Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08033/2013
AA/08034/2013
AA/08035/2013
AA/08036/2013
AA/08037/2013
AA/08040/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
on 3 July 2014	**On 7 July 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

FERIALE NAZAR ZAAROUR + 5

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellants: Mr B Criggie, of Hamilton Burns & Co., Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1) The appellants, a mother and her 5 children (2 now adults) are all citizens of Lebanon. Their appeals to the First-tier Tribunal were dismissed following a combined hearing by Judge Clough in 2 determinations both dated 11 November 2013 (one dealing with the first 5 appellants, and another with the 6th). Mr Criggie advanced the cases on the basis that

they all stand or fall together with that of the first appellant, who has been referred to by both sides as "the appellant".

2) The grounds of appeal to the Upper Tribunal are as follows:

The appellant entered the UK with her dependent children on 3 July 2013, with leave to enter as a family visitor group. The appellant and her children are Lebanese nationals. The appellant intimated a claim for international protection under the 1951 Refugee Convention on 4 July 2013. This claim was refused by the respondent on 7 August 2013. The appellant lodged an appeal against this decision with the First-tier Tribunal, and this was heard by FTTJ Clough at Glasgow on 23 October 2013. The grounds of appeal were limited to humanitarian protection under paragraph 339C of the Immigration Rules and Articles 2, 3 and 8 of the European Convention on Human Rights. The FtT dismissed the appeal on all grounds …

1 At paragraph 31 of the FTTJ states:

"*All those giving statements said they had no enemies and no reasons to believe why the threats were made.* ***To report such threats while knowing why they were made wholly negated the aim of reporting the incident to the police. I place no reliance on the documents relating to the police reports for this reason****." (writer's emphasis).*

… the FTTJ has given insufficient and confusing reasoning into relation to the assessment of this document. It may be the FTTJ meant that to report such incidents while NOT knowing why they were made wholly negated the purpose of reporting the matter to the police. Either way, this reasoning makes no sense whatsoever. If an individual is threatened by a stranger, whether the victim knows the reasons for the threat or not, a law abiding citizen's reasonable and proper response is to report the threat to the appropriate authorities. For the FTTJ to place no reliance on the police witness statements for this reason is irrational. This evidence goes to the very heart of the appellant and her family's claim … for the FTTJ to give no weight to this piece of evidence for this perverse reason, leaves the reader in real doubt as to the FTT's findings on the matter and as such constitutes a material error of law. ***(GM Burundi v SSHD [2007] EWCA Civ 18.)***

2 At paragraph 32 in relation to written evidence from the family Priest, the FTTJ states:

"I have no doubt a family priest who claimed to know the family well would have been aware the appellant's husband had left the family and the appellant and her children had left the matrimonial home some weeks before the date of the letter and would have noted it. The letters also state the family had left for Scotland when, in fact, they did not leave until 3 July. I place no reliance on these documents for this reason."… the FTTJ's reasoning is for dismissing these documents is insufficient and demonstrates a failure to apply anxious scrutiny to the appellant's case. The FTT arguably failed to consider the possibility that the family had approached their Priest before the marital relationship came to an end. The FTT arguably failed to take into account that the family had been planning to visit Scotland for a lengthy period of time, organising visas for the children etc. It is not unreasonable to assume that the family had discussed their intentions to flee the country for some time. It is certainly quite possible that this dramatic course of action is one which they would have discussed with their family priest … the FTT have materially erred in the weight which has been attached to this evidence, particularly in relation to plausibility issues, which go to the very heart of credibility and as such are material to the outcome. **(*Choudhry v Immigration Appeal Tribunal [2001] EWHC 613.)***

3) On 10 January 2014 First-tier Tribunal Judge Pooler granted permission to appeal, observing:

> It is arguable that the judge failed to give adequate reasons at [31] for placing no weight on police reports. It is less likely that the reasons at [32] in relation to supporting letters disclose a material error of law; but since permission is to be granted all grounds may be argued.

4) The respondent filed a Rule 24 response:

> … the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed herself appropriately. Although it is accepted that the reasoning in paragraph is not completely clear, it is contended that this is not material, as the judge clearly had other concerns regarding the police report, and this is highlighted as being the fact that the appellant mentions in evidence that her husband got out of the car, despite this salient fact being absent from the reports. The judge was also entitled to make the point about the letter from the Parish report, and that it was strange that it was written at the behest of the appellant's husband, and also before they came to Scotland, concluding that she could place little weight on it. It is clear she did not accept that the appellant's daughter had been threatened as claimed. The appellant has failed therefore to establish on the facts as accepted, that there is a risk to her or her children on return to Lebanon, and the judge was entitled to conclude as she did.

