



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-003931

First-tier Tribunal No: PA/53571/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
9th of November 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

Secretary of State for the Home Department

Appellant

and

IK
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr M Parvar, Home Office Presenting Officer

For the Respondent: Ms G Patel instructed by Parker, instructed by Legal Justice Solicitors

Heard at Field House on 23 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, IK is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify IK. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this decision we will refer to the parties as they were described in the First tier Tribunal, that is IK as the appellant, and the Secretary of State as the respondent.
2. The appellant is recorded as a national of Afghanistan born in January 1952. She applied for asylum based on imputed political opinion (persecution by the Taliban) on 9th February 2022. This was refused by the Secretary of State on 22nd July 2022. Judge Black in a previous determination dated 8th August 2018 dismissed the appellant's appeal on asylum and human rights grounds. That determination was not challenged successfully and stands. In her determination Judge Black had found the appellant had residency, and was on the electoral roll, in India and could return there. The respondent asserted in her refusal of July 2022 that the appellant could relocate to India as she had Indian citizenship because the evidence demonstrated only Indian citizens could vote.
3. First-tier Tribunal Judge Clarke (the judge) allowed the appellant's appeal. The judge referred to the previous decision of Judge Black which had held that the appellant had lawful residency in India and had two sons in India and that it was reasonable for her to return to India following RR(refugee-safe third country) Syria [2010] UKUT 422 (IAC). The judge held at [31] that Judge Black found the appellant was

'recognised by the authorities in India as being lawfully resident on the date of her name being on the electoral roll in February 2018, living at an address in Delhi at that date and being entitled to vote. The judge [Judge Black] did not find the appellant was a national of India. Judge Black found that the appellant was vague and inconsistent throughout her dealings with the respondent and the supporting witnesses evasive and vague and wholly incredible'.

4. The judge recorded at [8] that Judge Black did not find the appellant and her witnesses credible and the judge added at [9] having heard from the appellant and her daughter-in-law said this,

'I do not find the appellant has taken steps to obtain residency from the British High Commission India in London or to get confirmation if she is or is not a national of that country. Therefore, the appellant has not demonstrated bona fides in this appeal, and in particular as to whether she is a national of India or not.'

5. The judge also noted that in TG (interaction of Directives and Rules) [2016] UKUT 00374 (IAC) the Tribunal in that case found the appellant to be 'bona fide' in his evidence and that he had made attempts at the High Commission in India in London to obtain residency. In TG the appellant was accepted as not being a citizen of India and thus could not be excluded from protection merely because he was a resident in India to 2012.

6. Nonetheless the judge proceeded to set out and analyse extracts from TG. She then noted that there was no expert evidence before her, merely a printout dated 2nd February 2022 regarding a new category of emergency visa for Afghan nationals wishing to travel to India and that previously issued visas to all Afghan nationals, not in India, were invalidated.

7. She stated at [20]-[22]

' I have also been provided with a piece of legislation in India without any additional expert evidence or explanation as to its operation and cannot determine what the law is in India in the absence of expert evidence. The print out from the High Commission has not been updated and I do not therefore know if it remains the current process/procedure.

Judge Black found that the appellant could return to India because she was lawfully resident there and could obtain residency but that was simply on an analysis of Rule 334 of the Immigration Rules. Judge black noted the name on the electoral roll in 2018 but did not go so far as to find the appellant is a national of India. The appellant claims she was not issued with further residence cards after 2014 but that could be because it was declined, or she simply has not disclosed it, or if she was made a national she would not need a residence card.

There is no evidence to show on a balance of probabilities that the appellant would be admitted to India and thereafter would not face a real risk or degree of likelihood of refoulement to Afghanistan...'

8. The judge proceeded to allow the appeal on asylum and human rights grounds but made no further analysis in relation to Article 8 of the ECHR.

