Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/01588/2013
AA/01589/2013
AA/01591/2013

THE IMMIGRATION ACTS

Heard at Field House
On 23 September 2013

Date Sent
On 2 October 2013
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Before

UPPER TRIBUNAL JUDGE WARR

Between

ZG
AR
SR

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Mahmood of Counsel instructed by Wimbledon Solicitors
For the Respondent: Mr N Bramble

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan born on 4 November 1969, 29 June 1993 and 5 August 1994 respectively. The appellants arrived in this country on 4 August 2012 as visitors and applied for asylum on 9 January 2013. Their applications were refused by the respondent on 31 January

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2013 and 1 February 2013. Dependent upon the appeal of the principal appellant are her husband and other children. The judge heard evidence from the three appellants but not from her husband or from a son born on 29 August 1995.

2. At the commencement of the hearing Mr Mahmood, who represented the appellants then as he did before me, submitted that the appeals should be heard by a legal panel and that an expert report was required to determine the appeal although it appeared there was no current funding available for such a report.

3. The appellants' claim was and is on the basis that they are of the Shia Muslim faith and had suffered on that account in Pakistan. The principal appellant's husband had been assaulted and threatened in Karachi by Sipah-e-Sahaaba members. Threats had been made against the children. There was a robbery at the store he ran in Karachi and he had been forced to close the store. The appellant's husband had come to study in the United Kingdom in February 2011. There had been an attempted kidnap of the appellant's son at the end of 2011 which had not been reported to the police. A cousin had been kidnapped and murdered as had other family members. The family had moved to Lahore in May 2012 but there had been a fall-out with the neighbours. The family had returned to Karachi on 22 July 2012. Members of the family were summoned to attend court on 27 July 2012 and when they failed to attend a warrant was issued. The family travelled to the UK on 4 August 2012. They had been advised by their landlord that it was not safe to return to Pakistan.

4. The First-tier Judge found it remarkable that neither the appellant's husband nor her son had given evidence given that they had both been said to have been the victims of religious intolerance and could have given first-hand evidence – he referred to **<u>TK Burundi v Secretary of State</u> [2009] EWCA Civ 40**. The judge found the evidence given about the kidnapping to be inconsistent and concluded there had been collusion between the appellants. He could not give weight to the court documents when viewed in the round. The appellants had not claimed asylum on entry to the United Kingdom which diminished their credibility. The judge found that the appellants had not made an honest claim and had not reported the incident to the police. There had been no past persecution. In reaching his findings the judge took into account **<u>AH</u> Pakistan [2002] UKIAT 05862** and **<u>AW</u> Pakistan [2011] UKUT 31**. He also referred to other background material to which his attention was drawn by Counsel. While there had been severe violence involving some Shia faith followers the appellants had not established a well-founded fear of persecution. The judge accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

5. There was an application for permission to appeal. First-tier Judge Chambers refused the application on 8 May 2013. The application was renewed. It was submitted that the country guidance case of **<u>AH</u>** was out

of date as was the case of **AW**. The judge had not properly considered the objective evidence. The objective material provided by the respondent had been out of date. It did not reflect the current position of ordinary Shias in Pakistan and whether there was a sufficiency of protection for them. The judge had not considered the issue of internal relocation. The judge had on the one hand accepted that Shias had been victims of persecution but had then relied on the country guidance material which did not accord with the objective evidence. The judge had accepted that the appellants were Shias and this alone was a genuine basis to claim asylum based on the current prevailing conditions. In finding the appellants' claim not to be honest the judge had not taken the correct approach when addressing his mind to the question of whether the asylum claim was genuine or not. The appeal should be listed before a panel so that country guidance could be given. The expert had not been instructed at the time of the determination and the matter had only come to light when Counsel had been instructed two days before the hearing. It was for this reason that an adjournment had been requested.

6. Upper Tribunal Judge McGeachy on 18 June 2013 considered it was "just" arguable that the First-tier Judge had not given adequate reasons for finding that the first named appellant was not credible.

7. Mr Mahmood submitted that the situation for Shias had changed dramatically and an expert report was needed. The decision of the judge had not been supported by the evidence. The judge had not addressed the issue of internal relocation. An analogy could be drawn with the position of Ahmadis. He relied on his written submissions dated 10 September 2013. If a material error was found the matter could be listed for country guidance and an expert report could be compiled.

8. Mr Bramble pointed out that permission to appeal had been granted on the credibility issues and this particular issue had not been addressed by Mr Mahmood.

