IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/09242/2014
AA/09247/2014
AA/09249/2014
AA/09250/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 January 2016	**On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

MS CHAHRAZAD SAHRAOUI (FIRST APPELLANT)
MR AHMED ALI ACHOUR (SECOND APPELLANT)
MR YASIN ACHOUR (THIRD APPELLANT)
MR YOUCEF ACHOUR (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms P Solanki, Counsel instructed by Bindmans LLP Solicitors
For the Respondent: Mr K Norton, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeals

1. The Appellants, who are a mother and her three children, are citizens of Algeria. They appealed against a decision of the Respondent to remove them from the UK as illegal entrants. Their appeal was heard on 29 April 2015 at Taylor House by Judge Coll. Both parties were represented, the Appellants by Ms Solanki. In a decision of 29 June, promulgated on 7 July, 2015, the appeals were dismissed on political asylum, humanitarian protection and Articles 2, 3 and 8 human rights grounds and under the Immigration Rules.

2. Permission to appeal was refused on 31 July 2015 by Judge McClure, essentially on the basis that the judge had given sufficient reasons for her conclusions. On second application permission was granted on 16 September 2015 by Judge Smith in the following terms:

> "1. The Appellants appeal against the Respondent's decision dated 22 October 2014 refusing Ms C S's asylum claim and directing the Appellants' removal to Algeria. Their appeals were dismissed by First-tier Tribunal Judge Coll in a decision promulgated on 7 July 2014 ("the Decision").
>
> 2. In light of the asserted basis of the asylum claim and the involvement of minor Appellants, I have made an anonymity direction in relation to all Appellants.
>
> 3. In relation to ground two, although the findings in relation to risk to the Appellants as a lone mother with young children are detailed, a number of those findings appear to be speculative and inconsistent with the documentary evidence of the witnesses. The Judge has also arguably failed to properly analyse and apply the objective evidence. The Judge has arguably erred in her consideration of this issue. This issue is linked also to ground five which deals with the human rights claim based on the First Appellant's situation as a lone mother on return to Algeria. The Judge has arguably erred in her consideration also of that issue.
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> 4. I would not have granted permission on grounds three and four but the findings in relation to those issues may have a material bearing on grounds two and five and I do not therefore restrict the grant of permission".

3. The Respondent submitted a Rule 24 notice, essentially arguing that the judge gave cogent reasons for her conclusions, which were sustainable from the evidence, and that the grounds of appeal represented disagreement with them.

4. The first Appellant, together with her solicitor, attended the error of law hearing, which took the form of submissions. I have taken these into account, together with the very detailed grounds of application. I reserved my decision.

Decision

5. The permission application is based upon a number of grounds, which were developed by Ms Solanki at the hearing. I have concluded that it is sufficient for me to address one of them, which is that of risk on return, as to some extent it subsumes aspects of the others.

6. There is much evidence, at paragraphs 13 to 22 of the Appellant's statement, of her having been subjected to abuse, both physical and emotional, by various members of her husband's family. However the judge found at paragraph 104 that on the basis of her evidence the Appellant had experienced problems from only one member of her husband's family. This conclusion is not grounded in the evidence, and the judge does not explain why she rejects the evidence of the Appellant to the contrary. She goes on to find at paragraph 120 that the Appellant was not at risk from her in-laws and that the only antagonistic actions towards her came from her sister's daughter, and did not include physical abuse. Again, this finding does not sit with the evidence.

7. The judge considered letters from the Appellant's two sisters in Algeria, each explaining why they could not accommodate her (paragraphs 121, 122). Noting that neither had provided anything akin to a signed witness statement attesting to the truth of the contents and were not available for cross-examination, the judge, whilst not entirely discounting the letters, could give them little weight (paragraph 123). There was some suggestion that the sisters would attend to give evidence, but they did not do so (paragraph 8). However they live in Algeria, and it was not established that they were in the UK at all, and therefore available to give evidence. Each has prepared a signed statement, with a certified translation.

8. The judge considered a report by One World Research and Alice Jones, who consulted with a number of people including a university professor in Morocco and a lawyer who worked for the American Bar Association (paragraphs 115, 116). The judge preferred their evidence that for financial reasons it would not be possible for the Appellant to live with her sisters for longer than three to four months (paragraph 124). On that basis she found that the first Appellant would be able to stay with each sister for three to four months, thus giving her up to six months minimum in which to find herself suitable accommodation (paragraph 124).

9. This chain of reasoning lacks logic. Nobody except the sisters could say whether or not they were able and willing to accommodate not only the first Appellant but also her three young children, and the reasons. The judge had insufficient basis for rejecting their evidence, which gave the reasons why they were unable to do so.

10. The judge found that the Appellant would be able to live in a Government-run centre or shelter for three months (paragraph 125). The background evidence was that such shelters had limited capacity and that women who were in a serious situation of threat would not be turned away. So she found that the Appellant and her three children would then be able to live for up to three or four months in such a shelter (paragraph 126).

11. The judge continued that, although seeking her own rented accommodation as a perceived single woman would be very difficult, she would not discount help from either of her sisters' husbands or from a male mosque member in the UK; a male relative or supporter could in this

way secure a tenancy on her behalf, thus circumventing the difficulty faced by a single woman.

12. This finding was speculative, and there was no evidence to support it. One of the sisters said that her husband had refused to help the first Appellant (paragraph 122) and the other that the first Appellant had been threatened by her husband's parents (paragraph 121). On that basis it was not reasonably likely that either of her sisters' husbands would be willing to help her, even if they could afford to do so, of which there was no evidence. Nor was there any evidence of the availability of any other male relative or supporter from a mosque in the UK.

13. These findings on the availability of accommodation, with each of her sisters for three to four months and then, after another three to four months in a shelter, in accommodation which would be found for her, were speculative. In **AA (Uganda)** the Court of Appeal wrote:

> "54. I consider that the Immigration Judge's decision was wrong in law in at least three respects. One of those is that she proceeded on the basis that, if AA were returned to Kampala, she would be able to receive support from the church there at least comparable to that which she has been able to receive from a particular church in this country. There was no evidence to support that conclusion; it was pure speculation. I agree with Lord Justice Buxton's judgment at paragraphs 11 to 14 as to the significance of that error".

14. Based upon the evidence, the judge found that two men who had been supporting the Appellants financially would continue to do so (paragraph 131). However, in the face of the letters from the two sisters effectively to the contrary, the judge found that there was a degree of family feeling and sympathy between the two sisters in Algeria and the first Appellant, which might lead them to provide her with outgrown clothing, books, school equipment and food. Again, this finding was speculative. Drawing all of this together, the judge found that there was no real risk of homelessness for the Appellant in Algeria, and that she would therefore be safe and free from the risk of ill-treatment for a substantial period of time (paragraph 134). This conclusion was partially reached in the face of evidence to the contrary and was partially speculative.

15. It follows that the judicial conclusions upon the absence of risk of return are flawed and cannot stand. Thus the decision must be set aside and remitted for rehearing. Both parties agreed that in that event it should be remitted to the First-tier Tribunal.

Decision

16. The original decision contains an error of law and is set aside.

17. The appeal is to be reheard on all issues in the First-tier Tribunal at Taylor House by any judge other than Judge Coll.

18. Anonymity direction not made.

Signed Dated: 11 January 2016

Deputy Upper Tribunal Judge J M Lewis