



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000277
UI-2023-000280
First-tier Tribunal Nos:
PA/50037/2022; IA/00112/2022
PA/50556/2022; IA/01584/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18 April 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**AZOH (FIRST APPELLANT)
HAZ (SECOND APPELLANT)
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr H Sadiq, Solicitor, Adam Solicitors
For the Respondent: Ms J Isherwood, Senior Presenting Officer

Heard at Field House on 24 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants (and/or any member of their family, expert, witness or other person the Tribunal considers should not be identified) are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellants appeal against the decision of First-tier Tribunal Judge Malik dismissing their appeal against the refusal of their protection claims. The decision was promulgated on 21st December 2022. The Appellants applied for permission to appeal against that decision which was granted by First-tier Tribunal Judge Dempster in the following terms:
 - “1. The in time grounds assert that the judge erred in two material ways.
 2. Ground 2 asserts that the judge, in finding the appellants could be returned to any airport in Federal Iraq or the IKR without identification documents made a material error of law as they failed to have regard to SA (Iraq) [2022] UKUT 00037. Notwithstanding that the judge at [15] found that the appellants would be able to obtain their documents as they found the appellants retained contact with family members, nevertheless, when finding that the appellants could be removed to any part of Iraq or the IKR, concluded that *‘This I find would not place them at risk of harm’* [16]. It is arguable that the judge made a material misdirection of law.
 3. For the avoidance of doubt, this grant is not limited to the ground above. The other ground may be advanced at the oral hearing”.
2. The Respondent provided the Appellant and the Upper Tribunal with a Rule 24 response which I have taken into account in reaching this decision.

Findings

3. At the close of the hearing I reserved my decision which I shall now give. I do not find that the Grounds of Appeal demonstrate a material error of law for the following reasons.
4. At the outset of the hearing, Mr Sadiq, on behalf of the Appellants, indicated that he was no longer placing reliance upon paragraphs 5-8 of the Grounds of Appeal which effectively resulted in an abandonment of the second Ground of Appeal regarding a risk on return and availability of documentation in Iraq. The sole remaining Ground of Appeal therefore pertains to the First-tier Tribunal Judge’s refusal to grant an adjournment which is challenged in paragraphs 3-4 of the Grounds of Appeal. The decision to refuse the adjournment application can be seen in paragraph 5 of the judge’s decision and reasons under the heading Preliminary matter. As prayed for in the grounds, Mr Sadiq in essence argued that the application to adjourn was made on the day of the hearing (i.e. 7th December 2022) on the basis that the first Appellant’s wife (who is also the second Appellant’s mother) had recently arrived in the UK in August 2022. She had sought asylum in the UK and her claim was pending consideration from the Home Office. It was stated that she has direct and first-hand knowledge of the core of the Appellants’ case and it was submitted that the family members had not yet met although there was telephone contact between them. It was contended by Mr Sadiq that it was a material legal error to refuse the adjournment application because the overriding objective demanded that the adjournment was necessary in order to have a fair and just hearing and, notwithstanding any delay that might be caused in an adjournment of the

proceedings, it was key to the Appellants' case that the witness, who has relatively recently arrived in the UK and represented by a different firm of solicitors with limited contact between her and her family living some distance apart in London and Manchester, be able to give evidence which was said to be fundamental in core to the honour based case.

