Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04570/2015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 14th March 2016	**On 12th April 2016**

Before

Upper Tribunal Judge Southern

Between

F.N.
K.A.

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P. Draycott of counsel, instructed by Ison Harrison, solicitors
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first appellant is the mother of the second appellant, who was born on [ ] 2006 and so who was 8 years old at the date of the hearing before the First-tier Tribunal. Both are citizens of Pakistan. The appellants have been granted permission to

appeal against the decision of First-tier Tribunal Judge Mulvenna who dismissed their appeal against the refusal of their asylum and human rights claim. The claim of the second appellant is entirely dependant upon that of the first, so that it is convenient, generally, to refer to the first appellant as "the appellant". In granting permission to appeal, the First-tier Tribunal Judge said:

> "The grounds argue, *inter alia*, the judge erred in law: by using s.8 of the 2004 Act as his starting point for credibility; the judge acted unfairly in attaching weight to a 2005 visa application without putting his concerns to the appellant; he similarly erred in law in relation to the evidence of [SA]; the judge partly based his credibility assessment of [SA] on demeanour; the judge erred in law by making findings on matters not raised by the respondent in the RFRL and not put to the appellant or witnesses; the judge failed to engage with the substance of the supportive expert country report; the tribunal's findings at 60-62 were internally inconsistent with its findings at 29-35."

2. The nature of the appellant's claim was summarised by the First-tier Tribunal judge as follows:

> "The first appellant claims that, on 31 July [2005], she married her husband [JAC] ("the first appellant's husband"), who was born on [ ] 1976. She claims that their marriage was a love marriage which was opposed by her family because her husband was of a lower caste and arrangements were being made for the marriage of the first appellant to a distant relative who was 20 years older than her.
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> Following the marriage, the first appellant claims that she and her husband were subjected to threats by two of her brothers who actually caused them physical harm. The incidents in which harm was caused occurred on 10 August 2005 and 12 June 2012 when the first appellant was attacked and beaten; and, whilst the appellants were in the United Kingdom as visitors, on 18 February and 18 April 2012, when the first appellant husband was attacked.
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> The first appellant claimed asylum on 28 July 2014 claiming that she feared persecution on return to Pakistan as a member of a particular social group. The second appellant was joined in the claim as the first appellant's dependent child."

3. The chronology of events in the appellant's bundle suggests that the dates given for some of those events may not be absolutely correct but nothing material turns on that should any of those dates been incorrectly stated. The judge then summarised the respondent's case:

> "Essentially, the respondent found that the first appellant's account lacked credibility and plausibility; but, in any event, considered that there was a sufficiency of protection in Pakistan for the appellants; and that it was open to them to relocate to other areas in Pakistan."

4. Before undertaking her assessment of credibility, the judge set out a brief discussion of the country evidence the parties had put before her, which was broadly supportive of the appellant's case, and an account of the relevant immigration

history. The appellant's husband had made unsuccessful applications for entry clearance as a family visitor in 2004 and in 2005. Of these, the judge observed that:

> "The 2005 application (made on 19 July) was accompanied by a passport valid from 12 May 2004 to 11 May 2009 in the name of [JA] date of birth 1976. These details do not represent the full details of the first appellant's husband as the name "[C]" is missing as are the day and month of his date of birth. Additionally, the passport indicated that the holder was married to (K.F.K), born on 2 February 1984. The passport also contained an address and telephone number which did not correspond with the first appellant's husband's subsequent passport."

5. In 2008 the appellant, together with her husband and child, appealed against refusal of a subsequent application for entry clearance as family visitors. That appeal was allowed by a judge who considered that the sponsor, who is the appellant's brother in law, was a "credible and responsible person" and so the judge accepted his evidence that the purpose of the visit was for the appellant to attend his wedding, postponed while the appeal took its course. However, Judge Muvenna noted that:

> "According to the first appellant's current evidence as to her present circumstances, in a statement that was prepared with the sponsor's assistance, she says that the sponsor "has 2 children and a wife who are separated since 12 years". There is no mention of a subsequent spouse in or around 2009. The arrangement might have foundered but, equally, it might have been contrived to aid the appeal."

