



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08011/2016

THE IMMIGRATION ACTS

Heard at Bradford

**Decision &
Promulgated**

Reasons

On 26 June 2017

On 27 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**MN
(ANONYMITY ORDER MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering of Counsel

For the Respondent: Mr Diwnycz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for asylum and ancillary protection on 19 July 2016. His appeal was dismissed by First-tier Tribunal Judge Moxon ("the Judge") following a hearing on 16 December 2016.

2. I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as the Appellant's asylum and ancillary protection claim, for reasons that will become clear, remains outstanding.

The grant of permission

3. Upper Tribunal Judge Jordan granted permission to appeal (8 March 2017) on the grounds that it is arguable that the Judge erred in relation to the issue of paternity and in particular regarding the need to obtain DNA evidence where there was a birth certificate which identified it.

Respondent's position

4. Mr Diwnycz submitted, in the absence of a rule 24 notice, that the Judge considered all the evidence despite the exclusion of such a reference to that in [46] where the Judge said "the only evidence of paternity is a birth certificate".
5. He pointed out that the Judge had considered evidence as to whether the Appellant and child's mother were in a genuine relationship and noted inconsistencies in their evidence regarding the relationship [38, 40], linguistic challenges to developing a relationship where neither spoke English fluently [39], his adverse credibility regarding complying with immigration laws [41] and delay [42], and a lack of documentary evidence of them being together [45].
6. He noted the Judges reliance on TK (Burundi) v SSHD [2009] EWCA Civ 20 regarding the Judge's entitlement to factor in the absence of obtainable evidence.

Discussion

7. In my judgement, the decision was inadequate regarding paternity to such an extent that it amounts to a material error of law for the following reasons.
8. There is a baby. The baby has a father. The birth certificate identifies who the mother told the registrar was the father. There is no evidence she has been prosecuted by the relevant authorities for providing false information. The fact that DNA evidence could be obtained does not mean it needed to be given the bare assertion he was not the father. The Judge did not just have the birth certificate as evidence of paternity. He also had the evidence of both purported parents. None of the adverse points identified above [5] impact on that core issue. Many children are conceived from brief relationships where there may be little evidence of an ongoing relationship, or parental knowledge of each other, or even that the parents speak the same primary language.

9. The issue of paternity was an integral part of the assessment of the relationship between the Appellant and child especially as the child and mother were both at the hearing. I am therefore satisfied that the Judge made a further material error of law in that his assessment of that relationship was inadequate.
10. Both representatives agreed, once I announced my decision that there was a material error of law, that it was appropriate to remit the matter with no findings being preserved for a de novo hearing on paternity, the nature of the relationship, the consequent risk on return to Pakistan, and the family life issues that flowed from those assessments.

Decision:

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

I set aside the decision.

The matter shall be remitted to the First-tier Tribunal not before Judge Moxon with a time estimate of 3 hours and there being an Urdu interpreter to assist the Appellant and an Indonesian interpreter to assist the child's mother.

Signed:
Deputy Upper Tribunal Judge Saffer
26 June 2017