



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12035/2016
PA/12040/2016
PA/12042/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17th January 2018

Decision & Reasons Promulgated
On 20th February 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

AF
W
E

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones instructed by Farani-Javid-Taylor solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION 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 AF (first appellant), W (second appellant and E (third appellant). This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellants sought and were granted permission to appeal against the decision of First-tier Tribunal Judge Jerromes who dismissed their appeals

against a decision of the respondent refusing their international protection claim. Permission was granted on the grounds that it was arguable that First-tier Tribunal Judge Jerromes did not explain why he rejected the second appellant's evidence, that it was arguable there was a failure to engage with oral evidence, that it was unclear what findings had been made about the second appellant's fears and that although the judge rejected the transcript of the recording of the telephone call, he has still placed some adverse reliance upon it.

Background

2. The appellants are citizens of Pakistan. AF applied for asylum. Linked to her application and the respondent's decision are her two children W (born 2001) and E (born 2011). The basis of the asylum claim was that she and/or her two daughters will face domestic violence and/or be killed by AF's husband, Mr A, and that W will be forced into marriage by her father, AF's husband. AF claimed to have been a victim of domestic abuse by her husband; that he has been threatening her and that in March 2016 Mr A informed her that he intended to marry W to someone of his choice.
3. The appellants applied for and were granted visit visas. They entered the UK on 5 February 2016 and claimed asylum on 18th April 2016. The application for asylum was refused on 17 October 2016 and it is the appeal against that decision which was heard by First-tier Tribunal Judge Jerromes on 17th May 2017 and dismissed for reasons set out in a decision promulgated on 31st May 2017.

Error of law

4. Mr Bramble acknowledged that the judge had not stated what weight he gave to W's evidence – whether he accepted her evidence or not and the impact upon his decision of that evidence. There was, he said some confusion as to the exact meaning of paragraph 27 of W's witness statement which should have been resolved through oral evidence and in a finding by the judge. He submitted that even though no finding had been made in connection with her evidence, there were other findings which, taken overall, resulted in the conclusion that the main appellant and the two children could return to Pakistan.
5. The First-tier Tribunal judge heard evidence from W and her mother. He failed to consider this evidence and reach a finding on the weight to be given to it, in reaching his decision. The evidence was critical to an evaluation of the risks posed to the family on return to Pakistan given that the judge accepted the main appellant had been the victim of domestic violence.
6. The judge erred in law in failing to take into account and reach a finding on direct evidence given. That feeds into the finding on risk on return. I set aside the decision to be remade.

Remaking the decision

7. There was no interpreter booked. I indicated that the only evidence that would be required, given the submissions made during the discussion on whether there was an error of law in the First-tier Tribunal decision, would be that of W. Ms Jones expressed some concerns whether that should proceed today given that Mr Bramble may not have received training on the interviewing of vulnerable witnesses. I indicated that I was sure that Mr Bramble, if he has not had specific training, was aware of the proper safeguards to be considered and that questioning would be restricted to the issues that were in dispute. I put the hearing back for Ms Jones to take instructions and, having taken instructions she agreed that the hearing could proceed and that W would give evidence in English (in which she was fluent).
8. In the event, Mr Bramble had no questions; I had a few.
9. In her oral evidence W confirmed that she had heard her father and mother arguing on the phone because it was on speaker phone because it was being recorded. Her father had telephoned earlier and her mother had told her grandmother who had said that when he calls back to record it and then play it back to her uncle, who was not in the house at the time of the phone calls. W said she heard her father say that he wanted her to get married to someone of his choice and she heard her mother say that she did not want this.
10. The First-tier Tribunal judge found that AF had been a victim of domestic violence. This finding was not challenged by the respondent.
11. The appellants rely upon an expert report by Uzma Moeen, former senior lecturer in Pakistani law at several law colleges in Pakistan since 1996 and an Associate of the Asian Legal Advice Service, UK. She records in her report her full understanding of her duty in providing expert reports. She set out in detail her qualifications and experience and Mr Bramble took no issue either with her expertise or the content of her report. The First-tier Tribunal judge had accepted the background evidence with regard to forced marriages.
12. Mr Bramble stated that if I were to accept that W's father intended to force her to marry then there would be a risk on return. He accepted that internal relocation was not a viable possibility because the need to register would mean that the appellants could be traced. Mr Bramble acknowledged that the evidence indicated that Mr A retained an interest in the appellants but that the core of the case came down to a decision on whether or not he intended to force W to enter into a marriage of his choosing. Crucial evidence in that regard was the alleged telephone conversation on 7th March 2016, upon which W gave oral evidence.
13. That telephone call took place in Urdu. A non-certified translation was provided and there was some confusion as to who actually provided the English transcript, whether it was a cousin or brother or a mixture of both. If that were the only evidence of the claimed telephone conversation that would be very unsatisfactory. Nevertheless, W's evidence was highly consistent and corroborative of the content of the telephone conversation. W gave very little oral evidence before me but gave extensive evidence, it seems, before First-tier Tribunal Judge Jerome. Her evidence was believed and formed a significant

element of the First-tier Tribunal judge's findings that AF had been physically and mentally abused and that W herself had been physically abused. W's oral evidence before me provided more detail than was in her witness statement of how the recording of the telephone conversation came about. Other evidence from NHS records and counselling records is supportive of W's evidence both as to the domestic violence and the threatened forced marriage.

14. I find W credible and accept her evidence. I find that Mr A did telephone AF and threaten her and say that he intended to arrange a marriage for W to a person of his choice. I find that AF objected to this and there ensued an argument between them. I am satisfied that the threat of forcing W is not only perceived by W to be a real threat but is in fact a real threat.
15. Mr Bramble confirmed that if I were to make the findings as set out in paragraph 14 then there was no need for me to further consider the issues. W would be at risk of a forced marriage, the family could be traced, internal relocation was not a viable option and there was no sufficiency of protection.
16. The objections by AF to W's marriage would, I find, place her at serious risk of further violence from her husband who would, because of the registration system outlined in the expert report, be able to trace her.
17. Accordingly, I am satisfied that all three appellants are at risk of being persecuted for a Convention reason if removed to Pakistan.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and re-make the decision in the appeal by allowing it.

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 15th February 2018

Upper Tribunal Judge Coker