



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

Appeal Numbers: AA/10252/2012
AA/10253/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 8th January 2014**

**Determination Sent
On 17th January 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**ASIYA SAFI
MARYAM SAFI**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Wilding, Counsel, instructed by J D Spicer & Co
For the Respondent: Ms Isherwood, HOPO

DETERMINATION AND REASONS

1. There is a history to this appeal. The Appellants are sisters and citizens of Afghanistan. They applied for asylum on 1st October 2012 and 14th September 2012 respectively.
2. Their claim is that they were brought up in Pakistan where their father ran an NGO working on development. They returned to Afghanistan in 2010

and their father was abducted. They attended a family wedding in 2011 in Afghanistan at which there was an accidental shooting incident. The bridegroom was killed and their uncle was accused of murder because of a land dispute. A local jirga settled the matter by offering the Appellants in marriage to the bridegroom's brothers. The Appellants did not want to marry them and they returned to Pakistan where they lived with their mother and in hiding until an agent arranged student visas to enable them to come to the UK.

3. The Secretary of State did not accept that the Appellants had told the truth about the events which led to their coming to the UK. The Appellants appealed to a Judge of the First-tier Tribunal, D J Baker. On 13th December 2012 Judge Baker heard evidence from the Appellants and agreed with the Secretary of State that they lacked credibility and on 20th December 2012 dismissed the appeal.
4. On 5th January 2013, the Appellants appealed to the Upper Tribunal against Judge Baker's decision. Permission to appeal was originally refused by Designated Judge Garratt on 21st January 2013 but subsequently granted by Upper Tribunal Judge McGeachy on 13th February 2013.
5. The matter then came before Deputy Judge of the Upper Tribunal Parkes on 18th March 2013 and he found no error of law in the decision.
6. The Appellants appealed to the Court of Appeal and on 16th May 2013 Upper Tribunal Judge Grubb granted permission finding two arguable errors in the Deputy Upper Tribunal Judge's determination.
7. On 22nd October 2013 the Court of Appeal, by consent, allowed the appeal to the extent of remitting it to the Upper Tribunal (the Immigration and Asylum Chamber) for reconsideration.
8. At the commencement of the hearing there was some discussion with both representatives as to the nature of the hearing today. It was Ms Isherwood's contention that the terms of the Court of Appeal order were that the decision of Deputy Upper Tribunal Judge Parkes' determination should no longer stand and the issue today was whether the original judge, Judge Baker, had erred in law. Ms Wilding had prepared the case on the basis that there would be a full rehearing of the appeal. However, after consideration, she was content to agree that only if an error of law was established would the decision need to be remade.

Submissions

9. Ms Wilding relied on her original grounds and submitted that the judge had erred in her consideration of the stamps in the Appellants' passport. It is the Appellants' case that there were a number of stamps in the Appellants' passports which had been put there in order to fabricate an

immigration history, to enable them to obtain visas. The judge said that it was not clear why there would need to be several false stamps and that it was not impossible for a person to make the journeys recorded on the passport. It was difficult to see why the agent would have obtained passports for them in their true identities and then falsified stamps. In particular, the entry to Pakistan dated 28th September 2011 was inconsistent with their account of leaving Afghanistan after the wedding incident in June.

10. It is the Appellant's case that the stamps are demonstrably false because on the basis of the passport stamps both Appellants would have been in Pakistan on 18th January 2012, whereas on that date they were in fact being fingerprinted in the British Consulate in Islamabad, Pakistan. The passport stamps could not possibly represent an accurate record of their movements. Their explanation for the stamps is that the visit visas in the passport stipulate a maximum stay of one month on any one visit to Pakistan and the agent obtained them to ensure that their presence there remained lawful.
11. Ms Wilding submitted that the false stamps supported the Appellants' case that they were under the control of an agent who had been employed to facilitate their entry to the UK because they were in need of international protection.
12. She also submitted that the judge had acted irrationally in rejecting the Appellants' claim that their paternal grandfather had insisted that the sister's return to Kabul because the girls were living with their mother and without a male head of household, since it was unlikely that their grandfather would expect them to move to Afghanistan where their father had been kidnapped. Ms Wilding argued that, since the kidnap took place some 300 miles away from Kabul, it was not at all incredible that the grandfather would require the family to come and live with him. The basis of the concept of internal relocation was that even if one area of the country was unsafe, another area is not automatically so. The judge's finding that the Appellant's grandfather must necessarily have made a decision that the whole of Afghanistan was unsafe for them was perverse.
13. She accepted that, although it had originally been argued that the judge had not applied the correct standard of proof, Upper Tribunal Judge McGeachy, in granting permission, had said that this ground was not made out. However, she sought to rely on two remaining grounds, namely that the judge had improperly relied on assumptions as to plausibility and had made a material error with respect to the challenge to the interpreters at the asylum interview.
14. Ms Wilding submitted that the judge had accepted that women in Afghanistan were subject to certain cultural constraints but had erred in finding the Appellants' evidence not credible in relation to their lack of knowledge of their father's disappearance. The judge had said that it was reasonable to expect that they would have asked their mother who would

