and one child, appeal with permission a decision of First-tier Tribunal Judge Ali promulgated on 4 March 2020, in which the Judge dismissed the appeals on all grounds.

2. Permission to appeal was granted by another judge of the Upper Tribunal on a renewed application, the operative part of the grant being in the following terms:
 - “3. The first appellant is an Afghan national, the second is a national of Pakistan and the nationality of their child, the third appellant, is unclear. It is arguable that the First-tier Tribunal failed to consider whether there were very significant obstacles to the integration of the appellant’s as a family unit in either Afghanistan or Pakistan. Whether this would make a material difference to the outcome of the appeal is debatable given the absence of evidence as to whether either of the adult appellants would gain admittance to the other’s country.”
3. In her Rule 24 response dated 16 July 2020 a different Senior Home Office Presenting Officer wrote:
 - “The respondent does not oppose the appellant’s application for permission to appeal and agrees that the Judge of the FTT failed to give adequate consideration to whether there would be obstacles to the 3 appellants continuing their family life together in either Afghanistan or Pakistan, given their differing nationalities.
 - The respondent invites the Tribunal to set aside the determination and remit the appeal to the First Tier Tribunal for a fresh hearing.”
4. There is considerable sympathy for the Judge in this matter in light of the paucity of evidence provided by the appellants in support of their claims. The Secretary of State in the Reasons for Refusal letter dated 23 July 2019 raised the fact there was no evidence to support the first appellant’s contention that he would not be able to fulfil the requirements for residency in Pakistan, yet no such material was provided. Similarly, it does not appear the second appellant had provided evidence that she would not be able to fulfil the requirements to enable her to travel to Afghanistan with her husband, the second appellant.
5. The Judge was clearly aware of the core issues in the appeal, but in addition to the pleaded grounds is criticised for finding at [28] that neither appellant had provided any evidence that the embassies of either Afghanistan or Pakistan would not allow them to return their to live as a family unit when it is said that the second appellant was asked in examination in chief about this issue and gave an answer which the Judge appears to have overlooked on the face of the document.
6. The appellants clearly placed their trust in the solicitors advising them to prepare the case adequately, but the bundle provided to the Judge of some 22 pages fails to adequately deal with the real issues that needed to be determined in this appeal.
7. Proceedings before the First-tier Tribunal are adversarial in nature. The Judge was not required to adopt an inquisitorial approach. It is, however, not the fault of the appellants that the Judge was not given best available evidence to enable the matters to be properly determined.

8. Out of an abundance of caution, in light of the fact there is a young child involved in this case and the question of whether the appellants will be admitted to either Afghanistan or Pakistan to live as a family unit, I accept the Judge erred in law for the reasons set out in the grant of permission to appeal and the concession by the Secretary of State to this effect.
9. A useful discussion occurred thereafter in relation to what should happen with the appeal. The appellant's view is that the appeal should be remitted to be considered afresh, an approach supported by the Secretary of State in the Rule 24 response. Remittance is governed by the relevant Practice Direction and are not the default position if an error of law is found.
10. What is clear from the discussions that arose is that the nature of the evidence that will need to be provided, including that relating to the asylum applications previously made which should include their asylum interviews and witness statements, together with the determinations rejecting the claims made, expert evidence relating to the question of whether each will be able to be admitted to the other's country lawfully, the situation in Baglan province in Afghanistan if the situation there amounts to an insurmountable obstacle preventing reintegration, prospects of relocation within Afghanistan if this is the issue, and evidence regarding the family and country situation in Pakistan, the home of the second appellant, will be extensive. If such evidence is provided together with proper witness statements containing all the relevant evidence relied upon by the first and second appellant it is clear that the case to be considered will be materially different from that before the Judge.
11. It is clear that extensive findings of fact will have to be made on all aspects and that the appellants have not, to date, had the opportunity of a hearing before the First-tier Tribunal in which the merits of the claim have been properly pleaded and considered by a judge. I accept therefore that it is appropriate in all the circumstances for this case to be remitted to the First-tier Tribunal sitting at Bradford, to be heard afresh by a Judge other than Judge Ali. There shall be no preserved findings.

Decision

12. **The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh by Judge other than Judge Ali.**

Anonymity.

13. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 30 April 2021