



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/11397/2012
AA/11400/2012
AA/11403/2012
AA/11405/2012

THE IMMIGRATION ACTS

Heard at North Shields
On 4th September 2013

Determination Sent
On 30th September 2013

Before

Upper Tribunal Judge Chalkley

Between

MR ZAFOR KHAN
ALSO KNOWN AS TIN SHWE MAUNG KHAN
MRS SUNERA
ALSO KNOWN AS KHIN CHO CHO BEGUN
MISS SAFIYA
ALSO KNOWN AS ASYL CHO CHO KHAN AND
MISS SAMIYA
ALSO KNOWN AS AATIFA CHO CHO
(No order for anonymity)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Selway of Halliday Reeves
For the Respondent: Mr J Kingham, a Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first named appellant was born on 20th October 1961. The second named appellant, who is also known as Khin Cho Cho, was born on 23rd May 1973. The third named appellant, who is also known as Asyl Cho Cho, was born on 11th October 2004, and the fourth named appellant who is also known Aatifa Cho Cho, was born on 2nd January 2009. The first and second appellants are husband and wife and are the parents of the third and fourth appellants.
2. The appellants arrived in the United Kingdom on 24th April 2010, and claimed asylum. On 3rd December 2012, the respondent gave directions for the appellants' removal to either Burma or Japan, after refusing leave to enter.
3. The appellants appealed that decision and their appeal was heard by First-tier Tribunal Judge Sacks at North Shields on 8th March 2013. Judge Sacks made numerous findings in his determination and dismissed the appellants' appeals on asylum grounds, on humanitarian protection grounds and on human rights grounds.
4. The appellants challenged the determination and on 17th June 2013 Upper Tribunal Judge Grubb granted permission and said this:-

“Although the judge convincingly found that the appellant was not who he claimed to be and rejected his account of events that he said occurred to him in Burma, the judge nevertheless found that the principal appellant was a Burmese national, despite finding that he had resided in Japan for eighteen years, where he had a right of residence. Nevertheless, having properly rejected the principal appellant's claim (and that of the other appellants as his dependants) on the basis of past events, the judge went on to consider whether the principal appellant's sur place activities put him at risk. In finding that the principal appellant had not demonstrated that risk, the judge applied the approach in *TL (sur place activities – risk) Burma CG* [2009] UKAIT 0017. At least in part, the AIT reasoning in *TL* was found to be flawed by the Court of Appeal in *KS (Burma) v Secretary of State for the Home Department* [2013] EWCA Civ 67, in particular in relation to the Burmese ability to distinguish between a genuine opponent and hanger-on. To that extent alone, the First-tier Tribunal arguably erred in law in finding that the principal appellant would not be at risk on return as a perceived political opponent.”

5. I pointed out to Mr Selway that although Upper Tribunal Judge Grubb had referred to *KS*, the Court of Appeal in *KS* had suggested that the matter be looked at again by the Tribunal. Their decision in *TS (political opponents – risk) Burma CG* [2013] UKUT 00281 had now been published. I handed him a copy and agreed to allow him time to consider it.
6. The second, third, and fourth appellants' claimed as dependants of the first named appellant. The First-tier Tribunal Judge made extensive findings. He was not satisfied that the first named appellant was actually who he claimed to be and found that he was, Tin Shwe Maung. He was satisfied that the first appellant had

permanent residency in Japan and was satisfied also that there was no evidence before him to suggest that the appellant was Zafor Khan as he had claimed.

7. The judge did not accept that the first named appellant had been in Japan only for six months and found that he had been resident in Japan for eighteen years with a right of residence to remain there until 4th August 2012. There was no evidence before the judge to suggest that he would be unable to return to Japan.
8. He was satisfied that the first named appellant was a Burmese national, but not satisfied that his home had been raided as claimed, nor that he had ever come to the attention of the authorities in Burma. He found that the first named appellant had no involvement in politics in Burma and was not satisfied that the appellant had taken part in demonstrations on 6th November 2010.
9. The judge examined photographs taken between 15th and 17th September 2011 and was satisfied that the first appellant had attended at least one demonstration in London. He found that the appellant was not a high level activist or demonstrator and had not demonstrated how the Burmese authorities would be able to identify him given that he claimed to be Zafor Khan, despite the fact that the judge found that his true identity was Tin Shwe Maung.
10. The judge found there to be no evidence that the appellant was from the Rohingya race. It followed that he did not accept that there was any warrant for the arrest of the first named appellant in Burma and was not satisfied that any of the appellant's *sur place* activities brought him to the adverse attention of the Burmese authorities while he had been in the United Kingdom.
11. When the hearing resumed Mr Selway told me that he had very carefully considered the judge's determination and the Tribunal's decision in *TS* and was satisfied that the First-tier Tribunal Judge's determination did not contain any material error of law, given the current assessment of risk set out in *TS*. He had nothing further to say.
12. Mr Kingham did not seek to persuade me otherwise.
13. I am satisfied, having myself carefully read the determination of First-tier Tribunal Judge Sacks and the decision of the Upper Tribunal in *TS*, that these appellant will not, on the findings of First-tier Tribunal Judge Sacks, be of any interest to the Burmese authorities were they to return to Burma. I uphold the decision of First-tier Tribunal Judge Sacks. The appellants' appeals are dismissed.

Upper Tribunal Judge Chalkley