5) Mr Criggie said that the question for the Upper Tribunal was the seriousness of the error. At best the determination was unclear and at worst it was perverse. Even if the error did not reach that high standard, it was a material flaw. The item of evidence dealt with at paragraph 31 was very important to the case for the appellants. The police reports described near physical violence to the husband and father of the family group, over a matter related to his work. Those threats were offered in front of family members, and extended the risk to the children. If the police reports were factored back into the case, then viewed as a whole it had at least a chance of success. Mr Criggie acknowledged that there are other credibility issues, such as the fact that the description of events in the police reports did not necessarily coincide with the witness statements and oral evidence. However, the case for the appellants was that the police statements were taken in a hurried and cursory fashion, because the police had little real interest in the complaint. Errors and contradictions might therefore exist in the reports even although they were genuine. The error was of enough significance to justify an entire rehearing of the case.

6) Mr Matthews agreed that if the challenge for the appellants succeeded, the consequence should be a rehearing. However, he said that such error as was to be found did not require the determination to be set aside. It was plain enough that paragraph 31 had been intended to read, "To report such threats while <u>not</u> knowing why they were made wholly negated the

aim of reporting the incident to the police." He accepted that even with that insertion, there was force in the observation that a complaint to the police might sensibly be made whether the perpetrator of the threat was known or not. He maintained that the reports did not carry the potential significance claimed for the appellants. These were not reports verifying that an incident actually took place. They were not reports from an independent witness or a scene of crime observation. They were at best only evidence that a report had been made, which added very little. Read fairly and as a whole the determination contained several good reasons for rejecting the account given by the appellants. The headings in the determination were slightly misleading, because although the judge inserted the heading "Conclusions as to the evidence" above paragraph 26, she reached certain clear and well justified conclusions in discussing the evidence at earlier points in the determination. At paragraph 19, she rightly held that even assuming the police statements to be genuine, they established very little, at most an isolated incident of threats by persons unknown to the appellant, her husband and her daughter. The alleged incident did not support the claim of a concerted effort against her husband. Having already attached little significance to the police reports, any error in the further conclusion at paragraph 31 was of lesser importance. The appellant's second ground of appeal (on which Mr Criggie had made no further submissions) was dealt with not only at paragraph 32 but also at paragraph 20-23 where the judge gave good reasons for finding the letters not only to be unreliable but to cast significant doubt on the claims by the appellants. There was no error at paragraph 32 in declining to place reliance on the church letters. According to the appellants, the husband abandoned the family on 5 June and the appellants left Lebanon on 3 July, yet letters from the priest and bishop dated 17 and 19 June reflected a different basis of claim and a family which had not been split up. In summary, Mr Matthews submitted, the error at paragraph 31 was not one to require this determination to be set aside.

7) Mr Criggie in response accepted that the more significant point for the appellants was in Ground 1. However, as to Ground 2, he submitted that the evidence did not disclose what was known to the authors of the letters, which might have been genuinely written even although the family had by then split up. As to the police reports reflecting only an "isolated incident", he said that had to be viewed in the broader context of the case to reflect a wider problem to the family.

8) I mentioned that the refusal letter raises issues of internal relocation and legal sufficiency of protection, which are not dealt with in the alternative by the judge. Mr Criggie and Mr Matthews both acknowledged that the judge should have dealt with these issues, even if they were thought to be only alternatives. Mr Criggie accepted that no case was made on general difficulties and insecurity in Lebanon.

9) There is no point in recycling disputes about credibility in cases which do not succeed even "taken at highest". However, Mr Matthews did not seek to put this case on that basis. He said that the respondent sought to resolve it by looking firstly at credibility.

10) I reserved my determination.

11) Neither side referred to any authority (Scottish or English) on when error of law may be found through deficiencies in factual findings, some of which are based on good reasons but others not.

12) The Court of Appeal in *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037, 2006 WL 1994707 said:

> 45. In the light of these views as to the reasons the Tribunal gave for rejecting HK's story, I now turn to consider whether that rejection can nonetheless stand. Where a fact-finding tribunal has decided to reject evidence for a number of reasons, the mere fact that some of those reasons do not bear analysis is not, of itself, enough to justify an appellate court setting the decision aside. In such a case, the appellate court has to decide whether it would be just to let the tribunal's decision stand. That question will normally be answered by considering whether one can be tolerably confident that the tribunal's decision would have been the same on the basis of the reasons which have survived its scrutiny. In the present case, as I understood it, both counsel accepted that that was the right test, and that seems to me to be correct.