Application for permission to appeal

9. The Secretary of State applied for permission to appeal on the basis that it was unclear how the judge reached her findings at [21]-[22]. The previous Tribunal found the appellant was on the electoral roll in India in February 2018 (albeit she entered the UK illegally in 2017). As noted in the refusal letter the background evidence confirmed that only Indian citizens can vote in Indian elections and that established that the appellant was an Indian citizen. No objective evidence had been put forward to challenge the respondent's position and reliance was placed on the unproven assertions of the appellant. Given the objective evidence and the appellant's poor credibility as a witness no weight should have been attributed to her assertions. The residence permits did not assist the appellant as they only confirmed the position to 2014 leaving open the possibility of further extensions and Indian citizenship in the interim period. They did not undermine the evidence that the appellant was on the electoral roll in February 2018. The judge failed to address why she departed from the previous findings. If the information from the Indian

High Commission remained in place it should be relied upon and the Tribunal noted itself that the appellant may have chosen not to disclose their Indian status.

The hearing

10. At the hearing Mr Parvar relied upon the Secretary of State's grounds. The judge had not given good reason for departing from the findings of the previous FtT judge whose decision was comprehensive. The judge had not engaged with the decision letter and the appellant's position in response. The decision letter made clear that only Indian citizens could vote. The Secretary of State had discharged the relevant burden in relation to nationality and the judge did not engage with that and the findings were limited and brief. Minimal if any reasoning was given as to why the appellant was not a national of India. The previous issue on credibility was simply not addressed. There were competing issues which were simply not addressed. The focus on residence missed the point if she were an Indian citizen - no leave would be required.
11. The appellant's representatives had submitted a Rule 24 notice and Ms Patel submitted that the issue was whether the appellant could be returned to India. Ms Patel pointed to the fact that Judge Black previously had looked at the appellant's ability to return to India and the judge had considered the caselaw. The judge had noted that there was no expert evidence. The judge had given reasons as to why she could depart from the previous reasoning and Ms Patel referred to the witness statement of the daughter in law who opined on the ability to obtain Indian nationality. The daughter in law observed that one must live in India for 10 years to obtain Indian citizenship (the first appellant's Indian residence permit was issued in 2010).

Conclusions

12. A key issue in the matter was the position on the appellant's nationality but the judge appeared to omit from her findings whether the appellant had Indian nationality or not and merely became sidetracked with her focus being on residency. She jumped to a conclusion on whether the appellant would be admitted to India without more. It was not as the judge asserted that the matter of citizenship was only raised in the Review; it was in the decision letter. That was accepted by Ms Patel in her submissions. Although the judge relied on the lack of expert evidence to determine the matter, the simple point was whether the appellant had Indian citizenship or not and there needed to be an adequate assessment of the evidence. The Secretary of State had relied not only of the findings of Judge Black as to the appellant being on the electoral roll, but also evidence provided by the respondent from the Indian High Commission that only Indian citizens could vote. That was sufficient to discharge the respondent's burden as to nationality. As the judge recorded, the

appellant had failed herself to contact the Indian High Commission to confirm whether she had Indian nationality. That was a fundamental issue which the judge failed to resolve.

13. Although Judge Black did not, as acknowledged, go so far as to state the appellant was a national of India, that in this appeal, was for the judge to decide by resolving conflicts in the evidence. The judge herself acknowledged that although the appellant claimed she was not issued with a residence card after 2014 that could have been because she was in fact an Indian national [21].
14. The judge concentrated on TG when as can be seen from above the bona fides of the appellant in relation to key pieces of evidence was accepted by the Tribunal in that case; it was not so here. Despite the judge noting that the *previous* judge had made adverse credibility findings against the appellant and her witnesses, and the judge herself stating at [9] that the appellant had not demonstrated 'bona fides', the judge did not appear to factor this into what assessments were made and gave no good reason for not doing so.
15. For the reasons given above we find that the judge erred in law in her decision. We found the errors material.

Notice of Decision

16. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Although there was no cross challenge, Ms Patel submitted that there were no findings in relation to Article 8 at all and that was a ground of appeal and needed to be decided if the matter were remade. We consider, owing to the nature and extent of the findings to be made that the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and 7.2 (a) of the Presidential Practice Statement.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

3rd November 2023

