Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers:**
PA/08724/2016

PA/12591/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th June 2019	**On 4th July 2019**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MRS M A T
MR A T D
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Dr S Chelvin, Counsel instructed by Brent Community Law Centre
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Obhi promulgated on 6th December 2018 following a hearing at Birmingham on 9th November 2018. The judge dismissed the appeal under the Refugee Convention on humanitarian protection grounds and on human rights grounds (Article 3).

2. The appellants are mother and son, who are citizens of Cameroon, and who claim that they fear (Am) the father-in-law of the first appellant's

daughter, who is known as Ch because she had married Am's son J, and then introduced J to Christianity whereupon he converted. J and Am were of the Islamic faith and it was expected that conversion would be the other way around, that is Ch converting to the Islamic faith. Consequently it was asserted Am issued a Fatwa against the family and the appellants claim that they are still at risk. The second appellant, the son of the first appellant also asserted he was at risk because he was a priest in the Roman Catholic church. Further both appellants are anglophones and came from an area where the authorities were repressing Christians.

3. The appellants appealed the refusal decisions of the Secretary of State on 2nd August and 8th November 2016 respectively. The second appellant came to the United Kingdom in September 2010 having been granted entry clearance as a student and was subsequently granted leave to remain as the spouse of a person who is settled in the UK. Further leave to remain on this basis was refused on 26th August 2015 with the right of appeal exercisable only from outside the United Kingdom, but the appellant then claimed asylum on 27th April 2016 and in the refusal letter the Secretary of State considered the second appellant's submissions on human rights and made a relevant immigration decision with an attendant right of appeal.

4. The mother and first appellant's asylum claim was refused on 2nd August 2016. The first appellant joined the second appellant in the United Kingdom on 17th December 2015 having been granted entry clearance as a family visitor. She claimed asylum on 4th February 2016.

5. The matter came before First-tier Tribunal Judge Kelly who dismissed their protection claims and their claims on human rights grounds. Permission to appeal was granted on the basis of erroneous findings in relation to the protection claim and in relation to secondly the finding on the human rights grounds. The matter came before Deputy Upper Tribunal Judge Juss on 24th May 2018 and he found the decision of the First-tier Tribunal involved an error of law and that it fell to be set aside. The matter was remitted to the First-tier Tribunal for a hearing de novo.

6. The matter then came before First-tier Tribunal Judge Obhi who proceeded to dismiss the protection claims in respect of both appellants, but declined to consider the Article 8 claim of the second appellant on the basis that he had an out of country right of appeal.

7. An application for permission to appeal on the following bases

(i) that the claim was dismissed by First-tier Tribunal Judge Obhi as being fabrication but as could be seen from the evidence from the sister and brother-in-law, Ch and J had been recognised as refugees and resettled in Canada. The reasons given by Judge Obhi for dismissing the appeals were based on the credibility of the core of their claims and that plausibility of their accounts, but it was now proven through documentary evidence that the sister and brother-in-law had been granted protection status and they had been resettled in Canada. This had been overlooked. It was not the

case that they applied for asylum on the basis that the application for leave to extend had been rejected. The appellant wished to include new information about the anglophone crisis to allay doubts about the persecution of the anglophones in Cameroon and to which it was intended to send a vulnerable adult.

(ii) in relation to Article 8, the judge had failed to take into account material considerations that it would entail very serious hardship for the second appellant and his wife. There was extensive evidence to show that the marriage to the wife was genuine and subsisting. His wife has bipolar effective disorder.

8. The judge recognised that there was a possibility that the core of their claim was true.

9. Permission to appeal was granted on all grounds By Judge O' Callaghan but it was noted that additional documentary evidence not before the First-tier Tribunal judge could not be considered in that application. Judge O' Callaghan found that it was arguable that the First-tier Tribunal judge had erred in deciding that there was no valid article 8 claim before the Tribunal in relation to the second appellant. There was less merit in the other grounds but he observed, when granting permission that this included the same in relation to the first appellant.

10. Dr Chelvin, at the hearing before me, made reference to the skeleton arguments of the previous representatives who had referred to the refugee documentation in relation to the sister and brother-in-law. Indeed, that document can indeed be located in the bundle. The assertion on the grounds was that the document had been apparently overlooked.

11. On reading the decision carefully that is clearly not the case. It was noted by the judge at paragraph 48 that the submissions by the appellant's representative included the fact that the Home Office accepted the appellant's daughter was married and that their claims had been accepted by the Hong Kong authorities.

12. The judge therefore did acknowledge the documentation in relation to the refugee status of the Ch and J (daughter and son-in-law) and there was no oversight but as the judge set out at paragraph 52:-

> *"Even if the appellant's daughter and her son-in-law have been recognized as refugees in Hong Kong (I have some reservations about this as I detail further) and the account in relation to them is true, that does not mean that the first and second appellants are at the same risks".*

Specifically as the judge noted at paragraph 53:-

> *"I note that there is a Fatwa against the first and second appellants and the first appellant's daughter. However despite having the opportunity to kill the first appellant on at least two occasions, the*

second appellant on at least one occasion in 2010 and the daughter in 2008 when she returned to Cameroon despite having fled for her life to China, they did not succeed killing any of them except a small child".