6. Next, the judge recorded that, having succeeded in that appeal, the appellant came to the United Kingdom on 22 October 2009, accompanied by her husband and child, returning to Pakistan on 24 March 2010. The judge found the timing and duration of that visit "surprising" because the appellant's husband said he operated a poultry business in respect of which, according to evidence given at the visit visa appeal hearing, the peak selling period was "February to May, just before the monsoon broke". That judge, who allowed the appeal, had been told that although a friend would look after the business in the absence of the first appellant's husband, the visit could not extend beyond 8-10 weeks because of the friend's family and business responsibilities. As we have seen, in the event, the visit lasted just over 5 months. The judge noted that the explanation offered, which was that her husband needed to remain to assist his brother to resolve matrimonial difficulties that had arisen was one that was rejected by the judge who dismissed the appeal in September 2012 against refusal of a further visit visa application. In doing so that judge had said:

> "It may well be that the sponsor had some marital difficulties but given that Immigration Judge Thorndyke (who had allowed the earlier appeal) had been specifically told that [Mr C] could not stay longer than eight to ten weeks because of his business commitments, I do not accept that [Mr C] then stayed for five months to do something that could have been relatively easily done from Pakistan or with the assistance of other family members."

Taken together with the tension detected by the judge between the apparently inconsistent assertions that the purpose of the visit was a planned marriage, that had been delayed while an appeal was pursued, and the reference to an existing wife and children, the judge concluded that credibility had been damaged.

7. A subsequent application for visit visas were refused on the basis that there had been a dishonest failure to disclose material facts, that being a failure to mention the appellant's husband's passport relied upon in the 2005 application, that being the one referring to a wife other than the appellant. An appeal against refusal was determined by First-tier Tribunal Judge Nicholson in August 2012. He dismissed the appeal of the appellant's husband, finding as a fact that he had dishonestly failed to disclose details of the 2005 refusal, but he allowed the appeals of the appellant and her child because he was satisfied that her husband's dishonesty had not infected her own application.

8. Against that background, the judge went on to set out her adverse credibility findings. She gave a number or reasons for her conclusion, at paragraph 57 of her decision, that:

> "I do not believe that there is any truth whatsoever in any part of the account. In particular, I am not satisfied on the basis of the evidence before me that the applicants are at risk of persecutory action because of the first appellant's family seeking to restore their honour…"

9. While the reasons given for arriving at that conclusion, considered in isolation, may be thought to be sound, perhaps compelling, the problem is that to be legally sustainable such findings cannot be made in isolation but must be arrived at in the context of the evidence considered as a whole. Having made clear that the judge rejected as untrue the appellant's account of the risk on return asserted, the judge then said, at paragraph 58 of her decision:

> "I have been presented with an expert's report. I accept the credentials of the author, Mrs Uzma Moeen, and her expert opinions on the matters which are at the heart of this appeal. I observe, however, that Mrs Moeen indicates that:
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> > "my assessment ... stands independent of truth or falsity … (which I am fully aware is the domain of the Home Office or the Court to assess and judge)."
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> I have, for the reasons given above, found that there is no merit in the appeal. The expert report is, therefore, not material to the case. I give it no weight in reaching my conclusions."

10. This was a lengthy and detailed report, running to 40 pages, commissioned specifically for this appeal. It addressed the very issues in respect of which the appellant's evidence was rejected as untrue yet, as the judge made clear, she gave it "no weight" in reaching credibility findings that were comprehensively adverse. As the judge did not consider that expert evidence we simply cannot be sure that she

would have reached the same conclusion had she not excluded it from her consideration. This was not a report predicated upon an unquestioning acceptance of the truth of the appellant's account. At para 10 of the report, Mrs Moeen said:

> "I say at the outset that I have read carefully the Home Office's decision in this case and I am aware of the adverse credibility findings. My findings below are made being conscious of those."

There followed a detailed review of country evidence relevant to a consideration of the appellant's claim and the assessment of the judge should have been informed by that but, of course, it was not.

11. The consequence of the approach taken to this potentially important evidence, relied upon by the appellant, is that the judge has left out of account a material consideration. In so doing the judge made an error of law that can only be regarded as material to the outcome of the appeal. Mr Draycott pursues other challenges in addition to this. There is no discussion to be found in the decision of the judge of the evidence of one of the witnesses who gave oral evidence. There are no findings of fact in respect of some matters that were in issue between the parties. The judge has taken points against the appellant that were not put to the witnesses not raised in submissions. However, in view of the error relating to the expert evidence, it is not necessary to examine those other grounds further because for that reason alone, the decision to dismiss the appeal cannot stand. Therefore, the decision of the judge will be set aside and the appeal remitted to be determined afresh by a different judge of the First-tier Tribunal.

Summary of Decision

12. First-tier Tribunal Judge Mulvenna made an error of law material to the outcome of the appeal.

13. The decision of First-tier Tribunal Judge Mulvenna is set aside in its entirety.

14. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed

Date: 21 March 2016

Upper Tribunal Judge Southern