



IAC-CH-CK-V1

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

Appeal Number: AA/02711/2014
AA/02788/2014
AA/02789/2014
AA/02790/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 24th October 2014**

**Determination Promulgated
On 20th November 2014**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**PARVAIZ AKHTAR (& OTHERS)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Afzal, Immigration Advisory Service

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a male citizen of Pakistan, born 10 August 1960. The other appellants are his wife and minor children who claim as his dependents. The appellant entered the United Kingdom on 16 October 2007. He over stayed a visa

requirement and then made application by reference to Article 3 ECHR. That application was rejected and he subsequently claimed asylum on 9 November 2011. The basis of his claim was that he and a friend had a land dispute with a third party. Eventually that third party's brother was killed by the appellant's friend and this led to the appellant himself being threatened by the third party.

2. In considering the claim the respondent was of the opinion that the claim was not based upon a reason covered by the Refugee Convention and that in any event there were credibility issues arising on inconsistencies in the appellants account. The respondent rejected the claim and the appellant appealed that decision.
3. The appellant's appeal came before Judge of the First-Tier Tribunal Murray sitting at Newport on 2 June 2014. An oral hearing was held and the appellant was legally represented. In her subsequent determination the judge dismissed the appellant's claim on asylum, humanitarian protection and human rights grounds. For reasons stated in the determination the judge did not find the appellant credible in respect of events that he claimed occurred in his home country. Indeed at paragraph 32 of the determination the judge said:

"In the circumstances therefore I found the appellant's account to completely lack credibility. I reject it in its entirety".

4. For reasons set out in paragraph 34 of determination the judge found that there were no compelling circumstances that would engage a stand alone Article 8 appeal.
5. The appellant then sought leave to appeal. The grounds allege error on the part of the judge in applying to high a standard of proof when viewing the inconsistencies and in considering the delay in claiming asylum.
6. The second ground alleges error in the way the judge dealt with the "new" Immigration Rules. It was alleged that the judge should have dealt with the matter by the step-by-step approach laid down in **Razgar**. The delay on the part of the respondent in considering the claim strengthened the appellant's roots in the United Kingdom.
7. In granting leave to appeal another judge of the First-Tier Tribunal gave the following as reasons:

"1. In a determination sent to the appellants on 18 June 2014 Judge of the First-Tier Tribunal Lucy Murray dismissed their appeals on asylum and human rights grounds against the respondent's decision to remove them from the UK.

2. The grounds on which permission to appeal is sought submit that the judge erred by considering the Article 8 claims with reference to the Immigration Rules, whereas because the claims were made before 9 July 2012 they should have been considered separately from the Immigration Rules and

with reference to the applicable jurisprudence. This is arguably correct and it is arguable that the judge failed adequately to consider and balance all the relevant evidence in relation to the issue of proportionality.

3. The grounds submit that the judge applied too high a standard of proof when finding that the first appellant's account of circumstances of his asylum claim was not credible. This submission appears to have no merit. The judge correctly directed herself as to the burden and standard of proof and nothing in the determination indicates that any other standard was in fact applied. The judge gave clear and cogent reasons for disbelieving the appellant. This submission amounts in reality only to disagreement with her finding. Nevertheless permission to argue this ground is not refused".

8. Hence the matter comes before me in the Upper Tribunal.
9. Prior to the hearing the respondent submitted a Rule 24 response. That letter opposed the appellant's appeal submitting that the judge directed herself appropriately. Paragraph 3 of that letter sets out as follows:

"The SSHD maintains that there was no error in regards to the standard of proof and in relation to human rights – any error is not material because the claim is solely a private life claim which if now re-considered would result in the same outcome due to the automatic application of s.19 of the Immigration Act 2014 (inserting S.117(4) NIA 2002 Act) that "little weight should be given to private life that is established by a person at a time when the person's immigration status is precarious" – notably these appellants have only had 6 months lawful leave and 4½ years leave unlawful".

10. Mr Afzal submitted by reason of the date of the application for asylum the appeal should have been considered without reference to the new rules which came into force on 9 July 2012. The judge had not given any regard to transitional provisions. In this case the old rule should apply and there should have been Article 8 consideration of the facts.
11. Mr Richards referred to the case of **Haleemundeen v Secretary of State for the Home Department [2014] EWCA Civ 558** which contradicted the case of **Edgehill v SSHD [2014] EWCA Civ 402**. The judge had clearly dealt with S.55 considerations so far as the children are concerned and he invited me to dismiss the application.
12. At this stage I said I needed to consider the submissions and I reserved my decision on whether or not there was a material error of law contained in the determination.
13. After due consideration of the determination and the submissions made I have come to the conclusion that Judge Murray did make an error of law in reaching a conclusion that the "new rules" applied and in the way she dealt with Art 8 ECHR. The authority of **Edgehill** (please see above) and the eventual Upper Tribunal decision in **Haleemundeen** (the case having been referred back to the Upper

Tribunal by the Court of Appeal) reached a conclusion that cases such as this where the relevant date is before July 2012 required consideration other than under the new rules.

14. In any event it could be argued that the position of this appellant is not materially different when viewed under the old and then under the new rules. However greater consideration should have been given to Article 8 than as set out in paragraph 34 of Judge Murray's determination. The question of proportionality was not engaged.
15. In concluding that there was an error of law, I also reached the conclusion that the error was material in that the outcome of the appeal could have been different if further consideration had been undertaken. The decision on Human Rights therefore falls to be set aside.
16. I consider that a degree of fact finding is necessary with regard to the position of the appellant and his family. Accordingly in this situation I conclude that the correct outcome is for this matter to be remitted back to the First-Tier Tribunal in line with Senior President's direction. The appeal is to be heard by a judge other than Judge Murray.
17. Whilst the grounds seeking leave allege error in the decision on asylum and protection. That allegation was not referred to at the hearing before me. The reasons for granting leave mention that this point had "no merit". I agree. The judge was perfectly entitled to reach the conclusions that she did on credibility. She properly directed herself and I find no error in that part of the determination. Judge Murray's decision is confirmed and her findings preserved on the asylum appeal.
18. The First-Tier Tribunal will restrict itself to consideration of Article 8 only but will, of course, be mindful of the introduction now of Sect 19 of The Immigration Act 2014.

Signed

Date **20th November 2014**

Upper Tribunal Judge Poole