



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/09131/2015**

**Appeal Numbers:**

**AA/09135/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 4 May 2016**

**On 20 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**S Z (FIRST APPELLANT)  
A K (SECOND APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Z Malik, Counsel, instructed by Malik Law Chambers  
For the Respondent: Mr N Bramble, Senior Home Officer Presenting Officer

**DECISION AND REASONS**

**Introduction**

- 1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others,**

**all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellants from serious harm, having regard to the interests of justice and the principle of proportionality.**

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge R J N B Morris (the judge), promulgated on 8 December 2015, in which she dismissed the Appellants' appeals on all grounds. Those appeals were against the Respondent's decisions of 4 June 2015, refusing the Appellants' protection and human rights claims.
3. The first Appellant is the mother of the second. They are Pakistani nationals. The first Appellant's claim was based in essence on alleged domestic violence committed by her husband both in Pakistan and this country. It was said that the Appellants would be at risk on return to Pakistan.
4. The Respondent accepted that there had been domestic violence, but concluded that the Appellants would have familial support on return and, taking the case at its highest, the Appellants could receive state protection and/or internally relocate.

### **The judge's decision**

5. The judge notes the Respondent's concession as to the domestic violence and does not go behind it. She then sets out a number of reasons as to why other aspects of the first Appellant's evidence were unreliable. Some of these are the same as those contained in the Respondent's reasons for refusal letter, whilst some are independent (paragraphs 16-18). At paragraph 21 the judge makes the statement that:

"I found that there is a real likelihood that this aspect of her story [relating to familial connections and support] was a fabrication which was intended to bolster the Appellant's claim."
6. The first sentence of paragraph 26 reads:

"...I have concluded that one of the core elements of the Appellant's account of persecution lacks credibility, and that there is a real likelihood that it is a fabrication designed to enable her to remain in the United Kingdom."
7. As a result, the appeals were dismissed.
8. The judge did not stop her consideration of the case at the point of making the credibility findings. At paragraphs 22-25 she takes the claim at its highest and concludes that the Respondent was correct to have found that sufficient protection and/or internal relocation were available to the Appellants. On this basis, the appeals were dismissed as well.

9. Finally, the judge goes into some detail in considering and ultimately dismissing the Article 8 claims, both within and outside of the Rules (paragraphs 28-48).

### **The grounds of appeal and grant of permission**

10. There are four grounds, the drafting of which leaves something to be desired in terms of content and proper reflection of the judge's decision. However, the essence of these are: that the judge erred in applying an incorrect standard of proof; that she erred in relation to the issue of internal relocation; that she erred in her assessment of the Article 8 claims; finally, that she erred in dealing with the second Appellant's best interests and wellbeing.
11. Permission to appeal was granted by Deputy Upper Tribunal Judge Archer on 14 March 2016. There is specific mention only of ground 1. However, permission was not expressly limited.

### **The hearing before me**

12. The Appellants did not attend the hearing. Mr Malik confirmed that they were aware of the occasion, and he was content to proceed in their absence, as was I.
13. Mr Malik submitted that the judge erred in relation to the statements made in paragraphs 21 and 26 (quoted above). In response to my question as to whether any error was material in light of the alternative conclusions on protection and in particular internal relocation, Mr Malik submitted that the judge's assessment of internal relocation was inadequate. He accepted that it was implicit in her consideration that the correct legal tests had been applied. However, he stated that it these tests needed to be expressly set out. He suggested that there was nothing to show that the judge actually agreed with the Respondent's analysis in the reasons for refusal letter. In relation to Article 8 (including the best interests issue), Mr Malik submitted that the claims were "weak" and could not ultimately succeed. As I understood his final comments, he asked me to set aside the judge's decision so as to remove the adverse credibility findings, remake the decisions myself, and dismiss the appeals on the basis of the internal relocation issue as contained in paragraph 25 of the judge's decision. He reiterated that the Article 8 claims would not succeed.
14. Mr Bramble acknowledged what appeared to be a misdirection as to the standard of proof. He suggested that the specific findings could stand in any event. In the alternative, the judge's conclusions on internal relocation were open to her. He expressed some tentative concerns on the Article 8 conclusions, but in view of Mr Malik's position, these were by-the-by.

