Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/08720/2017
PA/08726/2017
PA/08732/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 12 November 2018	**On 08 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

NN
RA
PN
(ANONYMITY DIRECTIONS MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Samra of Harbans Singh & Co.
For the Respondent: Ms Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The decisions of First-tier Tribunal Judge Perry in these linked appeals are set aside for material error of law.

2. This is because the First-tier Tribunal Judge does not set out with adequate clarity any finding in respect of the weight to be accorded to supporting documentary evidence filed by the Appellants, or does not in the alternative make a finding to the effect that the evidence was false and/or otherwise unreliable. Whilst the Judge has made some clear and reasoned adverse observations in respect of aspects of the Appellants' accounts, these cannot be separated from other aspects of the reasoning that is unsatisfactory.

3. By way of background it is to be noted that the three Appellants herein were previously the dependants in the asylum application and appeal of SN (ref. AA/04107/2015). SN is the mother of the Appellants PN and NN and the daughter-in-law of the Appellant RA. She claimed asylum in the United Kingdom having entered clandestinely on 19 November 2013; she included the three Appellants herein as her dependants. SN's application was refused in February 2015 and a subsequent appeal dismissed. An application for permission to appeal to the Upper Tribunal was granted but in due course the decision of the First-tier Tribunal Judge was upheld. SN became 'appeal rights exhausted' on 30 November 2016. Thereafter further representations were made but these were rejected as not constituting a fresh claim on 17 January 2017. Subsequently the Appellants herein made applications for asylum in their own right. Those applications were considered together and rejected for reasons set out in respective 'reasons for refusal' letters ('RFRLs') dated 25 August 2017.

4. The claims of the Appellants herein were said to be based on new circumstances that had emerged (and were therefore not considered in SN's appeal). In particular it was said that the husband of SN (herein 'H') – i.e. the son of RA and the father of PN and NN - who had been thought to be missing, possibly kidnapped by the Taliban, had reappeared in Afghanistan together with another son (whom it was also thought had been kidnapped or disappeared at the same time). It was claimed that both were now active members of the Taliban. It was said that H wished now to recruit PN into the Taliban, and had promised NN to a Taliban member in marriage.

5. It was the Appellants' case that the reappearance of H had been communicated to SN through a former work colleague, 'A'. A had made contact with SN to inform her that H had contacted her (i.e. had contacted A) seeking information as to the whereabouts of SN and the rest of the family. In due course A gave the telephone number of SN to H pursuant to what was said to have been threats to A's life. Thus, H contacted SN and in due course also spoke to at least PN and NN on the telephone in the course of two telephone calls made on 29 March 2017 and 5 April 2017.

6. It may be noted that those claimed calls post-dated the making of the applications for asylum herein.

7. In support of their cases before the First-tier Tribunal the Appellants relied upon a number of documents that it was said had been provided to them by A. These documents, together with translations, are reproduced in the Appellants' bundle before the First-tier Tribunal at pages 19-29.

8. One document is described as a 'letter of petition': it is a document supposedly signed by A making complaint to the authorities in the Kunduz province as to the conduct of H in making contact with her and threatening her. A second document purportedly evidences action taken in consequence of the petition. It is purportedly addressed to the Prosecution Appeal Department of Kunduz Province for the attention of the Prosecution Department for the Internal and External Security from the 'Manager of the fight with terrorism' in the Security Command of Kunduz Province: it holds to confirm that subsequent to the petition of A, enquiries were made that established that H was an active member of the Taliban. A third document is said to be from the City Prosecution Department stating that an "*arrest decision*" has been issued in respect of H. A fourth document is supposed to have emanated from the Taliban and makes threats towards both A and SN.

9. Absent those documents the Appellants' case essentially turned on their personal testimonies, and the supporting testimony of SN (who provided a witness statement in these proceedings).

