



IAC-TH-CP-V1

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

Appeal Numbers: AA/07432/2014
AA/07434/2014
AA/07436/2014
AA/07429/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2015**

**Decision & Reasons Promulgated
On 13 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

SFH (1)

GF (2)

MOF (3)

FF (4)

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Pretzell, Counsel instructed by Harris Ali Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeals

1. The Appellants, respectively a husband and wife and their son and daughter, citizens of Pakistan, appealed against the refusal of their political asylum applications. The first Appellant, the father, sadly passed away a week before the hearing. The appeals of the other Appellants were heard on 27 April 2015 at Hatton Cross by Immigration Judge Housego. Both parties were represented, the Appellants by Mr Pretzell. In a decision of 30 May, promulgated on 3 June, 2015, the appeals were dismissed on political asylum and Articles 3 and 8 human rights grounds.

2. Permission to appeal was granted by Judge Osborne on 30 June 2015 in the following terms:

“1. The grounds seek permission to appeal a decision and reasons of First-tier Tribunal Judge Housego who in a decision and reasons promulgated 3 June 2015 dismissed the Appellants’ appeals on asylum, humanitarian protection and human rights grounds.

The appeal of SFH (AA/07432/2014) is discontinued as he died a week before the appeal hearings.

2. The grounds assert that the Judge misdirected himself and failed to consider relevant evidence and failed to give adequate reasons for his findings, thereby falling in material error of law. At [80-89] the Judge identified a number of discrepancies in the evidence which led to his rejection of the account of events in Pakistan. In assessing this evidence he failed to take into account his own acceptance that MOF is homosexual [92] and had attempted suicide Pakistan [91] and the objective evidence about the position of homosexuals in Pakistan. The Judge accepted the Appellant’s claim to be homosexual and that two of the Appellants had attempted suicide. The objective evidence establishes that Pakistan is a country where homosexuals may be at risk. The Judge should have considered whether the inconsistencies he identified might represent further embellishment of a genuine claim but he failed entirely to consider that possibility. The Judge made no finding of fact about the reason for MOF’s attempted suicide. He failed to direct himself or to consider that this was an attempted suicide by a young male homosexual in a country where homosexual acts are criminalised, regarded as sinful, and expose the perpetrators potentially to death or very serious harm. The Judge failed entirely to consider this matter beyond rejecting the specific claim to have been caught in flagrante. He failed to consider whether the attempted suicide was likely to be related to MOF’s homosexuality and the potential consequences. The Judge accepted that MOF had adopted a homosexual lifestyle in the United Kingdom but held that he had not done so in Pakistan. The wording of [92] is obscure and the meaning of the Judge is wholly unclear.

3. In an otherwise careful and focused decision and reasons it is nonetheless arguable that the Judge’s words at [92] are obscure and unclear. It is arguable that the Appellants should know precisely why the appeals were dismissed but it is arguable that the wording of [92] is too difficult to understand. The obscure wording is in itself capable of amounting to a material error of law. It is further arguable that the Judge’s findings at [95] is a further material error of law. If MOF has

adopted a gay lifestyle in the UK but the Judge finds that he would not do so in Pakistan then the Judge arguably should have gone on to consider why he would not do so in Pakistan. If the answer to that question is due to a fear of persecution, then it is arguable that the Judge should have decided the appeal differently.

4. As these arguable errors of law have been identified, all the issues raised in the grounds are arguable.”
3. In a Rule 24 response of 7 July 2015 the Respondent submitted that the decision did not reflect any error of law and should be upheld.
4. The second, third and fourth Appellants attended the error of law hearing before me on 8 October 2015. Both representatives made submissions, Mr Pretzell expanding upon his comprehensive skeleton argument. I reserved my decision.

Decision

5. My findings are, concisely, those which Judge Osborne found at paragraph 3 of his decision to be arguable. In relation to the second Appellant, the key paragraph in the decision is paragraph 92. Sadly this is obscure to the point of being unintelligible. At paragraph 12 of his skeleton argument Mr Pretzell discusses three possible constructions of it. Paragraph 95 does not explain how it is that the Appellant can reasonably be expected to adopt a discreet lifestyle in Pakistan, the more so in the light of **HJ (Iran) and HT (Cameroon)** [2010] UKSC 31 with the “Lord Hope test” in paragraph 35 of that judgement.
6. Paragraph 93 of the decision treats as irrelevant the action of the fourth Appellant which, according to her evidence, was a consequence of the second Appellant’s orientation. To decline to reach a finding about this was itself a material error of law.
7. Although in other respects full and careful, the key findings in the decision of Judge Housego are uncertain and flawed to the extent that the decision cannot stand. I have therefore to set it aside.

Disposal

8. In this event Mr Pretzell urged me to allow the appeal of the second Appellant, on the basis that, based upon the judicial findings, the weight of the background evidence so dictated. He accepted that the appeals of the third and fourth Appellants would have to be reheard. Mr Tarlow submitted that the circumstances of the three Appellants were inseparable, so that their appeals should be reheard together.
9. I recognise the force of Mr Pretzell’s submission in narrowing the issues for decision. I have however concluded that, since all of the appeals turn upon the orientation of the second Appellant, I ought not, as a judge who

has not heard evidence, to reach a determinative finding, based upon a decision which I have set aside, which would limit the fact-finding scope of the judge who has to hear evidence of the third and fourth and perhaps in any event of the second Appellant. I have therefore concluded that the three appeals require to be reheard in their entirety. No part of the first decision is preserved. Since this will involve traversing a substantial volume of evidence, it is appropriate for the appeals to be reheard in the First-tier Tribunal, by any judge other than Judge Housego.

Decision

10. The original decision contained an error of law and is set aside.
11. The appeal is to be reheard in the First-tier Tribunal by any judge other than Judge Housego.
12. The anonymity direction is preserved.

Signed

Dated: 12 October 2015

Deputy Upper Tribunal Judge J M Lewis