



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

**Case No: UI-2024-002568
UI-2024-002569**

**FtT No: PA/54059/2023
LP/03125/2023
RP/50085/2023 LR/00057/2023**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

L S M

J S M

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Wain, Senior Home Office Presenting Officer

For the Respondent: Miss Eastfield, Counsel

Heard at Field House on 14 August 2024

DECISION AND REASONS

1. Whilst it is the Respondent who is seeking leave to appeal today, we have hereinafter referred to the parties as they were identified in the First-tier Tribunal. LSM and JSM will be referred to as the Appellants and the Secretary of State for Home Department will be referred to as the Respondent.

2. The Appellants are father and son. The Respondent accepted LSM is an Afghan national but also had Indian citizenship and JSM was said to be an Indian citizen and had disputed Afghan citizenship. They entered this country on 10 February 2017 and claimed protection on 13 February 2017. Both claims were refused in a decision letter dated 23 June 2023. The Appellants appealed this decision and their appeals came before Judge of the First-tier Tribunal Dineen (hereinafter called the FTT Judge) on 9 February 2024 and he allowed their appeals on asylum and human rights grounds.
3. The Respondent appealed against that decision and permission to appeal was granted by First-tier Judge Buchanan on 3 June 2024 who stated:

“2. The Grounds of Appeal [GOA] contend that the FTT] arguably erred in law because:

- (1) “the finding made on impermissible dual nationality was [made] in the absence of any evidence” and made in reliance upon an unreported decision of another FTT];
- (2) inadequate reasons are given for the conclusion drawn about risk of persecution because of religion.

3. Ground One is arguable that there is no reasoned decision made by the FTT] on the matter of nationality or dual nationality. It is recorded that the Respondent accepts that the first appellant has Afghan citizenship. The FTT] does not positively decide that the second appellant is a national of Afghanistan. There are no positive reasons stated for concluding that it would not be open to hold dual nationality; and there is nothing to explain why it must be ruled out that an Afghan National cannot contemporaneously be found on an examination of the facts by the IAC to be an Indian citizen too [assessed according to national laws of Afghanistan and/or India, or assessed on principles of private international law or public international law].

4. Ground two is arguable that the cited sources at [24], which mentions ‘militants’ having targeted Sikhs is insufficient evidence upon which to reach a concluded view on ‘state’ protection to that community.

5. It is arguable by reference to the Grounds of Appeal that there may have been error of law in the Decision as identified in the application. I grant permission to appeal.”

SUBMISSIONS

4. Mr Wain adopted the grounds of appeal and the grant of permission and submitted the FTT Judge failed to make findings on nationality and in particular as to whether the Appellants were nationals of India or Afghanistan.

5. The FTT Judge had evidence of Indian passports for both Appellants (page 282 and 140 respectively) and there was also evidence of Indian citizenship and entry clearance reference to nationality (see pages 158, 382 and 281 of the bundle). Whilst the Appellants claimed these passports were not genuine the FTT Judge made but no findings either way. The FTT Judge's finding at paragraph [22] was based on dual nationality and the previous decision of Judge Grey but there was no evidence of this in the bundle. The FTT Judge referred to paragraph [60] of Judge Grey's decision but that reference is incorrect as he was not considering whether they were Indian nationals. At paragraph [16] the FTT Judge referred to the passport being obtained at same time but again this was not a finding that JSM was a national of Afghanistan. Judge Grey was only looking at risk in Afghanistan and in any event the decision was unreported and circumstances were different and no evidence of an application to rely on that decision.
6. Mr Wain further argued that there was inadequacy of reasoning on risk on return as Sikhs. The only finding was in paragraph [22] and there was no evidence there had been any consideration of the Respondent's evidence (paragraphs 6.7.23 and 6.7.25 of CPIN).
7. Miss Eastfield opposed the application. She submitted the previous decision of Judge Grey was not just a random decision but in fact related to the Appellant's family and Judge Grey had referred to the Appellants in his decision. She relied on the decision of SSHD v Patel [2022] EWCA Civ 26 and submitted the FTT Judge was entitled to rely on findings and reasoning from this decision. Whilst Miss Eastfield accepted the FTT Judge could have written the decision in more detail and explained the connection between the parties in this appeal and that of Judge Grey better that did not mean the findings were not open to the FTT Judge.

DISCUSSION AND FINDINGS

8. The fact the FTT Judge's decision was extremely brief does not necessarily mean there is a material error in law. As in any application it is necessary to consider both the decision and the grounds of appeal.
9. The FTT Judge allowed the appeal because he accepted the findings of Judge Grey and concluded that neither Appellant could hold dual nationality and consequently as they were Afghan nationals they could not also be Indian nationals. Miss Eastfield acknowledged the FTT Judge could have provided a more detailed decision and in particular could have explained why he followed the decision of Judge Grey, but the finding was open to him.
10. It was unclear from the FTT Judge's decision who Judge Grey had been dealing with and the connection of the applicants in that case to this case and on first reading it appeared to be an unreported decision on similar facts.

