



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

Appeal Numbers: AA/09922/2012
AA/09924/2012
AA/09923/2012
AA/09925/2012

THE IMMIGRATION ACTS

**Heard at North Shields
On 22nd August, 2013**

**Determination Sent
On 22nd October 2013**

Before

Upper Tribunal Judge Chalkley

Between

**SAFIA AMAN
NAJAN AMAN
MOHAMMAD OMAR AMAN
SITARA AMAN**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Pickering of Counsel
For the Respondent: Mr Kingham, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first named appellant is a citizen of Afghanistan who arrived in the United Kingdom on 24th October, 2009. She was born on 11th March, 1972 and left Afghanistan on 11th October, 2009 and flew to India. She left New Delhi on 14th October, 2009 and flew to Dubai where she transited briefly before flying to the United Kingdom and arriving on 14th October, 2009. The first named appellant claimed asylum on 19th October, 2009. The other three appellants are her three children who travelled with her and arrived in the United Kingdom on the same day.
2. The respondent refused the appellant's application and directed the appellant's removal from the United Kingdom. This resulted in an appeal to the First-tier Tribunal which was heard by First-tier Tribunal Judge Cope sitting at North Shields on 11th February 2010. He dismissed the appeals of the first appellant on asylum grounds, humanitarian protection grounds and on human rights grounds and concluded that there were no valid appeals before him in respect of the second, third and fourth appellants.
3. Further submissions were made on behalf of the appellant as a result of which the respondent accepted those submissions as a fresh claim for asylum. The respondent considered, but rejected the claim and on 18th October, 2011 decided to remove the appellants. The appellants appealed and their appeal was heard by First-tier Tribunal Judge Caskie in a determination promulgated following a hearing on 26th November, 2012. The judge allowed the appellant's appeal on refugee grounds, dismissed it on humanitarian protection grounds and allowed it on human rights grounds on the basis that the appellant's Article 3 rights would be breached on her removal to Afghanistan.
4. The respondent appealed this decision and challenged it on two grounds, the first on asylum grounds in finding that the first named appellant would be at risk on return to Afghanistan as a single female without male support, given the judge's findings at paragraphs 36, 37, 70 and 73 that he did not accept the assertions made by the first named appellant that she did not know where her husband was. The Secretary of State suggested that in the light of any clear findings as to his whereabouts or as to whether he could provide male support for the appellant and her children on return to Afghanistan, the determination was defective and the judge's findings inadequate. Additionally the Immigration Judge found that the appellant's elderly relatives could not provide the kind of male support in Afghanistan, but the judge fails to give any adequate reasons for reaching such a finding.
5. The second challenge is on the basis that the judge found that the appellant's asylum claim was lacking in credibility, but it was said he materially erred by failing to give adequate reasons for finding that the appellant would be at risk of persecution in Afghanistan, given that her

account has been found to be lacking in credibility and that the judge has found that he has doubts as to whether the appellant's husband has in fact returned.

6. At the hearing before me, Mr Kingham for the respondent drew my attention to paragraphs 73 and 74 of the determination. The last sentence of paragraph 73 poses the question whether or not the appellant's husband has returned to Afghanistan. At 74 the judge says he thinks that the appellant's husband probably has returned to Afghanistan, but he cannot on the evidence before him exclude the serious possibility or risk that he has not. Having made such contradictory findings the judge went on to say that he was satisfied "by the very narrowest margins that she would not be returning to Afghanistan to join her husband there".
7. Counsel sought to persuade me that the determination was sound, but having heard the Presenting Officer's submission and having considered what the judge said at paragraph 74, agree that there are difficulties with that the judge has found.
8. I have concluded that the determination does contains errors of law in that the judge has very clearly made findings that the appellant is in contact with her husband and then makes contradictory findings in paragraph 74, by suggesting that her husband "probably has" returned to Afghanistan and then finding that he could not exclude the serious possibility or real risk that he has not.
9. I was told by Counsel that there were in fact two refugee claims made by the appellant, the first based on political reasons and the second based on the fact that on return to Afghanistan the appellant would be a single female returning without male support. It was agreed that the findings made by the judge at paragraphs 34, 36 and 37 to and including 73 would all be preserved. The questions to be determined are whether on return to Afghanistan the first named appellant would be a lone female without male support in Afghanistan on which she could rely. Clear findings on whether on the evidence the appellant's husband has returned to Afghanistan or whether if he is not currently in Afghanistan he could return to Afghanistan in readiness to meet the first named appellant and her children on her return to Afghanistan needs to be made, as does a finding as to whether or not the appellant may have other male family members who might be in a position to offer her support.
10. Paragraph 7 of the Senior President's Practice Directions provides as follows:

"7.1 Where under Section 12.1 of the 2007 Act proceedings on appeal to the Upper Tribunal, the Upper Tribunal finds that the making of a decision concerned involved the making of an error on a point of law the Upper Tribunal may set aside the decision and if it does must either remit the case to the First-tier Tribunal under Section 12(2)(b)(i) or proceed

in accordance with the relevant practice directions to remake the decision under Section 12(2)(b)(ii).

- 7.2 *The Upper Tribunal is likely on each such occasion to proceed to remake the decision instead of remitting the case to the First-tier Tribunal unless the Upper Tribunal is satisfied that (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal, or (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be remade is such that having regard to the overriding objective in Rule 2 it is appropriate to remit the case to the First-tier Tribunal.*
- 7.3 *Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found even if some further fact finding is necessary."*

11. I indicated to the representatives earlier today that it is difficult for me to rearrange a hearing in North Shields, because of listing difficulties and because I am not going to be available from the end of October for an uncertain period. I reminded them of the provisions of the Senior President's Practice Directions and both were in agreement that this was a suitable case, given the length of time the parties would have to wait, for the matter to be relisted before me in North Shields were I to remit the appeal for rehearing by the First-tier Tribunal before a First-tier Tribunal Judge other than First-tier Tribunal Judge Caskie.
12. In view of the overriding objective informing the onward conduct of this appeal I have decided that it will be remitted to the First-tier Tribunal. Clear findings are needed as indicated above and clear findings would also of course be necessary in respect of the appellant's Article 8 appeal.

Upper Tribunal Judge Chalkley