Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/00441/2014
DA/00442/2014
DA/00443/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 14 October 2014	**On 27 October 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

A S (FIRST APPELLANT)
A B (SECOND APPELLANT)
A B (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms R Harrington, instructed by Gloucester Law Centre
For the Respondent: Mr I Richards, Home Office Presenting Officer

REMITTAL AND REASONS

1. These appeals are subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind

the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. The appellants are citizens of Iran who were born respectively on 19 February 1980, 16 September 2006 and 3 July 2009. The first appellant is the mother of the second and third appellants.

3. On 18 March 2006, the first appellant arrived in the UK with her husband, also an Iranian national, and they applied for asylum. On 21 April 2006, the first appellant was convicted of possessing a listed false instrument with intent and was sentenced to fifteen months' imprisonment. On 26 July 2006, the first appellant was notified of her liability to be deported. On 30 November 2006, the Secretary of State refused the first appellant's claim for asylum after she failed to complete and return a SEF.

4. On 16 September 2006, the second appellant was born in the UK.

5. On 29 September 2006, the first appellant underwent an asylum interview. She was subsequently issued with a SEF but she failed to complete and return it and on 30 November 2006 her application for asylum was again refused on non-compliance grounds. On 19 December 2006, she submitted a completed SEF and thereafter between December 2007 and June 2011 further supporting evidence was submitted to the Secretary of State.

6. On 3 July 2009, the third appellant was born in the UK.

7. On 31 July 2012, a decision was made to deport the first appellant on the grounds that her deportation was conducive to the public good but that decision was not served because of her outstanding asylum claim. On 4 September 2013, she was again notified of her liability to be deported. On 26 November 2013, the first appellant underwent a further substantive asylum interview.

8. On 20 February 2014, the Secretary of State refused the appellant's claim for asylum and for leave based upon Art 3 of the ECHR. On 24 February 2014, a decision was made to make a deportation order by virtue of s.3(5)(a) of the Immigration Act 1971. The second and third appellants were to be deported as her family members.

The Appeal to the First-tier Tribunal

9. The appellants appealed to the First-tier Tribunal. The appeal was heard by Judge Trevaskis and Ms V S Street JP on 20 June 2014. Before the First-tier Tribunal, the first appellant argued that she was at risk of persecution

on return to Iran as a single woman who was a Christian convert. She had separated from her husband and she was also at risk as a result of an adulterous relationship after which she and her husband separated in October 2012. She claimed that she did not know where her husband was and she had no contact with her husband's family and her father has refused to speak to her since her adulterous relationship and separation from her husband and her mother has accused her of bringing shame on the family.

10. In addition, the appellants relied on the Immigration Rules (HC 395 as amended) in particular para 399(a) and Art 8 of the ECHR.

11. In a determination promulgated on 25 June 2014, the First-tier Tribunal allowed the appellants' appeals under the Immigration Rules and also under Art 8 of the ECHR. The First-tier Tribunal concluded that the first appellant met the requirements of para 399(a), which provides that:

> "(a) The person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
>
> (i) the child is a British citizen; or
>
> (ii) the child has lived in the UK continuously for at least seven years immediately preceding the date of the decision; and in either case
>
> (a) it would not be reasonable to expect the child to leave the UK; and
>
> (b) there is no other family member who is able to care for the child in the UK; ..."

12. The First-tier Tribunal's findings are at para 31-34 of its determination as follows:

> "31. We find that [the first appellant] has a genuine and subsisting parental relationship with [the second appellant], her daughter, who has lived in the UK for at least 7 years prior to the date of the immigration decision.
>
> 32. We find that there is no other family member who is able to care for [the second appellant) in the UK; we accept the evidence that [the first appellant] is separated from her husband and does not know where he is.
>
> 33. We find that it is not reasonable to expect [the second appellant] to leave the UK; she was born here and has lived her whole life here; she has never been to Iran; she does not have any meaningful family ties in Iran; she has established private life in the UK for almost 8 years, attending and doing well at school.
>
> 34. Accordingly we find that [the first appellant] should not be deported."

13. Applying those findings, the First-tier Tribunal also allowed the appellants' appeals under Art 8 on the basis that their deportation would be disproportionate.

The Appeal to the Upper Tribunal

14. On 14 July 2014, the First-tier Tribunal (Judge Parkes) granted the Secretary of State permission to appeal against the decisions to allow the appeals under the Immigration Rules and under Art 8.

15. Subsequently, on 9 October 2014, the First-tier Tribunal (Judge R C Campbell) also granted the first appellant permission to appeal on the basis that the First-tier Tribunal had failed to make any findings and to reach a decision in respect of the first appellant's claim under the Refugee Convention.