9. The judge had set out in paragraph 21 of the determination full reasons for finding the appellants to be lacking in credibility. He had pointed out that there was no oral evidence from the appellant's husband or son. He had dealt thoroughly with the credibility aspects. Having found the appellants to be completely lacking in credibility he had gone on to consider the country guidance and country information. He had looked at the more recent objective evidence and the current situation. He had addressed the issue as to whether there should be a panel hearing but there had been no expert report or funding for such a report.

10. Mr Mahmood submitted on the credibility issue that while the appellant's husband and son had not given evidence three of the appellants had given evidence. They had given a detailed account. Documentary material had been provided by Chenab Law Chambers. While the judge had considered

the documentary evidence the reasons for the credibility findings were not sufficient.

11. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the decision on a point of law.

12. The judge is firstly criticised for not adjourning the case but an expert report had not been commissioned and it does not appear that appropriate consideration had been given at an early stage for the need to get such a report. I am not satisfied that the judge misunderstood the submissions that were being made on the appellant's behalf. I am not satisfied that his decision to refuse the application for the adjournment was in any way unfair. As the judge points out he did have background materials available as well as the country guidance.

13. Mr Mahmood in his opening submissions made no reference to the judge's negative credibility assessment and it was only when Mr Bramble pointed out that that was the basis on which permission had been given that he turned to that question.

14. The judge looked at all the evidence before him having properly directed himself on the burden and standard of proof in paragraph 20 of his decision. In paragraph 21 he gives detailed reasons for finding that the appellants' account was lacking in credibility. It was open to the judge, for example, to find it quite remarkable that the appellant's husband did not give evidence as well as the son given the claims in this case. He makes a reference to **TK Burundi** where at paragraph 20 the Court of Appeal refers to the importance for independent supporting evidence to be provided "where it would ordinarily be available". Where there is no credible explanation for the failure to produce supporting evidence "it can be a very strong pointer that the account being given is not credible" (per Thomas LJ).

15. In addition the judge found the account being given, as I have said, not to be consistent and identified collusion between the witnesses.

16. There is no foundation for the suggestion that the judge neglected to give the documentary evidence proper scrutiny in the light of the guidance in **Tanveer Ahmed [2002] UKIAT 00439**. The judge properly considered the court documents and the background material relating to corruption in Pakistan's courts and that fraud in relation to court documentation and lawyer's correspondence was rife.

17. In my view the judge gives ample reasons in paragraph 21 of his decision for finding that the account of the appellants lacked credibility. He makes it plain that he had come to his findings after considering the evidence as a whole and that the order in which his findings were set out did not indicate the order in which he had come to his conclusions. It is plain that

the judge gave the proper intense scrutiny to the background information when he reached his decision.

18. In paragraph 25 the judge, having made his assessment, noted that the appellants had not made an honest claim and had not reported incidents complained of to the police. There had been no past persecution. At an earlier stage, at paragraph 21(viii) the judge refers to the first named appellant saying at interview that she had intended to return to Pakistan "which rather weakens her assertion of a general fear for her safety" until friends sent her the court documents. He found that the court documents had come into the hands of the appellants at a convenient moment – see paragraph 21(vii). It had been at a time when they could not maintain their rental payments in the UK.

19. Having found the appellants' account lacking in credibility and was not honest he did not accept that the family was in fear at all.

20. It appears in paragraph 25 that the judge concluded that the appellants' claim was not honest and "even then" they had not sought the assistance of the police. What the judge appears to be saying in paragraph 25 is that the claims of the appellants lack credibility and even taken at their highest there would be a sufficiency of protection for them.

21. I see no error in the judge's approach to the credibility assessment which appears to be the principal point on which Upper Tribunal Judge McGeachy granted permission to appeal. In relation to the country guidance issue, the judge quite clearly had in mind the material brought to his attention by Counsel as well as the country guidance cases of 2002 and 2011.

22. I am not persuaded that the judge misdirected himself in his approach to the evidence before him, that his conclusions were not supported by the background material and the country guidance cases to which he refers or that it was incumbent on him to adjourn the proceedings in the particular circumstances of this case. The determination is satisfactorily reasoned. I am not satisfied that the determination was flawed on a point of law – either the point of law on which permission to appeal was granted or the points developed at the hearing before me both orally and in the skeleton argument.

23. The decision of the First-tier Judge was not flawed on a point of law and I direct that it shall stand.

Appeal dismissed.

The anonymity order made by the First-tier Judge continues.

Signed Date

Upper Tribunal Judge Warr