Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/04567/2014
AA/04568/2014
AA/04566/2014
AA/04571/2014
AA/04573/2014
AA/04556/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 July 2016	**On 19 July 2016**
Delivered Orally	

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

[TP] (FIRST APPELLANT)
[IP] (SECOND APPELLANT)
[EP1](THIRD APPELLANT)
[EP2] (FOURTH APPELLANT)
[CP] (FIFTH APPELLANT)
[MP] (SIX APPELLANT)
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss J Lois, Counsel, instructed by Messrs Duncan Lewis & Co Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the first named Appellant, [TP] ("the Appellant") a citizen of Indonesia born on [ ] 1954 and her five dependant daughters (also citizens of Indonesia) against the decision of First-tier Tribunal Judge Abebrese who, following a hearing at Taylor House on 23 July 2015 and subsequently promulgated on 24 August 2015, dismissed their appeal against the decisions of the Respondent dated 22 June 2014 to refuse to grant them asylum under paragraph 336 of HC 395 (as amended) and that of even date, to remove them as illegal entrants from the United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 to the Immigration Act 1971.

2. As summarised by the First-tier Tribunal Judge at paragraph 2 of his decision, the appeal of the Appellant was linked to her five daughters. They all claimed asylum based upon their fear that if they were returned to Indonesia they would face mistreatment due to their religion and also due to a reason not covered by the Refugee Convention.

3. The brief immigration history of the Appellant is that she left Indonesia on 5 February 2010 arriving in the UK on the same day using her own national passport endorsed with a visit visa valid until 14 July 2010. On 4 August 2010 she made an application for leave to remain outside the Rules on compassionate grounds that was refused on 24 March 2011.

4. The Appellant claimed asylum on 28 April 2011. It was claimed by the Appellant and within the separate asylum claims of her daughters, that her husband and the father of her daughters, was a prominent figure in the fishing industry in Pekalongan who was persecuted when he refused to convert to Islam and remain silent about corruption in the fishing department and that (as explained in the application for permission to appeal) "*by extension that the Appellant's claim that they too were persecuted because they were family members*". In summary, the grounds take issue with the judge's adverse credibility findings and in his approach as regard the medical evidence as it related to the Appellant.

5. Permission to appeal was granted by First-tier Tribunal Judge R A Cox on 18 September 2015 in which he noted that the grounds in essence contended that the judge gave inadequate and to an extent mistaken reasons within his adverse credibility findings and misapplied the case of N

in relation to the Appellant's medical condition. He concluded the challenge to the adverse credibility findings had arguable merit but without further explanation he also said that the challenge application as regards the case law guidance in N whilst *"perhaps more problematic"* he would *"not exclude at this stage".*

6. There is a history to the appeal track of this case since the grant of permission that is more helpfully reflected in the directions notice of Deputy Upper Tribunal Judge Norton Taylor promulgated on 4 December 2015 when he adjourned these appeals to be relisted for an error of law hearing. It was recorded that:

> "It was agreed by both representatives, correctly in my view, that at this stage it would be inappropriate to direct the parties to be ready for a remade decision at the next hearing given the nature of the issues involved, the various possibilities regarding any errors of law and the distinct possibility that errors of law are found in respect of the protection claim, and the appeals will need to be remitted back to a First-tier Tribunal".

7. Further, that if the Appellant sought to rely on amended grounds they should make an appropriate written application to the Tribunal to that extent, to be served upon the Respondent and *"made as quickly as possible and any event no later than six weeks after this Direction Notice is issued".* Further, that if the Appellant's solicitors wished to see the Record of Proceedings of the First-tier Tribunal Judge a written application in effect should be made as soon as was reasonably practicable.

8. I observe that since that notice, a Memorandum and Directions dated 9 June 2016 was issued by Upper Tribunal Judge Rintoul, in which it was noted that there had been no compliance with the directions issued on 25 April 2016 nor any formal request to amend the grounds of appeal and accordingly the Upper Tribunal considered that the Appellants no longer wished to amend their grounds and that the appeals could be listed for hearing on the first available date on the basis of the grounds already issued. It was also to be assumed, given the failure to comply with directions, that a transcript of the hearing for the First-tier Tribunal was no longer required.

9. I would pause there because, as is accepted by Miss Lois before me today, there has been and is no challenge therefore to the findings of the judge in terms of Article 8 of the ECHR.

10. Thus the appeal came before me on 13 July 2016 when my first task was to decide whether the determination of the First-tier Tribunal Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal.