10. The First-tier Tribunal Judge made pertinent adverse observations in respect of elements of the evidence. In particular I note the following:

> *"Before me SN was asked what contact her husband had with her former colleague previously and how he would have known to locate a former colleague after 4 years. She told me her husband and colleague have never met and her former colleague lived in Kunduz but had moved to Mazar at some point. She did not know where her former colleague was currently living. She was asked about the extent of her contact with her former colleague having left Afghanistan. She could not give dates when they had spoken. She did not provide an explanation how the colleague could contact her."* (paragraph 24).

11. Necessarily these matters go to the question of the circumstances both in which H could have contacted A to attempt to get in contact with SN and

the Appellants, and to the nature and means of contact between SN and A. Further to this, at paragraph 25 the Judge made the following observation:

> *"The first visit of SN's husband to a former colleague was the same day as SN lodged further submissions. I accept it was convenient that after four years SN's husband made contact with her former colleague and given SN could not say whether her former colleague lived in the same area the Appellants do not explain how SN's husband could have known how to contact her former colleague."*

12. Plainly this passage in part picks up on the previous observation at paragraph 24; but it also appears to imply a cynicism about the timing of the emergence of the new matters relied upon to distinguish the instant appeals from SN's appeal. Any such cynicism would not be obviously misplaced: it does indeed seem to me to be a potentially adverse feature that these matters came to light at a time when SN and the other Appellants were struggling to establish a basis to remain in the United Kingdom. However, notwithstanding the scope for understandable cynicism, in my judgement if a decision-maker wishes to accord adverse weight to such a circumstance something clearer and more definitive would be desirable by way of finding and reasoning than mere reference to 'convenience'. Be that as it may the Judge's comments in this regard are not without merit, and are not in error of law.

13. At paragraph 28 the Judge gave consideration to the evidence in relation to the telephone calls that it was said had been received from Afghanistan. There was no supporting evidence in this regard; it was the evidence of the Appellants that a SIM card that had been in the mobile telephone that had received the calls had been destroyed and so it was not possible for them to produce supporting evidence of the receipt of such phone calls. In this context the Judge said this:

> *"The second Appellant and SN provided conflicting accounts in relation to how SN was able to contact her former colleague after the phone SIM card was destroyed. SN states she contacted another friend but does not say how she could do that if the SIM card had been destroyed. The second Appellant told me that they stored numbers from the SIM card before it was destroyed."* (paragraph 28).

Then, at paragraph 30:

> *"… The Appellants did not provide any evidence to support their account of the calls either from SN's husband or former colleague. They could have provided screenshots etc. The apparent explanation for the failure to provide evidence of the calls was that SN was very cross and did not know what she was doing is at odds with the first Appellant's account that they stored numbers from the SIM card*

before it was destroyed. As those accounts differ I do not accept the reasons given why the phone calls could not be evidenced."

14. It seems to me that, in isolation, the Judge's reasoning for not being satisfied as to the explanation for a lack of supporting evidence of the telephone contact was sound.

15. However, I am troubled by other aspects of the Judge's overall consideration of the Appellants' cases.

16. At paragraph 22 the Judge purports to identify omissions from the letter of petition of A, and the overall narrative account being advanced by the Appellants:

"Whilst I have before me the petition of SN's former colleague to the local security services that does not relay that SN's former colleague gave SN's phone number to SN's husband but does state where SN's former colleague lived.... Whilst the Second Appellant relays that SN's former colleague was told by his father that he had joined the Taliban and was demanding SN's address, the Second Appellant does not allege that SN's former colleague was told that he was to join the Taliban or that his father had arranged a marriage for the First Appellant."

17. It seems to me that the matters identified therein are not adverse to the Appellants' case. They are not in any meaningful way discrepant. There is no particular reason why the details of the petition lodged by SN should include all of the information that is part of the Appellant's narrative account. The differences are differences of omission and do ot obviously or sustainably found an adverse inference. Nor can it be said that it would inevitably have been the case that the behaviour threated by H towards his children (recruitment and forced marriage) during subsequent telephone calls to them would have been communicated to A or otherwise included in her petition.