13. The last phrase Dr Chelvin relied on as being problematical, not least a child had died, but as the judge had already recorded and found at paragraph 51:-

"There is a photograph of a women standing next to a child's cot, and a photograph of a child in a cot. It is impossible to make out any detail of the cot or the child in it. There is a death certificate, again it is a poor copy, and it is not translated. There are some medical records which are not translated. I cannot make out what reasons are for the child's death, other than she had second degree burns. There is nothing to confirm how she received those burns. The appellant claimed she was thrown into boiling water by some Muslim men who came to the house and attacked her daughter. I am surprised that even now on a remitted appeal the appellants have not sought fit to obtain translations of those documents … the documents should have been translated, particularly as what is claimed is so relevant to the core of the claim. What I therefore have is an untranslated death certificate, some untranslated medical records and the appellants' claim that the first appellant's granddaughter was murdered. The second appellant has reported an attack on herself to the police, although I except that she has not been consistent in her claims, but there is no evidence that this murder was reported to the authorities".

14. Further the judge proceeded

"It is significant that the appellant's daughter does not appear to have been harmed during that incident or indeed killed if that was the intention of the people who had come to the house".

15. It is evident that the judge does not accept that the death of this child was necessarily linked to the protection claim and the judge cogently reasoned at paragraph 52:-

"It also does not seem plausible to me that her daughter who had fled for her life to another country and sought refuge there would return to the country that she had fled not so long ago and in doing so would not lose her right to refuge in the country which had given her refuge. I note that several documents have been produced from China, but I am unable to place any weight on them as I consider that the core of the claim is not credible".

16. The judge also reasonably questioned why the family did not relocate to the majority Christian community in the south when they had the funds to do so and that the first appellant did not come to the UK albeit that their problems were said to have commenced in 2007 (indeed the daughter was

engaged as long ago as 2002 and the children had been born in 2004 and 2007, but the first appellant did not come to the UK until 2010 and at paragraph 55 the judge stated

> *"It is also a matter of record that the first appellant came to the UK in order to visit her son and to seek private treatment for her cataracts and her glaucoma. There is a letter from the consultant that she saw when she sought that treatment".*

17. As the judge stated at paragraph 56 she did not accept that the appellant, if she was in fear of her life, would use the money that she had to send her son to the UK as a student and not use it to enable them both to leave the country and seek asylum. Furthermore the son on his arrival in the UK did not seek asylum and if he had done so he would have been able to support his mother to come to the UK.

18. The judge also identified at paragraph 57 that there was no direct evidence that the daughter's father-in-law was the man who the second appellant claimed he was and the judge rejected that he was indeed the same person, a man of power and influence cited in the county background information. Indeed he did not even go under the same name.

19. It was for those cogent reasons that the judge did not consider the claims made by either the first or second appellant to be plausible when the evidence was considered in the round and taking into account all of the information. As the judge stated at paragraph 59 "just because the accounts are detailed internally consistent does not make them true".

20. The judge specifically found on the facts that the second appellant came to the UK in order to study and that upon arrival he was seeking settlement status. The first appellant came for medical treatment. As stated in the grant of permission new background material not before the judge cannot be considered.

21. As set out in *Shizad (sufficiency of reasons: set aside)* [2013] UKUT 00085

> 'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.

22. For these reasons I find that the findings of Judge Obhi in relation to the asylum claim contain no arguable material error of law. It was indeed open to the judge having considered the evidence in the round to find that the protection claims were not made out even on a lower standard of proof.

23. Nonetheless in relation to the Article 8 claim, I find that the judge at paragraph 66 materially erred in concluding that first the respondent was not satisfied there was a genuine and subsisting relationship between the

appellant and his wife and that as the claim had been certified, it was not appropriate for the judge to deal with that claim within that decision.

24. Bearing in mind the decision in relation to both appellants should have addressed Article 8 that is an error of law.

25. The Article 8 claim of the first appellant was considered from paragraph 62 onwards but effectively the judge declined to consider the article 8 claim of the second appellant because she thought his claim remained certified. The Secretary of State's decision dated 8th November 2016 had indeed addressed article 8 and a human rights decision made. The appellant appealed and his family life claim together with his private life claim should have been addressed by the judge and the failure to do so is an error of law.

26. The findings in respect of the second appellant are also pertinent and may impinge on the Article 8 claim of the first appellant. This was also a key element with which the judge did not engage and is an error of law in respect of the first appellant.

27. In all the circumstances I set aside the decision of Judge Obhi in respect of Article 8 only and I set aside the findings **from paragraph 62 onwards only**. The Article 8 claims in respect of both appellants should be reconsidered on remission to the First-tier Tribunal. This is because of the intertwining of the claims of the first and second appellant.

28. The Judge erred materially for the reasons identified. I set aside the decision (as set out above) pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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

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

Signed Helen Rimington Date 2nd July 2019

Upper Tribunal Judge Rimington