16. Before me, both Ms Harrington (who represented the appellants) and Mr Richards (who represented the Secretary of State) accepted that the First-tier Tribunal had erred in law by failing to deal with the first appellant's asylum claim and to that extent the first appellant's appeal should be allowed and remitted to the First-tier Tribunal in order that findings and a decision could be made in the asylum claim.

17. As regards the Secretary of State's appeal, Mr Richards focused his submissions on the First-tier Tribunal's reasoning at paras 31-33 of its determination. Mr Richards submitted that the First-tier Tribunal had given wholly inadequate reasons for finding that it would not be reasonable to expect the second appellant to leave the UK. He submitted that the appellant was only 7 at the time of decision and her focus was almost exclusively within the home. She would be returning to Iran with her mother and sister. He pointed out that the evidence was that the first appellant was teaching her children Farsi. He submitted that the First-tier Tribunal had simply failed to consider the evidence concerning any family in Iran and to make appropriate findings in relation to that.

18. Ms Harrington, on behalf of the appellant, accepted that the First-tier Tribunal's reasoning was brief but, she submitted, there could be no doubt as to the basis upon which the appellants had succeeded. She submitted that it was implicit in the First-tier Tribunal's finding that the second appellant had no "meaningful family ties in Iran", that the First-tier Tribunal had accepted the evidence of lack of contact with the families in Iran and the limited contact with the second appellant's grandmother. Ms Harrington submitted that the First-tier Tribunal's finding that it would not be reasonable to expect the second appellant to leave the UK was a finding properly open to it on the evidence. She submitted that the grounds were in effect arguing that the First-tier Tribunal should have given different weight to the various factors and that did not, in her submission, disclose any error of law.

Discussion

19. There is no doubt that the First-tier Tribunal's reasoning at paras 31-33 is, on any view, brief. The Tribunal had a duty to give reasons for its findings in favour of the appellants under, in particular, para 399(a) of the Rules. Those reasons may be brief providing that they deal with the central issues raised in an appeal so that the decision as a whole makes sense (see Shizad (Sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) and Budhathoki (Reasons for decisions) [2014] UKUT 00341 (IAC)). In one sense Ms Harrington is correct when she submits that the Secretary of State knows why the appellants succeeded, i.e. the second appellant could not be expected to leave the UK. However, in my judgment, what follows in para 33 is an inadequate set of reasons to sustain that conclusion and fails to take into account all the relevant matters.

20. First, it was, of course, relevant that the second appellant was born in the UK, had lived her whole life in the UK and had never been to Iran. But, it was also necessary to consider that the second appellant was only 8 years old and would be returning with her mother and sibling. That factor is not expressly considered in the First-tier Tribunal's reasoning.

21. Secondly, it was relevant to consider what would be the appellants' circumstances in Iran. That raised matters which were part of the evidence and, to some extent, related to the first appellant's asylum claim. The First-tier Tribunal unfortunately made no findings on that evidence including the attitude of the first appellant's family and that of her husband to her and also what contact was, and would be, possible with the second appellant's grandmother. I do not accept Ms Harrington's submission that the First-tier Tribunal must (in para 33) be taken to have simply accepted the first appellant's evidence on all these matters. It was incumbent upon the First-tier Tribunal to make relevant findings on this as part of its reasoning process to reach its conclusion that the second appellant had no "meaningful family ties in Iran". I do not say that such a finding was not open to the First-tier Tribunal but its reasons given in para 33 were not adequate to support that finding and disclosed a failure to grapple with the relevant evidence and make appropriate findings on that evidence.

22. For these reasons, the First-tier Tribunal erred in law in reaching its finding in the appellants' favour under the Immigration Rules, namely para 399(a).

23. Ms Harrington did not contend that the finding in the appellants' favour under Art 8 could stand alone. That is clearly correct as it is even more briefly dealt with in paras 35-38 and is premised entirely upon the favourable finding under para 399(a).

Decision and Disposal

24. For these reasons, the First-tier Tribunal's decision to allow the appellants' appeals under the Immigration Rules and Art 8 involved the making of an error of law. Those decisions cannot stand and are set aside.

25. Further, the First-tier tribunal erred in law by failing to make any decision on the first appellant's asylum claim.

26. Given that the appeal is properly to be remitted to the First-tier Tribunal in order to deal with the first appellant's asylum claim, it would be appropriate for the First-tier Tribunal also to consider *de novo* the appellants' claims under the Immigration Rules and Art 8 of the ECHR.

27. For these reasons, the appeals are remitted to the First-tier Tribunal to be determined *de novo* by a Tribunal not to include either Judge Trevaskis or Ms V S Street JP.

Signed

A Grubb
Judge of the Upper Tribunal

Dated

14 October 2014