Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/09512/2014
AA/08043/2015

THE IMMIGRATION ACTS

Heard at Bradford UT	**Decision & Reasons Promulgated**
On 22nd May 2017	**On 2nd June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MRS S.T. (FIRST APPELLANT)
MR W.R.B. (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Hussain of Counsel
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was made by the First-tier Tribunal, on the basis that the Appellants have two minor children and the decision impacts upon their welfare. It is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellants, Mrs S.T. and Mr W.R.B., are citizens of Pakistan, born [ ] 1975 and [ ] 1975 respectively. They appeal with permission to this Tribunal against the First-tier Tribunal (Judge Cox) which in a decision promulgated on 26th January 2016 dismissed their appeals against the Respondent's refusal to grant them asylum or other protection.

Background

2. The Appellants, who are husband and wife, entered the United Kingdom in November 2012 in possession of family visit visas and accompanied by their two younger children F and H. Their eldest child remained in Pakistan because she was preparing for her "A" level examinations.

3. The Appellants remained in the UK outwith the terms of their grant of leave and on 9th April 2014, were encountered by Immigration Officers, working at a computer shop "Talk and Text". They were served with IS15 notices as overstayers.

4. On 11th June 2014 S.T. claimed asylum, naming her husband and F and H as her dependants. By December 2014 however W.R.B. made a claim to asylum in his own right.

5. The claims of both Appellants were essentially interrelated. In summary they claimed a fear of returning to Pakistan firstly because their lives would be in danger on account of their mixed religious marriage and secondly on account of W.R.B. having another relationship with a woman by the name of T.K.

6. So far as the first strand of the Appellants' claims is concerned, S.T. is a Sunni Muslim and W.R.B. a Shia. They married in 1992. They said that their families were unhappy at the match, although initially the couple lived with W.R.B.'s parents. It was said that the parents caused difficulties because they wanted their son to divorce S.T. However, the Appellants' eldest daughter was born in September 1994. They did not divorce.

7. In 1996 both Appellants together with their eldest daughter went to live with S.T.'s mother.

8. The second strand to the Appellants' claim originated in 2005 when W.R.B. started an affair with T.K. a Shia Muslim woman. S.T. was unaware of the affair and unaware that W.R.B. married T.K. as a second wife in 2010. W.R.B. claimed that he and T.K. divorced in 2011.

9. In September 2009 W.R.B. said he was attacked by four men and formed the impression that the attack occurred because he had married a Sunni woman, namely S.T. He claimed he was again attacked in 2011 by four men who this time accused him of mistreating a Shia woman, namely T.K. Both incidents were reported to the police. No charges followed.

10. Following the second attack, W.R.B. said that he was scared of T.K.'s family, and so he went to seek a reconciliation with her (without S.T.

knowing). W.R.B. then confessed his actions to S.T., they collected funds and together paid T.K. 2 lakh rupees to sign divorce papers. T.K. did sign divorce papers but continued to harass both Appellants.

11. The Appellants decided therefore to apply for visas to come to the UK together as a family. Their eldest daughter remained in Pakistan. Sadly in January 2013, whilst the Appellants and their younger children were in the UK, their eldest daughter became the victim of a hit and run accident and died as a result of the injuries sustained. The Appellants accused T.K.'s family of killing their daughter and the police were involved, but no charges resulted.

12. In September 2013 the Appellants bought a computer shop in the UK and in April 2014 they were encountered at the shop by Immigration Officers. The Appellants claim that their lives are in danger because of their marriage and they also believe that T.K. intends to harm them through her connections with Shia organisations.

13. The Respondent did not accept the credibility of the Appellants' claims as regards the attacks upon W.R.B., nor the credibility of the claim that the Appellants' daughter had been targeted by T.K. or her family through their connections.

14. When their appeals came before the First-tier Tribunal, Judge Cox made several findings. In particular, for the purposes of this decision, he noted that S.T. was a credible witness [52]. In addition, after considering expert evidence relating to supporting documents submitted, he was satisfied that the Appellants' eldest daughter had died as a result of a hit and run accident. He was not satisfied that the accident was deliberate targeting of the girl.

