



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09940/2013**

AA/04638/2014

THE IMMIGRATION ACTS

Heard at: Field House

Promulgated

Decision and Reasons

On: 24 June 2015

On 26 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MANSA COWAR (KURANA)
ATUM SINGH
(NO ANONYMITY DIRECTIONS MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Ms A Jones, counsel instructed by Simman Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Afghanistan, born in 1939 and 1941 respectively. Their appeals against the decision of the respondent refusing their asylum, humanitarian protection and human rights claims were dismissed by First-tier Tribunal Judge KSH Miller in a decision promulgated on 30 December 2014.
2. On 20 January 2015, First-tier Tribunal Judge Frankish granted the appellants applications for permission to appeal to the Upper Tribunal. The grounds asserted inter alia, that he should not have dismissed the concerns raised by the appellants about the interpreter. There were further criticisms regarding alleged inappropriate conduct by the Judge during the hearing.

3. I have had a full report and statement from counsel, Ms Jones who represented the appellants before both Tribunals. She has set out various complaints regarding the alleged conduct.
4. However, as a result of the acceptance by Mr. Walker that concerns had been raised about the interpreter by the appellants and their grandson during the proceedings, and that the Judge had somewhat impatiently brushed aside these concerns, there has been a procedural irregularity. Both appellants had stated that Farsi and Dari were not the same and that the Farsi language used by the interpreter had not been entirely clear.
5. In the circumstances Mr Walker accepted that there had been a material error of law and that the decision should be set aside and remade. Both representatives submitted that in the circumstances the case should be remitted to Taylor House for a fresh decision to be made.

Assessment

6. It is evident from the decision itself that concerns had been raised as to the interpreter. The appellant's grandson had himself intervened and expressed his concerns. Both wished to have their evidence interpreted by a Dari (Afghan) interpreter and not in Farsi. Although I have been informed that they are similar, they are not the same.
7. I find that Mr Walker's concession was therefore entirely appropriate in the circumstances.
8. I find that the appellants were deprived of the opportunity of giving their evidence effectively in a language they fully understood. That opportunity had not been afforded them. Their credibility was a core issue in the appeal.
9. I thus find that the decision of the First-tier Tribunal Judge involved the making of a material error of law. I accordingly set aside the decision.
10. As noted, the parties were agreed that in these circumstances, having regard to the fact that the appellants have been denied an opportunity of presenting their 'full case' to the Tribunal, it is appropriate for the matter to be remitted to the First-tier Tribunal.
11. I have considered the Presidential guidance in this respect. I find that there has been a procedural irregularity such that there will have to be a complete re-hearing. In the circumstances, I accept that this is an appropriate case for the appeal to be remitted to the First-tier Tribunal at Taylor House.

12. The agreed hearing date has been fixed by agreement. The case will be heard on the 18 December 2015 at Taylor House. Directions have been given. There will be four witnesses called to give evidence. A half a day has been allocated to the hearing of their appeals.
13. I have also directed that a Dari (Afghan dialect) interpreter is required.

Notice of Decision

The appeal is allowed.

The case is remitted to the First-tier Tribunal, Taylor House for the re-hearing of the appellants' appeals.

No anonymity direction made.

Signed

Date 24 June 2015

Deputy Upper Tribunal Judge Mailer