



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07153/2013
AA/07154/2013

THE IMMIGRATION ACTS

**Heard at North Shields
on 9th September 2014**

**Determination Sent
on 11th September 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**BW
YA**

(Anonymity direction made)

Respondent

Representation:

For the Appellant: Mr Mangion – Senior Home Office Presenting Officer.
For the Respondent: Mr Jackson instructed by J McCarthy Solicitors.

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Andonian, promulgated following a hearing at Taylor House on 2 June 2014, in which he allowed the appeals of this husband-and-wife against the direction for their removal to Afghanistan.

2. The Secretary of State's grounds assert the Judge erred in two respects; the first of which is failing to adequately provide reasons for accepting the credibility of the appellants account and failing to deal with the assertion that their credibility is damaged by the failure to claim asylum in either Spain or France where they spent substantial periods and, secondly, that it was argued that even in the event that the account is true the appellants could safely relocated to Kabul. The grounds allege the Judge failed to deal with this issue which is stated to be a clear material error of law.
3. The grounds of lack merit. The Judge clearly considered the fact the appellants failed to claim asylum in Spain or France and in paragraph 15 of the determination refers to the Secretary of State's opinion that this damaged their credibility. A failure to claim asylum at the earliest opportunity is relevant to an assessment of credibility under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 but it is settled law that it is not determinative. The key finding made by the Judge in paragraph 16 is that throughout this time they were under the control of an agent and therefore had no opportunity to claim asylum elsewhere. Whilst this may be considered by some to be a generous finding if the appellants spent a considerable period of time in Spain or France it has not been shown to be outside the range of findings the Judge was entitled to make on the evidence. Even if such a finding was irrational the failure to have claimed asylum earlier will not, in itself, be determinative of the credibility issue.
4. The Judge accepted that the appellants are from Afghanistan rather than elsewhere as alleged by the Secretary of State and in paragraph 13, having referred to the burden of proof, stated: "... I must also state here also as to their claim for asylum which on the lower standard I found to be well founded. They both gave evidence and their evidence corroborated what each one had said. I also found them to be credible witnesses". As the account was found to be true that is a good reason for accepting it as being credible.
5. The second ground regarding relocation fails to take account of the reasons why the Judge accepted that this is not a viable option. The Judge accepted the evidence of the country expert who is of the opinion that the account the appellants had given about their fear of returning to Afghanistan was plausible. In paragraph 23 of his report the experts states:

23. In summary, it is my opinion that [BW] account of his experiences in Afghanistan is plausible given my knowledge of the dynamics at play at the relevant times. No part of his account strikes me as inherently unlikely. If his account is true, he is certainly likely to face serious harm (most likely honour killing) if he returns to Afghanistan now. It is likely that his entry to the country would initially go unnoticed, but as soon as he

seeks employment or accommodation
it; and they would then have the
after him.

the family will be aware of
information necessary to go

6. The weight to be given to the evidence, including the expert report, was a matter for the Judge. The Court of Appeal have made it abundantly clear that the Upper Tribunal must not interfere with findings made by the First-tier Tribunal unless there is clear evidence of material legal error. In this case it cannot be said that such error has been shown to exist for, based upon the acceptance of the credibility of the account and the country expert report, the conclusions reached by the Judge are within the range of permissible findings he was entitled to make on the evidence. No legal error material to the decision to allow the appeal has been made out.

Decision

7. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

8. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 10th September 2014