have in turn asked a male relative to take some kind of action, whilst failing to acknowledge that their mother would have been subject to the same cultural constraints.

15. Finally, the judge rejected the Appellants' account of difficulties at the interview to explain various inconsistencies in the evidence. The judge said that it was unlikely that there would have been serious problems with two different interpreters. Ms Wilding submitted that in Maryam's interview the interpreter had left without giving any reason which supported her case that she had had to correct his interpretation. A complaint had been made about Asiya's interview promptly after it had taken place. The general proposition that interpretation problems would be unusual was not borne out in particular by a research paper by Bogner et al showing that a high percentage of asylum seekers anonymously questioned about their interviews had experienced problems from a broad number of countries.
16. The errors individually and cumulatively rendered the determination unsafe.
17. Ms Isherwood submitted that there was no error of law in the determination which contained a proper analysis of all of the relevant evidence. The judge was entitled to find the Appellants not to be credible and to dismiss the appeal.

Findings and Conclusions

18. I agree that the judge may have erred in her comment on the stamps in the passport since at least one of those stamps is demonstratively false, it being accepted by the Respondent that the Appellants were in Pakistan on at least one occasion when according to the stamps in the passport they were in Afghanistan. However, the fact that the judge may have been mistaken in respect of her broad conclusion (that it had not been shown that the stamps were false), does not render the determination unsafe. The judge did not dismiss the appeal on the basis that the entry to the Pakistan in September 2011 was inconsistent with their account of having left Afghanistan in June but gave a number of other wholly sustainable reasons for her conclusions. Indeed, Ms Wilding accepted that the fact that the Appellants had false stamps in their passport was a neutral factor rather than one which established the truth of their claim.
19. Neither do I accept that it was irrational for the judge to reject the evidence that the grandfather required the girls to move to Afghanistan where their father had been kidnapped. It seems that there were maternal male relatives in Pakistan - there is reference to a maternal grandfather being in Peshawar. It was not irrational for the judge to state, in the circumstances, that the claim that the paternal grandfather expected them to move to Afghanistan was not credible, particularly since she was not shown any objective evidence to support the claim that they would be expected to go to paternal male relatives rather than maternal

male relatives. This is not a finding in contradiction to the general principles of refugee law, but simply an assessment by the judge of the individual facts of the case.

20. Neither has it been established that the judge's adverse credibility findings are simply assumptions as to plausibility. The judge noted that the Appellants were both well educated, presented as very self-assured and indeed Maryam claimed to have done some work with an NGO. Although the judge acknowledged the consistency of the Appellants' evidence, both internally and with the objective evidence, it was open to her to hold it against them that their lack of detailed knowledge was indicative of a lack of truthfulness in the account. She acknowledged the cultural restrictions for females, which she properly took into account in weighing up the evidence, but was entitled, for these particular educated and articulate women, to find that their lack of knowledge was a convenient excuse in a false asylum claim.
21. Finally, with respect to the interpreters, again the judge was entitled to conclude that the alleged problems were a means of explaining the inconsistencies in the evidence of the two sisters. Both Appellants signed the interview record and stated that they were content with it. Neither raised an interpreter problem at the time. The fact that the interpreter left during Maryam's interview is likely to be a reflection of her proficiency in English rather than for any other reason. The judge did not assume that interpreter problems did not occur but the conclusion that it was unlikely that there were serious problems with two different interpreters, in the context of her findings as a whole, is unassailable.
22. Overall, this is a very thoughtful and well-considered determination. Neither the grounds nor the submissions establish any legal error.

Decision

23. The original decision stands. The Appellants' appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor