Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02648/2017**

PA/02617/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons**
On 3 May 2018	**Promulgated**
	On 11 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

FATEMEH HOSSEINI
JAVAD HOSSEINI
[NO ANONYMITY ORDER]

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Mr Chris Boyle, with Halliday Reeves Law Firm, solicitors
For the respondent: Ms Rhona Patterson, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse them international protection under the Refugee Convention or humanitarian protection grounds, but allowing them on human rights grounds, with regard to paragraph 276ADE of the Immigration Rules HC395 (as amended) and Article 8 ECHR outside the Rules.

2. The appellants are a mother and her 24 year old son, ethnic Hazaras of Afghan origin, but neither was born in Afghanistan: the principal appellant was born in Iraq, and the second appellant was born in Iran. The principal appellant is a single head of household, having divorced her Pakistani husband after the birth of the second appellant.

3. The appellants assert that they are stateless. The respondent treated the appellants as citizens of Afghanistan.

Background

4. The principal appellant was born in Iraq in 1976 to parents who were both Afghan citizens. Her grandparents were all Afghan citizens, but the principal appellant's father had left Afghanistan long before she was born, to live in Iraq. The principal appellant continued to live in Iraq until her father died in 1992, when she would have been 16 years old.

5. The principal appellant then moved to Iran, where she lived with her maternal grandparents. Her brother was also living in Iran. While in Iran, the principal appellant met and married a Pakistani citizen husband. The second appellant, her son, was born there in 1994, but the marriage failed and the parties are now divorced. The principal appellant only ever had a temporary residency permit in Iran, as her mother's dependent. Neither she nor her son ever lived in Pakistan.

6. In 2015, the principal appellant's brother was involved in a car accident in Iran. She thinks that the driver of the other car was a member of Sepah, part of the Islamic Revolutionary Guard Corps in Iran. The principal appellant says that she and her son would be at risk from Sepah if returned to Iran now.

7. On 25 April 2015, the appellants were deported to Afghanistan. They were admitted, and spent 5 days in Afghanistan before returning clandestinely to Iran, where they stayed with the principal appellant's maternal aunt in Tehran for about 2 months, before leaving to go to Turkey on 22 November 2015.

8. The appellants spent about 5 months in Turkey, then took a boat to Greece, from where they travelled by van and lorry, arriving in the United Kingdom on 5 September 2016 clandestinely, and claiming asylum the next day, 6 September 2016. The appellants say they cannot return to Afghanistan because they are not Afghan citizens.

9. The respondent considered the question of nationality of Afghanistan, Iraq, Iran and Pakistan in turn, concluding that the appellants had or were entitled to claim Afghan citizenship, but that there was no risk of persecution to them in any of those countries.

10. The appellants appealed to the First-tier Tribunal.

First-tier Tribunal decision

11. The First-tier Tribunal had the benefit of expert reports from Dr Fatah (regarding the appellants documents) and Ms Sheri Laizer, regarding the risk to the appellants as 'unwarranted Afghans in Iran', their inability to access Iraq as the principal appellant had lost her right to reside there when her father died, and the risk to them as Hazaras in Afghanistan.

12. At [79] in his decision, the First-tier Tribunal Judge found that the appellants had not discharged the burden of proof on them of satisfying him that they were not Afghan citizens and he proceeded on the basis that they were of Afghan nationality.

13. The Judge found that anywhere in Afghanistan, all of which would be internal relocation for them as they had never lived there, the appellants would be regarded as incomers, since they were farsi speakers and had not grown up there. At [81], he found that neither appellant was enough of an insider to be able to integrate into Afghanistan, given that they had spent only 5 days in that country, following deportation, that they had no family or other support in Afghanistan, and that resources there were already strained.