11. I note that by letter dated 28 September 2015, the Respondent served her Rule 24 response submitting that the First-tier Tribunal Judge had directed himself appropriately but pointing out that the copy of the determination available to her was missing paragraphs 46 to 52. The Respondent, however, maintained the position that there was no material error of law in dealing with the case of N with regard to the Appellant's medical condition and that the grounds were *"no more than a disagreement with the adequately reasoned findings of fact of the First-tier Tribunal".*

12. At the outset of the hearing before me and having taken careful note of the most helpful skeleton argument prepared by Miss Lois in readiness for this hearing, I was able to draw to the parties' attention the second page of the screening interview which contains a standard paragraph that would have applied in each and every screening interview undertaken by each of these Appellants in this particular case. The passage is in fact, as I understand it, read out to an interviewee at the outset of such a screening interview, and this is what it has to say in unequivocal terms:-

> "The questions I am about to ask you relate to your identity, background and travel route to the United Kingdom. The information you will be asked to provide will be used mainly for administrative purposes. You will not be asked at this stage to go into detail about the substantive details of your asylum claim as, if appropriate, this will be done at a later interview. However some details you will be asked to provide may be relevant to your claim."

So nothing could be clearer.

13. This takes me to passages within the determination of the First-tier Tribunal Judge that thus raise a clear concern and which indeed were highlighted both in the grounds seeking permission to appeal and in greater detail by Miss Lois in her skeleton argument. For example, at paragraph 10(ii) she submitted as follows:

> "(ii) The reason (the second Appellant) had not raised the issue of rape at the screening interview was that this was conducted in an open public the space. However the information was fully divulged as soon as (she) was within the private setting of the substantive interview. Further (the second Appellant) provided a detailed account regarding the circumstances of the rape (that Miss Lois then proceeded to identify)."

14. That of course raises an entirely different point but nonetheless only serves to reinforce what I am satisfied was a clear material error of law by the Judge in terms of the reasons he gave for finding as he put it, even to the lower standard of proof, that the Appellant's core accounts were not credible.

15. Indeed, at paragraph 40 the Judge inter alia had this to say:

> "Furthermore, the Tribunal does not find the kidnapping issue either to be credible and notes that this issue in conjunction with the rape could have been mentioned earlier and one would have thought that the circumstances in relation to when the Appellant had been interviewed were adequate for these matters to have been mentioned at an initial stage. The fact that they were not mentioned and that they were only brought up at a subsequent stage does, the Tribunal finds, undermine the credibility of the Appellants' claims."

16. I find that such a finding clearly fails to take into account and understand the nature of a screening interview and as Miss Lois rightly submitted, both before me and in her skeleton argument, fails to take account of the Appellants' claim in terms of kidnapping and rape, that were clearly raised by them at the appropriate time at the substantive asylum interviews and within their witness statements.

17. It is right to say that most helpfully, Mr Kotas for the Respondent, accepted that the above clearly placed the First-tier Tribunal Judge in material error of law and he further accepted that insofar as the findings of the Judge were concerned in terms of the Appellants' asylum and humanitarian protection claims, such an approach clearly tainted those findings overall and therefore could not stand.

18. I had no difficulty for the reasons I have above canvassed, in wholly agreeing with him and I am grateful for his realistic approach to that particular issue.

19. This now takes me to the remaining challenge, namely as to the Judge's approach to the medical evidence and his application to that evidence to the guidance in N [2005] UKHL 31. Again and most realistically and helpfully Miss Lois informed me that upon careful reflection she was indeed satisfied that such a challenge simply was not sustainable and therefore I do not intend to deal with this matter any further.

20. The parties asked that the appropriate course was to remit this case to be reheard solely on the issues of asylum and humanitarian protection before a First-tier Tribunal Judge other than First-tier Tribunal Judge Abebrese to be heard at Taylor House. Having considered as to how the decision should be remade I found myself in agreement with their proposal. Indeed such a course is in any event reflected in such circumstances, in the record of Deputy Upper Tribunal Judge Norton in his Directions notice of 4 December 2015.

21. I am told that the Appellant's daughter's will each be giving evidence in addition to their Sponsor [JP] for which no interpreter will be required. In

such circumstances it would be appropriate for this matter to be given a time estimate of one day.

22. Thus there are highly compelling reasons falling within 7.2(b) of the Senior President's Practice Statement as to why the decision should not be remade by the Upper Tribunal. In such circumstances none of the findings of the First-tier Tribunal Judge in relation to the issue of asylum and humanitarian protection are to be preserved.

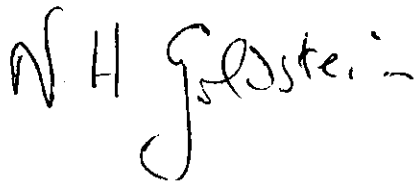
23. The appeals shall be remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge Abebrese, with none of his asylum and/or humanitarian protection findings preserved, to Taylor House Hearing Centre on the first available date, for which purpose no interpreter will be required.

Notice of Decision

24. The making of the previous decision insofar as it related to the findings of the First-tier Tribunal Judge in terms of the Appellants' asylum and humanitarian protection claims did involve the making of an error on a point of law and I order that they shall not stand. The decision of the First-tier Tribunal Judge in terms of dismissing the Article 3 ECHR claim based upon the evidence before him will stand.

No anonymity direction or request for such anonymity has been made at this stage.

Signed Date 18 July 2016



Upper Tribunal Judge Goldstein