5. Turning to the judge's findings at paragraph 5, Judge Malik notes that the adjournment was first raised at the start of the hearing on the basis that the witness had now arrived in the UK and that she had made a protection claim on what he notes was an identical basis to that of the Appellants. The decision reflects that no decision had been made in her asylum claim and that she had not even been substantively interviewed at that time. It was argued before the judge that the appeal should be adjourned to enable her to give evidence. In the event, the judge states that as the witness had been in the UK since August 2022 he considered there had been ample opportunity for her to provide a statement and/or to attend the hearing which took place on 7th December 2022, or to seek an adjournment long before the morning of the hearing before the First-tier Tribunal. For those reasons Judge Malik did not consider it in the interests of justice to delay the appeals further and refused the adjournment application.
6. I have found the cursory grounds to be somewhat unhelpful in assessing the fairness in refusing the adjournment application by the First-tier Tribunal Judge and whether or not it was a reasonable decision bearing in mind the overriding objective. This is chiefly because the grounds do not give any detail whatsoever as to the evidence that the witness would have given in relation to the Appellants' protection claims. Notwithstanding that the Grounds of Appeal mention that the witness was going to give evidence that was core to the honour based risk, it transpires that Judge Malik is correct in his statement in the decision that the witness's protection claim and that of the Appellants was on an identical basis. In essence, Mr Sadiq in expanding upon the Grounds of Appeal, argued that the evidence of the witness would indeed have been in identical terms to that of the Appellants and would not have covered any new material at all. I explored further with Mr Sadiq whether there were any new events or elements of risk that might be germane to the Appellants' account owing to the witness's later arrival in the UK in August 2022, however Mr Sadiq again candidly clarified that his instructions were that there was no new factual element of risk that the witness would have given evidence upon.
7. It is an unfortunate series of events that seems to have led to the late adjournment application on the morning of the hearing. Mr Sadiq, in enlarging upon the grounds, stated that the Appellants had only made him aware of the witness's arrival and willingness to give evidence on the morning of the hearing on 7th December 2022. In short, he was instructed that notwithstanding that the witness had arrived in the UK some four to five months earlier in August of the same year, his lay clients had panicked over and been preoccupied by housing and funding and the inability to see each other instead of the evidence she might be able to give to enhance their claims. I queried whether Mr Sadiq has asked the Tribunal to put the matter to the back of the list, instead of adjourning the hearing to another day, or a hearing link could be generated so that the witness could join the hearing to give evidence with a witness statement being settled in the interim whilst this was arranged and/or the matter put back. Unfortunately, these options were also not explored nor suggested by Mr Sadiq.

8. As I have stated, I have had difficulty in deciding this matter as it does appear at first blush that it would have been difficult for the Appellants and their witness to coordinate her participation when the witness and the Appellants had not even met in the UK (notwithstanding that she had entered the United Kingdom several months earlier), however the real difficulty arises from the Appellants' failure to timeously convey instructions to Adam Solicitors in relation to the witness's ability and desire to give evidence to support their claim. This was a particularly glaring oversight as this hearing had in truth arisen following a fresh claim and the starting point for Judge Malik was the previous Tribunal Judge's decision from 2019 pursuant to *Devaseelan*. Therefore, I am uneasy as to the judge finding that there was "ample opportunity" to provide a statement in the context of the above scenario, as well as the witness having time to arrange to attend the hearing since her arrival.
9. However, stepping back and taking a holistic view of the application and the evidence the witness would have brought to Judge Malik's attention, I am not minded to find there was a material error in refusing the adjournment application as the witness's evidence was apparently going to be in identical terms to that of the Appellants (accepting Mr Sadiq's submissions at face value). Given that fact, and given the list of inconsistencies highlighted by the First-tier Tribunal in paragraphs 11(a) to (g) of Judge Malik's decision and reasons, the majority of the adverse findings turn to a great extent upon inconsistencies between the documents and the Appellants' account. To my mind if the witness was simply going to corroborate the account already given by the Appellants, I do not see that this would have made a material difference to the outcome of the appeal. Indeed, it is unfortunate that the Appellants had not sought, even now, to put before the Tribunal a witness statement for the purposes of this hearing on 24 March 2023 (submitted on the basis of Rule 15(2A) of the Procedure Rules) to illustrate the evidence that the witness could have potentially given had the adjournment application been acceded to by Judge Malik. That evidence may have assisted in highlighting the parts of the Appellants' case that the witness could have given evidence upon, and indeed which may have lent support to the submission now made today, that her evidence may have had a bearing upon the outcome of the appeal. However, given the lack of any indicative witness statement and having heard from Mr Sadiq that her account was going to be in identical terms to that of the Appellants, in my view there is no material error of law in the judge's refusal to adjourn the appeal hearing as the witness's evidence would not have had any material impact upon the outcome of the proceedings below.
10. In light of the above findings, I find that the decision of the First-tier Tribunal does not contain any material error of law.

Notice of Decision

11. The appeal to the Upper Tribunal is dismissed.
12. The decision of the First-tier Tribunal shall stand.

Deputy Upper Tribunal Judge Saini

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