14. The Judge found at [85] that both appellants were outside the country of their nationality, whichever country that might be and that in Afghanistan they would form part of a minority group, 'the very large number of Afghans the Iranians are deporting' and that the government of Afghanistan was facing significant difficulties in providing support for that group. He accepted that there was significant discrimination against the Hazara in Afghanistan, but below the level of persecution, and that, even having regard to their individual circumstances, the risk of harm also did not meet the test in Article 15 of the Qualification Directive 2004/83/EC, including Article 15C thereof.

15. He also found that there was no risk of persecution to the appellants in Iraq or Pakistan. As regards Iran, and having regard to the evidence of Ms Laizer about mass deportation of Afghans from Iran, he did not consider Iran to be a viable destination for removal, since they would be identifiable on arrival as persons who had previously been deported to Afghanistan, which would be likely to be repeated, perhaps with detention and maltreatment on arrival.

16. The Judge allowed the appeals. He did so at [94] only on Article 8 grounds, although under Decision, the allowing of the appeals is unqualified.

17. The appellants appealed to the Upper Tribunal. This is, in effect, an 'upgrade' appeal, seeking international protection instead of leave to remain on private and family life grounds.

Permission to appeal

18. The relevant paragraph of the grounds of appeal is as follows:

> "The First-tier Tribunal Judge does not appear to have made any findings as to why the appeals have not been allowed under the Refugee Convention.

> He has simply stated at paragraph 89 'The appeals are dismissed in terms of the Refugee Convention' and at paragraph 93 'The appeals are dismissed in terms of the other relevant ECHR Articles' and has not gone on to consider whether there would be a breach of Article 3 ECHR to return the appellants to Afghanistan, a country which he has accepted they are nationals of [sic]."

19. Permission to appeal was granted (out of time but with a satisfactory explanation for the delay), on the basis that it was arguable that the First-tier Tribunal Judge had failed to make any clear finding as to whether the appellants or either of them are stateless, that he failed to make a clear finding as to whether they were citizens of Afghanistan, or whether Article 3 ECHR would be breached if they were to be returned there.

Rule 24 Reply

20. In reply, the respondent noted that at [79], the First-tier Tribunal Judge appeared to accept that the appellants were Afghan citizens, and that any failure to make a finding on the risk of persecution in their most recent country of habitual residence was immaterial to the outcome of the appeal. The Judge had considered paragraph 15C of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (as amended) but had rejected the contention that any provision thereof applied to these appellants.

21. The respondent contended that the consideration of Article 3 ECHR was subsumed in that consideration, and that there was a finding, accepted by the respondent, that the appellants had not challenged the finding by the First-tier Tribunal that there were 'no obstacles to integration' in Afghanistan. The possibility of return to Iran, Iraq and Pakistan had also been considered properly, the appellants obviously being entitled to claim nationality in a number of countries.

22. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

23. The parties' submissions at the Upper Tribunal hearing are set out in my record of proceedings and do not take matters much further than the grounds of appeal and the grant above. The Secretary of State accepted that there would be obstacles to integration in Afghanistan. She had not challenged the Judge's decision to allow the appeal under paragraph 276ADE and Article 8 ECHR.

24. This appeal therefore concerns only whether the appellants are entitled to the enlarged support available to those entitled international protection under the Refugee Convention, humanitarian protection or Article 3 ECHR.

25. For the appellants, Mr Boyle accepted that neither Afghanistan nor Iran permits dual citizenship: in order for the appellants to be entitled to Iranian citizenship, they would have to have shown that they could meet its requirements and that they had renounced any other citizenship they held.

Afghan citizenship laws

26. The refusal letter sets out the Afghan citizenship laws, in the form of a summary prepared by www.multiplecitizenship.com which the Secretary of State does not dispute, extracted the *Official Gazette of the Ministry of Justice for the Republic of Afghanistan, March 19, 1992*:

> "**CITIZENSHIP**: Citizenship laws are based upon the Official Gazette of the Ministry of Justice for the Republic of Afghanistan dated March 19, 1992.
>
> **BY BIRTH**: Birth within the territory of Afghanistan does not automatically confer citizenship. Exception is a child of unknown/stateless parents.
> **BY DESCENT**: Child whose mother or father is a citizen, regardless of the country of birth.
> **MARRIAGE**: Foreign national who marries a citizen of Afghanistan is granted citizenship upon application.
> **BY NATURALIZATION**: Afghan citizenship may be acquired upon fulfillment of the following conditions: Person was born in Afghanistan and has resided continually in country for at least five years.
> **DUAL CITIZENSHIP:** NOT RECOGNIZED. **Exceptions**: A former citizen of Afghanistan, who fled the country due to political instability or war and has acquired new citizenship, may still hold "unofficial" Afghan citizenship. This is recognition that those who fled the country might some day want to return as Afghan citizens without losing new citizenship.
> The Afghani spouse of a foreign national is not required to renounce Afghan citizenship unless demanded by the spouse's country.
>
> **LOSS OF CITIZENSHIP**:
> **VOLUNTARY**: Voluntary renunciation of Afghan citizenship is permitted by law. Contact the Embassy for details and required paperwork. The following persons are not allowed to renounce citizenship: Person who has continuing financial obligations to the government or other institutions. Person who has been convicted of a crime and sentenced to jail. Persons involved in national security, whose loss to the country might endanger Afghan security.
> **INVOLUNTARY**: The following is grounds for involuntary loss of Afghan citizenship: Person voluntarily acquires foreign citizenship and does not fall under the exempted status described under "Dual Citizenship." Persons concerned with dual citizenship should not assume their Afghan citizenship was lost by default. Embassy should be contacted and citizenship formally renounced. "

27. The appellants did not seek to advance the full version of the Afghan citizenship laws, or indeed the laws of Iraq, Iran or Pakistan concerning citizenship. It is the appellants who bear the burden of proof in relation to their actual or putative citizenship.

Discussion

28. The principal appellant's case is that her parents were both Afghan citizens. In that case, she herself is Afghan by descent, 'regardless of the country of birth' and so is the appellant, because the principal appellant's citizenship passes to him. On that analysis, these claimants are not stateless.

29. The next point to note is that Afghanistan law does not allow for dual citizenship except for those who have fled the country and taken up tactical second citizenships, but may wish to return some day to Afghanistan without losing such citizenships. There is also express provision that the Afghan spouse of a foreign national is not required to renounce her Afghan citizenship unless the spouse's country demands renunciation. The principal appellant's brief marriage to a Pakistani citizen would therefore not have operated to renounce any Afghan citizenship she held.

30. The summary states that otherwise, renunciation must be done expressly; that 'persons concerned with dual citizenship should not assume their Afghan citizenship was lost by default'; and that the Embassy should be contacted and citizenship formally renounced, if that is what the appellant wishes to do.

31. I treat the appellants as Afghan citizens. They are not, and never have been, stateless, nor have they renounced their Afghan citizenship. It is quite clear that their nationality is Afghan.

32. The appellants may have been ordinarily resident in Iraq (for the mother) and Iran (for both of them) but they never had any right to live in either country and there was no evidence before the First-tier Tribunal on which a potential right of re-entry, still less of nationality, in either country, could be constructed. The second appellant, as the son of a Pakistani father, may have had some entitlement to Pakistani citizenship but the evidence on that was vanishingly slight.

33. Nor is it right to say that the First-tier Tribunal Judge made no findings as to why the appeals were not allowed under the Refugee Convention. There are adequate findings on that question, in relation to each of the countries under consideration. In particular, in finding that Article 15 is not met, the Judge did engage with the Article 3 ECHR test (see Articles 15(a) and 15(b)). If that test is not met, and the Refugee Convention test is not met, the appellants could not succeed under Article 3 ECHR.

34. For all of the above reasons, these appeals are dismissed because there is no material error of law in the decision of the First-tier Tribunal.

DECISION

35. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law
I do not set aside the decision but order that it shall stand.

Date: 10 May 2018 Signed Judith AJC Gleeson
Upper Tribunal Judge

Gleeson