18. At paragraph 23 it seems, with respect, the Judge becomes unnecessarily distracted by the means by which PN became aware of the nature of the conversation that had passed between his mother and his father during the telephone calls. The Judge says this:

"Whilst the Second Appellant alleges of the first call from his father that his mother received the call and that his father spoke to his mother and he also relays what his father and mother said, he does not say how he knew what his father said, he does not say the call

was made on loudspeaker or if his mother told him subsequently. He states his father later spoke to him and after that to his sister. As to the second call again he states that his mother received the call and his father spoke to his mother. Whilst he relays what his father and mother apparently discussed, again he does not say how he knew what his father said, if the call was made via loudspeaker or if his mother subsequently told him. He states his mother subsequently passed the phone to him and he argued with his father."

I cannot see what possible material difference it makes to the overall narrative account as to whether or not PN listened in to the conversation between his father and mother on a loudspeaker or had that conversation reported to him subsequently by his mother. If it was a matter of any moment or material difference it would have been a matter simply clarified by asking PN during the course of his evidence what the position had been. I am at a loss to understand why the Judge appears to have been distracted by this peripheral, minor, and ultimately irrelevant point.

19. This unnecessary and misplaced focus is aggravated by the Judge's observations at paragraph 29. The Judge states that the witness SN gave no detail of the calls in her witness statement. However, it is clear that SN's witness statement sought to adopt the contents of her son's statement (wherein details of the calls are given) rather than setting out matters in repetition. This is apparent from the opening paragraphs of SN's witness statement which appears at page 12 of the bundle before the First-tier Tribunal:

"I confirm that I have been through my son's statement and I confirm that the contents of the statement are true and accurate to the best of my knowledge and belief and I adopt this as my statement."

20. The Judge also appears, at paragraph 21 of the decision, to be critical of PN's evidence in respect of the receipt of a telephone call from A. However, as the Judge records in the same paragraph, when PN was asked about this he stated that he had not taken the call personally and was unaware as to how often his mother had been in contact with her former colleague. In circumstances where he is not a direct witness to the nature of these particular calls it seems inappropriate to imply any criticism of him for not having been better versed in these matters.

21. What emerges from the foregoing are a number of instances where the Judge has identified problematic circumstances in relation to the overall plausibility and credibility of the claim that this family was contacted in turn by a former colleague of SN and then by H. Such matters are informed by, and inform, evaluation of the nature and quality of communication with SN's former colleague A. This in turn informs

evaluation of the provenance of the supporting documents purportedly sent by A.

22. However, in my judgement the Judge's considerations are based in part on an exploration as to the minutiae of the making and receiving of telephone calls, which with even careful scrutiny does not seem to go to the core of the narrative account.

23. It is against this background that the Judge expresses the following conclusion:

> *"I do not accept the Appellants' accounts, they are vague and lacking in detail. They do not provide explanations where one is called for and they destroyed evidence, the mobile phone SIM card which could have verified their account. The Convention reason and risk being dependent on their accounts their asylum claims fail."* (paragraph 32).

24. In my judgement the problem with this conclusion is that nowhere in terms does the Judge turn to an evaluation, or state any reasons or findings in respect of, the supporting documentation. A reader of the Decision is left, as it were, to speculate to fill in the gaps. Moreover this is in circumstances where aspects of the Judge's reasoning on matters that might impact upon provenance is erroneously misplaced or otherwise in error. It was incumbent on the Judge provide clear findings and reasons in respect of the supporting documents, and not to leave it as a matter of implication that possibly they were rejected because of the lack of detail or vagueness in aspects of the oral testimonies.

25. In all such circumstances I find that the decision must be set aside for error of law. Because of the nature of the error the decision in the appeal is most appropriately remade by way of a new hearing before the First-tier Tribunal.

Notice of Decision

26. The decision of the First-tier Tribunal contained a material error of law and is set aside.

27. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Perry with all issues at large.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Date: **3 January 2019**

Deputy Upper Tribunal Judge I A Lewis