



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

Appeal Numbers: IA/30924/2014
IA/30925/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29th May 2015**

**Decision & Reasons Promulgated
On 15th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**(1) MRS SURJIT KAUR KAPOOR
(2) MISS ROSHNI KAUR KAPOOR
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Wells (LR)

For the Respondent: Ms A Brocklesby-Weller (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M A Khan promulgated on 8th December 2014, following a hearing at Hatton Cross on 12th November 2014. In the determination, the judge dismissed the appeals of Mrs Surjit Kaur Kapoor, and her daughter Miss Roshni Kaur Kapoor. The Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are mother and daughter. Both are citizens of Afghanistan. The first Appellant's husband, and the father of the second Appellant, is a person by the name of Mr Gurmeet Kapoor Singh, and he is present and settled in the UK, having recently been granted ILR, following his lawful entry into this country. Both appeal against the decision of the Respondent Secretary of State dated 15th July 2014 and dated 17th July 2014 refusing their application to remain in the UK on a discretionary basis under Article 8 of the ECHR.

Submissions

3. At the hearing before me on 29th May 2015, it was agreed, following submissions by Mr Wells, appearing on behalf of the Appellants, by the Presenting Officer Ms A Brocklesby-Weller, that the determination of Judge M A Khan did contain an error of law on account of matters that had been simply overlooked as clear, discrete, and individual claims on behalf of the Appellants. Mr Wells had submitted that, the Appellants being from Afghanistan, it was an important aspect of the claim put before Judge M A Khan, that if returned back to Afghanistan, there would be risk of "indiscriminate violence" and that Article 15(c) would be engaged. Ms Brocklesby-Weller helpfully submitted, much to her great credit, that the Presenting Officer's notes in the file before her had the entry "representative argued that the Appellant could not return to Afghanistan and relied on the objective bundle". I notice from the Grounds of Appeal before Judge M A Khan that there is, under the heading "Single lone female", a statement that, "we seek to rely on the case of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 163**, which clearly states that lone women or female heads of households should not be expected to relocate internally". Given that the determination of Judge M A Khan makes no reference whatsoever to this aspect of the claim before the Tribunal, it was accepted by both sides that there was an error of law in the determination.
4. Secondly, it was also accepted by both sides, that the judge's approach below had been predicated on the earlier determination of IJ Froom. That determination, however, was made on 5th November 2009 and was the result of a previous appeal hearing by the first Appellant's husband, Mr Gurmeet Kapoor Singh, at the time when he was here unlawfully and following which he had to leave the United Kingdom, but the judge proceeded nevertheless to state that, "the starting point is the findings of the previous Tribunal decision" (see paragraph 32), and then to have based his decision on paragraph 38 of what was said by IJ Froom, which was to do with entirely different accounts given by the Appellants in relation to their asylum appeal that they feared being targeted by a commander in Afghanistan.
5. The current case, however, was one where, with the position of Mr Gurmeet Kapoor Singh being no longer in jeopardy because he had ILR,

the situation had to be assessed on the basis of the return of two women, one of whom, the second Appellant, was a young unmarried woman, of a minority religious group, that was known to be at risk in Afghanistan. Yet, the failure to acknowledge at any stage the fact that Gurmeet Kapoor Singh had now been granted ILR, would not now be returning back to Afghanistan with his wife and daughter, altered the basis of the appeal currently before Judge M A Khan to what had previously been before Judge Froom.

6. It was accepted both by Mr Wells and Ms Brocklesby-Weller that this was a material error in that this change of circumstance in a significant way ought to have been specifically addressed by the judge.
7. Finally, the judge made no reference to the Operational Guidance because the OGN states, as the Grounds of Appeal before Judge M A Khan made clear, that “unescorted internal travel for single women and female heads of households who do not have a male support network can be extremely difficult” (see paragraph 2.4.7).
8. The judge’s suggestion (at paragraph 35) that, “I do, to some extent accept that a young woman of the second Appellant’s age may have some problems moving about in Afghanistan but it would not be impossible” amounts to an error of law for two reasons. First, there is no rule of law that movement internally in a country like Afghanistan has to reach the level of not being impossible. Second, the decision (at paragraph 35) is predicated on the assumption that Mr Gurmeet Kapoor Singh would be returning back with these two Appellant women, and that cannot be right, because he has now got ILR, in fact not acknowledged in the determination.
9. For all these reasons, it was accepted by all sides that the proper course of action was to remit this appeal back to a Judge of the First-tier Tribunal, to be heard by a judge other than Judge M A Khan in a de novo hearing with no previous findings being preserved.

Error of Law

10. For the reasons I have given above, I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. Under Practice Statement 7.2(a), the Tribunal may remit the matter to the First-tier Tribunal if the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be considered by the First-tier Tribunal. I deem this to have been the case here.
11. This matter is remitted back to a judge at Hatton Cross to be heard by a Tribunal other than the Tribunal Judge M A Khan, at the first available opportunity.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to Hatton Cross under Practice Statement 7.2(a) to be heard by a judge other than Judge M A Khan in a de novo substantive hearing with no previous findings preserved.
13. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th June 2015