11. Rule 8 of the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal states:

“8.1 A decision or judgment of any court or tribunal which has not been reported may not be cited in proceedings unless:

(a) the person who is or was the appellant before the Tribunal, or a member of that person’s family, was a party to the proceedings in which the previous decision was issued; or

(b) the Tribunal gives permission.

8.2. An application for permission to cite an unreported decision or judgment must:

(a) include a full transcript of the decision or judgment;

(b) identify the proposition for which the decision or judgment is to be cited; and

(c) certify that the proposition is not to be found in any reported decision or judgment.”

12. Miss Eastfield helpfully took the Tribunal through this decision (pages 48-74 of the bundle) and demonstrated that Judge Grey’s decision mentioned both the Appellants and paragraph [24] of this decision identified the Appellants as being the son and grandson respectively of the first-named Appellant in the appeal before Judge Grey.

13. Following Rule 8.1 of the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal I am satisfied the FTT Judge was entitled to not only admit this decision but he was also entitled to take judicial notice of the decision itself in circumstances where the issues were the same.

14. On the facts before the FTT Judge the Respondent accepted the first-named Appellant had Afghan citizenship obtained on 8 August 2019 but did not accept the second-named Appellant had obtained Afghan citizenship but asserted he was an Indian national. In the bundle of evidence there was evidence the second-named Appellant obtained his Afghan passport on the same day as his father and those of the parties (the second-named Appellant’s grandparents) who appeared before Judge Grey. The FTT Judge accepted this document as evidence that the second-named Appellant had an Afghan passport and concluded, for the reasons provided by Judge Grey, that the Appellants only held Afghan nationality and could therefore not reside in India.

15. Mr Wain argued the FTT Judge erred in his approach to the issue of nationality and in his finding the second-named Appellant had Afghan citizenship. The FTT Judge accepted the evidence in the bundle demonstrated the second-named Appellant held an Afghan passport and in such circumstances contrary to the grounds of appeal I am satisfied this was a finding open to the FTT Judge.

16. The second issue was whether the FTT Judge erred in finding that neither Afghan nor Indian nationals could hold dual citizenship. The FTT Judge accepted this argument based on what Judge Grey said.
17. Mr Wain argued there was no evidence to support the finding in the bundle save for what Judge Grey had said despite this being a live issue. Judge Grey's decision referred at paragraph [45] to the fact that the Indian Citizenship Act 1955 did not allow dual citizenship and in his submissions to me Mr Wain did not dispute this submission.
18. Mr Wain argued that the FTT Judge needed to make a finding as to whether the Appellants were Indian or Afghan nationals and he submitted the FTT Judge had failed to do this. I disagree as it can be implied from his finding at paragraph [23] that the FTT Judge accepted the Appellants were Afghan nationals as he found they could not reside in India. Mr Wain's submission that this was not a finding the second-named Appellant was an Afghan national lacks merit against a background there was a passport and the remainder of the family had been issued passports bearing the same date and there was no issue over their nationality. I therefore reject this ground of appeal.
19. The second issue centred around inadequacy on risk on return given there was no consideration of the CPIN referred to in the decision letter. Miss Eastfield conceded the decision could have been more detailed but argued that the findings were open to the FTT Judge.
20. The FTT Judge allowed the appeal both on asylum and human rights grounds departing from what Judge Grey had found in 2019. His reasons for departing from that decision were set out in paragraph [24].
21. I accept Mr Wain's submission that the reasoning failed to take into account the Respondent's arguments and this becomes more significant when you look at Judge Grey's findings on risk of persecution and serious harm. Both claims were rejected by Judge Grey who only allowed the appeal on article 8 grounds on the basis there would very significant obstacles to their reintegration.
22. I accept Mr Wain's submission there was inadequate reasoning on the asylum or article 3 claims for the reasons and I also note there was no assessment of the evidence outside of the asylum and article 3 claims. I therefore find there was an error in law.
23. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it 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 re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
24. Following an earlier discussion with the representatives I find this is a case which should be remitted back to the First-tier Tribunal for a full hearing.
25. In remitting the same I do preserve the finding the Appellants are Afghan nationals and can only be returned to Afghanistan because India does not recognise dual nationality.
26. I issue the following directions for the disposal of this matter:
- c. Matter to be listed before any Judge other than Judge Dineen at Hatton Cross Hearing Centre.
 - d. Matter to be listed for three hours.
 - e. If an interpreter is required the court should be notified not less than 14 days before any substantial hearing.
 - f. The Tribunal will need to consider whether as Sikhs would the Appellants face a real risk of persecution or serious harm or alternatively whether there are very significant obstacles to the Appellants' return to Afghanistan?

Notice of Decision

There was an error in law. The decision is set aside

The matter is remitted to the First-tier Tribunal with the above directions.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

30 August 2024