### **Decision on error of law**

15. The judge expressed herself in the rather unfortunate terms set out earlier on not one but two separate occasions. What she has said is a misdirection in law as to the applicable standard of proof in protection claims. It is a pity that there is no other reference in a standard paragraph to the correct legal test: this might have indicated a slip on the pen on her part in respect of paragraphs 21 and 26. Although the individual adverse credibility findings do appear adequately reasoned, having regard to what the judge has actually said and the need for anxious scrutiny in protection claims, I find that there is an error here.
16. The question then is whether the error is material to the outcome of the appeals. In my view it is not.
17. The judge has clearly gone on to consider the claims at their highest. This therefore negates the error made in relation to the adverse credibility issues provided the alternative conclusions are themselves sustainable.
18. At paragraph 25 the judge expressly confirms that she had had regard to all the evidence before her including the country information. There is no reason to suppose that this statement was inaccurate. She then states that she agrees with the Respondent's conclusions as regards internal relocation as set out in paragraphs 50-77 of the reasons for refusal letter. The judge goes on and (in my view quite properly) gives specific examples of the reasons with which she agrees (paragraph 25(i) and (ii)).
19. There is no challenge to the content of the country information relied on by the Respondent and in turn the judge. Mr Malik's sole line of attack relates to the relevant legal test applicable to internal relocation, namely "reasonableness" or "undue harshness". Mr Malik's argument is that the judge failed to explicitly state the relevant terminology in paragraph 25.
20. I reject this submission for the following reasons. First, in paragraph 24 the judge makes specific reference to the question of whether the Appellants could "reasonably" stay in another location. Second, specific reference is made to relocation being "reasonable" and "not unduly harsh" in paragraphs 75-76 of the reasons for refusal letter, the very same passages with which the judge was agreeing with. Third, at paragraph 14(i) of her decision the judge cites Januzi [2006] UKHL 5 and a passage therefrom in which the unduly harsh test is explained.
21. Reading the judge's decision in full, in its proper context, and with an appreciation both of common sense and the notion of substance over form, it is quite clear to me that the judge had in mind the appropriate legal test in relation to internal relocation. There is simply no error here.
22. Therefore, the judge's conclusions on the alternative scenario of the Appellants' cases at their highest are sustainable. It was open to the judge to dismiss the appeals on this basis.
23. As I have said previously, Mr Malik urged me to set aside the judge's decision even if, as I understood his position, the judge had essentially

been correct on the internal relocation point. It is right that there has been an error on the assessment of some aspects of credibility, but that of course does not compel me to set aside the decision: I have the power to do (section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007). Here, because the error is immaterial, I do not exercise that power.

24. Turning to the Article 8 issue, the long and short of it is that Mr Malik has adopted the position that the claims were bound to fail. Therefore, any errors which may exist in the judge's decision must, on the Appellants' case before me, be immaterial.
25. In any event, the grounds themselves do not identify any material errors. The judge conducted a thorough consideration of Article 8, both inside and outside of the Rules. The second Appellant's wellbeing and best interests are fully dealt with, under correct legal direction and with fully sustainable reasoning. There is nothing to properly suggest that the Article 8 assessment is materially infected by the error on credibility made in relation to the protection claim. Mr Malik has not made any submission to the contrary and the grounds do not articulate anything approaching a challenge of this sort.
26. In light of the foregoing, the judge's decision stands.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The Appellants' appeals to the Upper Tribunal are dismissed and the decision of the First-tier Tribunal stands.**

**I maintain the anonymity direction**

Signed

Date: 17 May 2016

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT** **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 17 May 2016

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal