



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/08724/2016  
PA/12591/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunals  
On 24<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 9<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MARGARET [T]  
(2) ACHU [D]  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr V Jagadeshm (Counsel)

For the Respondent: Mrs H Aboni (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Kelly, promulgated on 14<sup>th</sup> June 2017, following a hearing at Bradford on 8<sup>th</sup> June 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellants**

2. The Appellants are mother and son. The mother, the first Appellant, was born on [ ] 1959. The son, the second Appellant, was born on [ ] 1985. Both are citizens of Cameroon. Both appeal against the decision of 2<sup>nd</sup> August and 8<sup>th</sup> November 2016 respectively, refusing their application for asylum and for humanitarian protection under paragraph 329C of HC 395.

## **The Appellants' Claims**

3. The essence of the Appellants' claim is that they fear "[A]" who is the father-in-law of the first Appellant's daughter, who is known as "[C]", because she had married [A]'s son, [J], and then induced [J] to convert to Christianity. [J] himself, like his father [A], was of the Islamic faith. It was expected of [C] to convert from her Christian faith to the Islamic faith. Instead of this, however, she got her husband to convert from Islam to Christianity. As a result of this, [A] had issued a "fatwa" against the whole family. The second Appellant, the son of the first Appellant, also alleged that he was at risk because he had been a priest in the Roman Catholic church and both Appellants are anglophones, coming from an area where the authorities are repressing such people.

## **The Judge's Determination**

4. The judge set out the nature of this claim as presented (see especially paragraphs 5 to 16) in considerable detail. In addition, however, the judge observed that, "the premise upon which the first Appellant's narrative is based" had been accepted by the Respondent Secretary of State, namely, that [C]'s husband had converted from Islam to Roman Catholicism, following his marriage to her, so that the judge expressly found this account "to be broadly plausible" (paragraph 39).
5. However, there had been a delay in claiming asylum by both Appellants, and the judge did not regard the explanation offered as being satisfactory (paragraph 40).
6. Nevertheless, the judge did also go on to say that there was "a considerable body of documentary evidence to support the first Appellant's account of events between 2007 and 2010", and that the documents demonstrated that both "[C] and [J] made their claim for international protection upon the basis of a description of events which is broadly consistent with that given by the first Appellant", such that the judge was "satisfied that those events did in fact occur" (paragraph 45). It is not clear from this whether the judge accepted that the reference to the events, as having been proven, on the lower standard, included a reference to the existence of the "fatwa" against the entire family. At the hearing before me, Mr Jagadeshm, appearing on behalf of the Appellants, submitted the way in which the judge had put these matters suggested that the entire narrative of the Appellants had been accepted at face value, which included the existence of the fatwa by [A] against the Appellants' family. It is arguable, however, that the failure of the judge to expressly draw attention to the "fatwa" and to specifically make a finding as to the existence of the fatwa, left that question open.

7. In any event, the judge did not find the Appellants' claim to have been proven because it was not accepted by the judge that the second Appellant was attacked on his return from the church in Yaounde in 2010 (as he claimed), because he had not claimed asylum upon arrival in the UK (see paragraph 46, referring to paragraph 42). Furthermore, the judge did not accept, as stated by the second Appellant, that [A]'s wealth and power was such, that he would be able to target the Appellants anywhere at all (see paragraph 47).
8. The ultimate conclusions of the judge were that the "primary focus of [A]'s adverse interests has always been upon his son, [J], whom he regards as an apostate" (paragraph 55). This was because [A]'s son had converted from Islam to Roman Catholicism (paragraph 55). However, the judge found that [A] also had an adverse, and a lesser interest in [C], due to her reneging upon her own promise to convert to Islam following her marriage to [J] (paragraph 56).
9. The judge held that these findings of facts by him were "further supported by the fact that they have claimed and been granted international protection in Hong Kong" (paragraph 57). The judge did not accept that, given that the second Appellant had trained as a priest, would place the Appellant at risk from [A], given that "this occurred many years ago" and "there is no evidential basis for this claim that has contributed to the adverse interest in him" (paragraph 59).
10. However, [A] would not have an adverse interest in either of the Appellants, in the view of the judge, were he aware that both [J] and [C] are now permanently residing in Hong Kong. The judge did not consider it unreasonable for the Appellants to inform [A] of this fact, because it was the truth, and it did not involve the Appellants being discreet about their beliefs or innate characteristics, in addition to the fact that [J] and [C] are entirely safe in Hong Kong (see paragraph 60).
11. In a further twist to the judge's findings, it was concluded towards the end of the determination that

"it would not cause either the second Appellant or his wife very serious hardship were the former to return to Cameroon in order to exercise his right of appeal against refusal of his application for leave to remain as a spouse whilst allowed to continue to reside and work in the United Kingdom".

The judge made it also clear that if the second Appellant were to choose to exercise his right of appeal from abroad, he would likely be assisted by the findings that the judge had made in favour of the Appellant. Moreover, both parties had shown that they were able to survive a temporary period of separation given that the second Appellant moved out of the matrimonial home following the making of his asylum claim (paragraph 62).
12. The appeal was dismissed.