13) Going on to apply that test to the case before it, the Court said:

> 46. In this case, I am satisfied that one cannot be confident that the Tribunal would have rejected HK's case on the basis of their reasons which have survived scrutiny in this court. On the face of it, that would seem to be pretty self-evident from the discussion in paragraphs 33 to 43 above. Of the eight reasons, not much survives. Of course, as Jacob LJ said in argument, the issue cannot be resolved simply by asking how many of the Tribunal's reasons survive. The issue has to be determined partly by reference to the probative value of those reasons, both in absolute terms and by comparison with the rejected reasons, and objectively, but also subjectively, in the sense of seeing what weight the tribunal gave to the various reasons it gave. The issue also has to be determined bearing in mind the overall picture including reasons which a tribunal would have had, but which were not expressed. An example would be the impression made by a witness (a factor which is not, in my view, high in the hierarchy of cogency, especially in an asylum case which will normally involve an appellant from a very different cultural background from that of the Tribunal).

14) *HK* was one of the cases cited to the Court of Session in *HA v Secretary of State for the Home Department* [2007] CSIH 65, 2008 S.C. 58, where it was said:

> 17. In the light of the cases cited to us it is convenient at this stage to formulate some propositions about the circumstances in which an immigration judge's decision on a matter of credibility or plausibility may be held to disclose an error of law. The credibility of an asylum-seeker's account is primarily a question of fact, and the

> determination of that question of fact has been entrusted by Parliament to the immigration judge (Esen, para 21). This court may not interfere with the immigration judge's decision on a matter of credibility simply because on the evidence it would, if it had been the fact-finder, have come to a different conclusion (Reid, per Lord Clyde, p 41H). But if the immigration judge's decision on credibility discloses an error of law falling within the range identified by Lord Clyde in the passage quoted above from Reid, that error is open to correction by this court. If a decision on credibility is one which depends for its validity on the acceptance of other contradictory facts or inference from such facts, it will be erroneous in point of law if the contradictory position is not supported by any, or sufficient, evidence, or is based on conjecture or speculation (Wani v Secretary of State for the Home Department, para 24, quoted with approval in HK, para 30). A bare assertion of incredibility or implausibility may disclose error of law; an immigration judge must give reasons for his decisions on credibility and plausibility (Esen, para 21). In reaching conclusions on credibility and plausibility an immigration judge may draw on his common sense and his ability, as a practical and informed person, to identify what is, and what is not, plausible (Wani, p 883L, quoted with approval in HK, para 30, and in Esen, para 21). Credibility, however, is an issue to be handled with great care and sensitivity to cultural differences (Esen, para 21), and reliance on inherent improbability may be dangerous or inappropriate where the conduct in question has taken place in a society whose culture and customs are very different from those in the United Kingdom (HK, para 29). There will be cases where actions which may appear implausible if judged by domestic standards may not merit rejection on that ground when considered within the context of the asylum-seeker's social and cultural background (Wani, p 883I, quoted with approval in HK, para 30). An immigration judge's decision on credibility or implausibility may, we conclude, disclose an error of law if, on examination of the reasons given for his decision, it appears either that he has failed to take into account the relevant consideration that the probability of the asylum-seeker's narrative may be affected by its cultural context, or has failed to explain the part played in his decision by consideration of that context, or has based his conclusion on speculation or conjecture.

15) As to the case before it, the Court concluded:

> 45. We have been persuaded that the submission of counsel for the appellant that the immigration judge fell into error of law is in parts well founded, but in other parts ill-founded. We have rejected the attack on the immigration judge's testing of the credibility of the appellant's evidence by reference to the objective evidence. We have also rejected the submission that the immigration judge's treatment of the arrest warrant discloses an error of law. We are, however, for the reasons which we have explained, satisfied that the immigration judge fell into error of law in his treatment of the credibility and plausibility of the detail of the appellant's account of his relationship with M, in his treatment of the evidence of the persecution of the appellant's brother-in-law, and on the related issue of internal relocation. It seems to us that those aspects of the immigration judge's reasoning played a material part in his overall conclusion that the appellant's claim must be rejected.

16) The significance of an error is ultimately to be resolved on the facts of each case. Rather more could survive of this determination than in *HK*. However, the defective part of the judge's reasoning did play a material part in her overall conclusion that the claim for the appellants was to be rejected. I do not think the Upper Tribunal could be "tolerably confident" that the judge's decision must have been the same on the basis of reasons which withstand scrutiny. The judge says plainly at paragraph 31 that this

is her reason for placing no reliance on the documents. Even when the typography is corrected, it is not a good reason. There is nothing unusual about a victim reporting crime without being able to identify a suspect. The reports were at the centre of the case. Even if Mr Matthews is right to argue that they could not take the case very far on their own, a finding that the appellants produced unreliable documents of this nature must have counted very significantly against them. It could not safely be said that there could be only one outcome, or that the probative value of the other reasons is sufficient.

18) The determination of the First-tier Tribunal is **set aside**. None of its findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Clough. (The judge next hearing the case, whatever other findings are reached, should not overlook the issues of internal relocation and sufficiency of protection.)

4 July 2014
Judge of the Upper Tribunal