



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003994
UI-2023-003995, UI-2023-003996
UI-2023-003997

First-tier Tribunal No:
HU/57700/2022
HU/57701/2022, HU/57702/2022
HU/57704/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MM
AM
AM
AM

(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. M. Azmi, Counsel instructed by Axis Solicitors Limited
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 5 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellants 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge Juss, (the “Judge”), dated 24 July 2023, in which he dismissed the Appellants’ appeals against the Respondent’s decision to refuse their protection and human rights claims. The Appellants are nationals of Pakistan.
2. Permission to appeal was granted by First-tier Tribunal Judge Veloso in a decision dated 20 September 2023 as follows:

“Ground 1 does not dispute the judge’s reference at [19] that the appellants’ asylum claim had before been certified as ‘without foundation’. The judge then sets out their reasons for finding the claim not credible. Contrary to Ground 2, the judge refers on a number of occasions to the appellants’ 2 affidavits, which they considered alongside the remainder of the evidence. The mere existence of the affidavits does not mean that the judge is required to find that the first appellant will be associated with his driver on return to Pakistan and therefore is at risk. Also relevant to that assessment is the fact that he returned to Pakistan following his driver’s killing, his wife and family were not attacked and even after the killing his work was ongoing through his 2 workers. The grounds do not dispute that this was the first appellant’s evidence. Ground 3 fails to take into account his evidence that the police were proceeding with his complaint and as soon as anything is known they will get back to him, the police never refused to help him and never attacked him. This is relevant to the assessment of the availability of protection in Pakistan.

Grounds 4: it is arguable that the judge erred in law in their assessment of Art 3 -health claim with regards to the fourth appellant’s mental health issues. The fact that medical treatment is available in Pakistan does not of itself address the relevant test as set out in AM (Zimbabwe) [2020] UKSC 17.

Grounds 5 through to 7: it is arguable that the judge erred in failing to make any detailed findings on para 276ADE(1)(vi), which are relevant to the Art 8 ECHR assessment. It is furthermore arguable that the judge erred in failing to consider the welfare of the fourth appellant, bearing in mind the medical evidence’s reference to mental health issues including suicide. Whilst there is no specific requirement on how to set out a balancing exercise in a decision, it is arguable that the judge erred in failing to carry out the said exercise.

Whilst Ground 1 through to 3 amount to mere disagreements, Ground 4 through to 7 do disclose an arguable error of law.”

3. There was no Rule 24 response.

The hearing

4. At the outset of the hearing Mr. Lawson conceded that the decision involved the making of material errors of law in the Judge’s failure to adequately consider Articles 3 and 8. He asked that the appeal be remitted back to the First-tier Tribunal to be reheard de novo in relation to these two issues, but that the findings on the asylum appeal be preserved.
5. Mr. Azmi did not pursue Grounds 1 to 3. Given the absence of any findings on Articles 3 and 8 he submitted that the appeals should be remitted back to the First-tier Tribunal for consideration of Article 3 - medical grounds, and Article 8 - medical, private and family life grounds.

Error of law

6. I find that the decision involves the making of material errors of law in the failure to give adequate consideration to Articles 3 and 8.
7. The findings are from [18] to [27]. The Judge first considers the Appellants' asylum claim. Although the grounds of appeal asserted errors of law in this consideration, given the position of the Judge who granted permission to appeal, Mr. Azmi did not pursue these grounds.
8. The Judge deals with the Appellants' medical issues at [22]. He states:

"Fourth, as for the claim that each of the family members have mental health issues of their own (see pp. 42, 43, 44 , 48), I am satisfied that these are all matters which can be treated in Pakistan equally as well. I have considered the several NHS letters and reports with respect to their alleged health condition. I am satisfied that these can be treated in Pakistan. There is a letter which states that the daughter, the Fourth Appellant is at risk of committing suicide, but I am satisfied that such treatment as she is receiving here can be replicated in Pakistan and that removal will not lead to an increase in risk such that Article 2 and 3 of the HRA are violated. If she returns to Pakistan she will not be able to access medical care there."
9. As submitted in the grounds at [6], I find that the Judge has not engaged with the evidence provided relating to the fourth Appellant. He has not engaged with the psychotherapist's report, and has failed to give adequate reasons for his finding that the fourth Appellant will be able to access medical care in Pakistan. The consideration of her risk of suicide and self-harm is cursory. I find that this amounts to a material error of law.
10. The Judge deals with Article 8 from [25] to [27]. He states:

"As for the Appellants' Article 8 rights, the Appellants cannot succeed under Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) for the reasons set out in the refusal letter. The question is whether there are "exceptional circumstances" here. The Appellants obviously do not succeed inside the rules. The question is whether they succeed outside them. I find that they do not. This is because as the decision in *Agyarko* [2017] UKSC 1 explains, "the European Court's use of the phrase 'exceptional circumstances' in this context was considered by the Court of Appeal in *MF (Nigeria)* [2013] EWCA Civ 1192 (paragraph 56). The Supreme Court goes on to say that,

"Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of the Immigration Rules, only where there are 'insurmountable obstacles' or 'exceptional circumstances' as defined." (Paragraph 57)."
11. At [26] the Judge sets out another paragraph from *MF (Nigeria)* [2013] EWCA Civ 1192. At [27] he concludes:

"I am satisfied that there will not be 'unjustifiably harsh consequences' to the Appellants, for the reasons I have already identified above, if they were to be returned to Pakistan now. They have spent the majority of their lives there. They would all be returned together as a single family unit. They would find no difficulty in being able to re-integrate into Pakistani society at the first available opportunity."

12. This is the extent of the Judge's consideration of Article 8. As accepted by Mr. Lawson, there is no consideration of the "very significant obstacles" test under paragraph 276ADE(1)(vi). There was evidence before him relating to the mental health of all four Appellants, but there is no reference to that. There is no reference to the "best interests" test in relation to the fourth Appellant.
13. I find that the Judge has failed to carry out any assessment of the evidence before him relating to the Appellants' circumstances. He has failed to give reasons for his finding that the decision does not breach Article 8. I find that this is a material error of law.
14. I have taken into account the case of Begum [2023] UKUT 46 (IAC) when considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. At headnote (1) and (2) it states:

"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."
15. I carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal, together with the concession by Mr. Lawson. There has been no effective consideration of the Appellants' claims under Articles 3 and 8. There are no findings relating to the Appellants' circumstances. I therefore consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

16. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside in relation to Article 3 - medical, and Article 8.
17. The finding that the Appellants' appeals are dismissed on asylum and humanitarian protection grounds is preserved.
18. The appeal is remitted to the First-tier Tribunal to be reheard de novo only in relation to Article 3 - medical, and Article 8.
19. The appeal is not to be listed before Judge Juss.

20. The appeal is to be listed after 6 February 2024 to enable the Appellants to obtain updated medical evidence.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
11 December 2023