## The Grant of Permission

13. On 31<sup>st</sup> October 2017, permission to appeal was granted by the Upper Tribunal on the basis that the second Appellant had made an application for leave to remain in the UK on the basis of his spousal relationship with a British citizen, namely, a “Miss [MB]”, (to which the judge had drawn attention at paragraphs 48 to 53). The second Appellant had previously been granted leave to remain precisely on the basis of this relationship. The second Appellant had also made an asylum claim on 27<sup>th</sup> April 2016. The judge had accepted the second Appellant’s genuine relationship with Ms [MB]. However, he had concluded that there would be no very serious hardship for the second Appellant to return to Cameroon and exercise his right to appeal in respect of the earlier application made, on the basis of the spousal relationship, which had been refused on 26<sup>th</sup> August 2015. The second Appellant had the option of having his spouse relocate with him in the absence of any evidence that medical treatment, which she sorely needed, would not be available for her (because she suffers from bipolar affected disorder).
14. The Upper Tribunal, however, concluded that the judge failed to consider the extent of the second Appellant’s spouse’s reliance upon support from family members and the NHS in the UK. Moreover, given Judge Kelly’s acceptance of the genuineness of this relationship, it was questionable whether it would not be disproportionate to expect a person to undertake a human rights appeal from abroad, as has been in issue in the decision of **Kiarie and Byndloss [2017] UKSC 42**.
15. Finally, the Upper Tribunal also stated, that insofar as the judge had made findings of the genuineness of the Appellants’ protection claim, it was unreasonable for him to expect the Appellant to disclose the location of close family members in order to avoid any risk of ill-treatment (see paragraph 58 and paragraph 60), because this was be corporate to the principles of international protection.

## Submissions

16. At the hearing before me on 24<sup>th</sup> May 2018, Mr Jagadesham, appearing as Counsel on behalf of the Appellants, relied upon his skeleton argument and the grounds of application.
17. First, that Judge Kelly had accepted the essence of the Appellants’ claim on the basis that there was “a considerable body of documentary evidence” to support the account, and also [C] and [J] had made a claim for international protection “upon the basis of a description of events which is broadly consistent with that given by the first Appellant” (paragraph 45).
18. Second, Mr Jagadesham argued that the determination was unsustainable because Judge Kelly did not find that the Appellants would be at real risk from [A] in Cameroon. What Judge Kelly found was that they would not be at real risk if they informed [A] that [J] and [C] are now permanently residing in Hong Kong, where they have been granted international protection. Such a conclusion was irrational because it suggests that a person can protect oneself by revealing the location of another

international protected person to that person's persecutor. It was also not credible that a mother would reveal the location of her child to a child's persecutor.

19. Third, as far as Article 8 was concerned, given that the judge had found that there was a "genuine and subsisting relationship" between the second Appellant and his wife, it was not reasonable to conclude that, in an appeal that was effective before Judge Kelly, that the Appellant could be required to instead appeal from abroad, in respect of the very issues of which Judge Kelly was seized. In any event, if Judge Kelly was required to consider "undue harshness", this was a matter that could only properly be determined by oral evidence which was being given before Judge Kelly, rather than accessed on the basis of an out of country appeal from Cameroon.
20. For her part, Mrs Aboni submitted that there was no material error of law with respect to the determination of the protection issue. The judge had accepted (at paragraph 45) that events had occurred in Cameroon, but there was no evidence in the findings that he had accepted that the Appellants had become direct targets of [A] themselves. What the judge was stating (at paragraph 45) was that the Appellants' narrative was consistent in relation to events that were taking place in Hong Kong, where the international protection claim had been made, but there was no acceptance of the existence of a "fatwa".
21. However, Mrs Aboni submitted that she would have to accept that in relation to the Article 8 issue, the judge had erred in law because it was not reasonable to conclude that the second Appellant, the son, could return to Cameroon to exercise a right of appeal from abroad, when there was a genuine in country right of appeal before Judge Kelly that was being heard. However, Mrs Aboni submitted that there was only an error of law with respect to the second Appellant, the son, but that the first Appellant, the mother, could not show that Judge Kelly had erred because Judge Kelly had concluded that "she would have the assistance and support of her son" (at paragraph 63(d)).
22. In reply, Mr Jagadeshm submitted that if the son succeeds on Article 8 grounds then so must also the mother because her mental condition is what made her dependent upon her son (with reference being made to paragraph 25 of the skeleton argument).

### **Error of Law**

23. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
24. First, there is an error of law with respect to the protection claim, because the judge accepted that [A] had an adverse interest against the Appellants (see paragraphs 55 to 57) and that protection had been afforded in Hong Kong, but that in order to now be safe from the threat of any harm from [A], there should be disclosure of the fact that they were settled in Hong Kong (paragraph 60). Such a conclusion runs counter to the principles and purposes of international protection. Second, the judge erred also in not making an explicit finding on whether a "fatwa" had been issued by [A] against

the entire family because the positive findings made in favour of the Appellants, which referred to “a considerable body of documentary evidence to support the first Appellant’s account of events between 2007 and 2010” (paragraph 45) do not expressly confirm this.

25. Third, and most importantly, given that there was an effective in country right of appeal before Judge Kelly with respect to the asylum claim made on 27<sup>th</sup> April 2016, it was wrong for the judge to say that the matters arising in relation to undue harshness and the public interests in immigration control, both of which go to proportionality, could be properly assessed by way of an appeal from abroad. That may have been the position in relation to the refusal by the Secretary of State of 26<sup>th</sup> August 2015 in relation to the Appellant’s spousal application which had been certified under Section 94 of the NIAA 2002. It was not the case in relation to the Appellant’s claim for asylum which was made later on 27<sup>th</sup> April 2016.

### **Notice of Decision**

26. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal under Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal, to be heard by a judge other than Judge Kelly.
27. This appeal is allowed to that extent.
28. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

7<sup>th</sup> July 2018