15. Judge Cox did not accept was the genuineness of the First Information Reports (FIRs) which W.R.B. said showed that the police in Pakistan had not properly investigated the claimed attacks upon him in 2009 and 2011. The judge went on to find that so far as W.R.B. was concerned, he had great doubts about his credibility. His doubts encompassed inconsistencies in the second Appellant's story relating to his claim that he had been attacked twice, firstly on account of his marriage to S.T. and secondly on account of his divorce from T.K. It is correct to note that the Respondent had always maintained that the FIRs were fraudulent because a DVR report said they were. The judge did not go so far as to accept that assessment but did find the FIR's unsatisfactory in the general context of the second Appellant's evidence overall.

16. The judge then assessed the evidence holistically. For properly considered reasons, whilst he accepted that S.T. genuinely believed that there was a threat to her and her husband, objectively he found no basis for the Appellants' relocation to the UK and therefore no reason why they could not return to Pakistan.

17. The judge's assessment was reinforced by the fact that W.R.B. appeared less than truthful in giving his evidence about opening up a computer shop less than a year after his arrival here. Accordingly, the appeals of both Appellants were dismissed.

Onward Appeal

18. Both Appellants appealed the FtT's decision. The grounds seeking permission complained of several matters, but permission was granted on limited terms only by FtTJ Dineen. The relevant part of the grant reads as follows:

> "2. The notices complain that the judge did not consider the evidence in the round, failed to give anxious scrutiny to the evidence and ignored material evidence.
>
> 3. The judge in fact made comprehensive findings on the evidence at **[39-89]** At **[80]** he found on the totality of the evidence that he could not attach any weight to FIRs. He found at **[88]** that on the totality of the evidence he was not satisfied to the lower standard of proof that the appellants would be at risk in Pakistan.
>
> 4. The appellants' complaints amount to no more than disagreement with the order in which the judge considered the evidence.
>
> 5. However, at **[55]** the judge began a bulleted list of findings which on its face is incomplete. This may be due to a word processing error. It is not possible to say what the omissions are or whether they might be material.
>
> 6. Permission to appeal is granted on this ground only".

19. The Appellants, taking issue with Judge Dineen's limited grant of permission sought further permission from the Upper Tribunal. This was refused by UTJ Blum and thus the matter comes before me on the limited ground only as set out by Judge Dineen to decide whether the decisions contain an error of law requiring them to be remade.

UT Hearing

20. Before me, Mr Hussain appeared for both Appellants, and Mr Diwnycz for the Respondent. The first Appellant S.T. was not in attendance. Mr Hussain handed in a medical appointment letter showing that S.T. is pregnant and was attending a clinic for a pregnancy scan. He made no application to adjourn the proceedings on account of that and was content to proceed in her absence.

21. Mr Hussain's submissions centred round the omission in Judge Cox's decision at [55]. He submitted that it is a long held principle that an

Appellant is entitled to have a decision made whereby he or she can clearly understand why they have won or lost their appeal.

22. In the instant appeals, Mr Hussain did acknowledge that the limited Grounds of Appeal primarily concern S.T.'s appeal, because [55] relates to that part of the decision where the judge is dealing with S.T.'s oral evidence.

23. He submitted that the judge had set out a list of his findings but had not completed that list. This was sufficient to raise a doubt about whether the judge's omission was material or not. He proposed that the appropriate course therefore would be to find that this omission amounted to an error sufficient to remit the appeals back to Judge Cox for him to complete the omission at [55]. In the light of that finding the judge should reconsider his decision and re-promulgate it.

24. Mr Diwnycz had not served a Rule 24 response. However, he was fully supportive of the course proposed by Mr Hussain and agreed that this would be the most practical way forward. This was in view of the fact that the judge had made comprehensive findings on the evidence at [39] to [89] and those findings were not open to challenge.

Consideration

25. The point in issue before me is a narrow one. I find that the decision of Judge Cox in many ways is a careful, thoughtful one and one on which he clearly has spent considerable time. However, I do find that the omission at [55] amounts to an error and as the grant of permission outlines it is not possible to say what the omission amounts to and whether it could therefore be material. I reiterate that there is no sustainable challenge to the judge's credibility findings concerning W.R.B.

26. In view of the considerable time spent on this matter by Judge Cox, I find it is appropriate that these matters should be remitted to Judge Cox for him to clarify the omission at [55]. It will be necessary for him to re-make and re-promulgate his decision regarding both appellants in the light of that clarification.

Notice of Decision

For the foregoing reasons I set aside the decisions of First-tier Tribunal Judge Cox, to the extent that I remit these matters back to Judge Cox for him to remake the decisions on the terms set out above.

Signed C E Roberts Date 31 May 2017

Deputy Upper Tribunal Judge Roberts