



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

Appeal Numbers: PA/10375/2018
PA/10362/2018
PA/11219/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

On 8 February 2019

**Decision & Reasons
Promulgated**

On 25 February 2019

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MRS G I
MR A R
MISS A I
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss E Mottershaw, Counsel

For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, mother, son and daughter, are nationals of Pakistan. They have permission to challenge the decision of Judge Foudy of the First-tier Tribunal (FtT) dismissing their appeal against the decisions made by the respondent on 10 August 2018 refusing their protection claims. The judge

did not find credible their account of being at risk on return to Pakistan from family members of the first appellant's husband as a result of a long history of domestic abuse directed against the first appellant.

2. Permission was granted limited to the Article 8 issue.
3. I am grateful to both representatives for their submissions. I can be brief in setting out my decision because both Mr Tan and Miss Mottershaw were in agreement with me that the judge's decision was erroneous. The simple point is that the judge wholly failed to address the appellants' Article 8 grounds of appeal, confining herself solely to their protection grounds. It appears she did not address Article 8 because "[n]o Article 8 appeal was pursued". Whilst the evidence relating to this matter is incomplete, what there is indicates that Article 8 was pursued. There is no Record of Proceedings on the file, but Article 8 was addressed in detail in the respondent's three reasons for refusal decisions and was clearly raised in the grounds of appeal. The appellants were unrepresented at the hearing and there was no Home Office Presenting Officer in attendance. The judge heard evidence from the appellants, which, although principally directed at explaining their fears about return to Pakistan, clearly alluded to their private and family life circumstances. The first appellant had stated that she suffers from diabetes, arthritis, depression and high cholesterol and has received counselling for suicidal thoughts.
4. I also have concerns about the judge's treatment of the first appellant's claim to have been the victim of domestic violence. At paragraph 20 the judge said that "I find it incredible that it took until October 2017 for the Appellants to seek protection from domestic abuse if the claim was indeed true". At paragraph 25 the judge rejected the reference made by Dr Anwar to the first appellant's history of domestic violence, because in the judge's view this doctor had simply accepted without question the factual history given to him by the first appellant. Further in the judge's view this doctor's statement that she had suffered domestic violence since 2013 was at odds with her own evidence that her husband had been violent to her earlier than that. However, the judge also had before her a letter dated 20 February 2018 from an NHS mental health team based in Oldham which stated that she had attended six sessions for counselling and "has experienced a great deal of verbal, domestic and physical abuse ...". I am not satisfied that the judge's assessment of the domestic violence history took into account all relevant evidence.
5. Whilst it does not appear that the appellants have a strong Article 8 case, I cannot exclude that the judge may have approached their appeals differently had she recognised that Article 8 was in play and had properly weighed the medical evidence relating to past domestic violence.
6. For the above reasons I conclude that the decision of the FtT judge requires setting aside for material error of law.

7. I see no alternative to remitting the case to the FtT. In my judgment, it is a case in which every effort should be made to obtain legal representation. On Judge Foudy's findings (see last sentence of paragraph 25), the first appellant is a vulnerable witness. Getting to the bottom of whether the first appellant's account of experiencing domestic abuse at the hands of the husband/father is credible, will require a careful handling of oral testimony. From the bundle submitted for the hearing before me - entitled "Domestic Violence Evidence" - there is now more documentation on this issue (even though there is still no police report).
8. I would emphasise, however, that the ambit of the next hearing must be confined to Article 8. Whether or not the husband/father has engaged in domestic abuse, the claim that the appellants would be at risk from his family members in Pakistan was simply not substantiated and was properly not pursued by Miss Mottershaw.
9. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the Ft (not before Judge Foudy).

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

Unless and until a Tribunal or court directs otherwise, the appellant 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.



Dr H H Storey
Judge of the Upper Tribunal 22 February 2019