



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
AA/11154/2015

**Appeal Number**

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower  
On 12<sup>th</sup> July 2017**

**Decision and Reasons Promulgated  
On 2<sup>nd</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

**Between**

**GURMEET SINGH KHURANA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Trevelyan (Counsel, instructed by Legal Justice Solicitors)  
For the Respondent: Ms H Aboni (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This the Secretary of State's appeal against the decision of First-tier Tribunal Judge Gurung-Thapa who allowed the Appellant's appeal in a decision promulgated on the 23<sup>rd</sup> of January 2017. The Judge had accepted that the Appellant was a national of Afghanistan and his account of his treatment there and went on to find that the Appellant's wife was also a national of Afghanistan and not of India as the Secretary of State maintained, accordingly the couple could not live in India and were entitled to refugee status in the UK.
2. The Secretary of State sought permission to appeal to the Upper Tribunal in grounds of the 27<sup>th</sup> of January 2017 which challenged the Judge's approach to the findings made in respect of the Appellant's wife's nationality. It was argued that the Judge had simply accepted the Appellant's assertion that his wife was not entitled to Indian nationality without giving reasons with reliance placed on passages cited from MA (Ethiopia) [2009] EWCA Civ. Permission was granted by First-tier Tribunal Judge Pedro on the 25<sup>th</sup> of April 2017.

3. At the hearing before the Upper Tribunal the parties made submissions in line with their respective positions, these are recorded in the Record of Proceedings. Mr Trevelyan argued that the situation in the case of MA (Ethiopia) was different from that which obtained in this appeal there being a difference between the ability to return and whether it was person's actual nationality.
4. The background which was not in dispute was the Appellant's wife and her parents had travelled to the UK in December 2006 in Indian passports with visit visa that had been issued in Delhi. They had been granted temporary admission for enquiries to be made of the British High Commission in Delhi but left the UK on their return tickets at the start of 2007. A minute sheet from the Respondent dated the 24<sup>th</sup> of July 2014 contained a reference to the Appellant stating his wife had been to the UK but with an agent and knew nothing as she was only 16.
5. Further evidence was that the Appellant and his wife had married in Afghanistan in April 2014 and that they had not had contact with her parents since shortly after the wedding. The Appellant's wife's uncle had made a witness statement detailing his coming from Afghanistan and being granted refugee status and then British Citizenship.
6. The Judge's findings are set out from paragraph 34 onwards where the Judge stated "I have taken into consideration of the evidence in the round, including findings that I made in the Appellant's father's appeal. I find that the Appellant is an Afghan national." In relation to the nationality of the Appellant's wife the Judge's findings in paragraph 37 amount to "Having taken account of the evidence I accept that her genuine name is Manmeet Kaur..." and went on to accept she was from Afghanistan.
7. Put directly the findings made are bald and unreasoned. A passport is a document that proves itself and unless is shown to have been issued without authority is evidence of its contents including the nationality of the person holding it. The date of birth given on the Appellant's wife's passport of August 1986 would have made her 20 when she arrived in the UK and as the family was being investigated it does not appear that her age was questioned. Even if she was 16, and so not an adult, she was not so young that she would have been unaware of what was going on. Holding a passport giving her age as 20 she could legitimately have been questioned by Immigration Officers on her own which would raise how she would have handled that.
8. There are other features that the Judge did not address such as the difference in the accounts of the Appellant and his wife such as about who she came with. There is also the return of the family to India, if they came to the UK because Afghanistan was too dangerous for them it is difficult to see why with all the arrangements that would have been made asylum was not claimed by them at that time.
9. The Judge's unreasoned acceptance of the evidence in this case cannot stand. There were a number of issues to be addressed and resolved but were simply not considered in the decision. I note that the acceptance of the core of the Appellant's account has not been challenged by the Respondent and accordingly that part of the decision remains undisturbed. However the findings in relation to the Appellant's wife's nationality are flawed to the extent that they are set aside.
10. This issue requires further evidence and a detailed consideration of the position, legally and factually. In the circumstances I am take the view that it is appropriate to remit the case to the First-tier Tribunal for the issue to be ventilated fully. It is not to be heard by Judge Gurung-Thapa.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

The decision is set aside in part in relation to the nationality of the Appellant's wife and the ability of the Appellant and his wife to live lawfully in India.

**Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

**Fee Award**

In remitting the case to be reheard in part I make no fee award which remains an issue for the First-tier Tribunal.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 1<sup>st</sup> August 2017