



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

**Appeal number: AA/04779/2014
AA/04782/2014
AA/04781/2014
AA/04780/2014**

THE IMMIGRATION ACTS

Heard at Field House

On March 31, 2016

**Decision and Reasons
Promulgated**

On April 27, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS S S
MASTER BS
MASTER A S
MISS A S**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Respondent

Mr Iqbal, Counsel, instructed by West Ham Solicitors

Mr Bramble (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. On October 15, 2011 the appellants arrived in the United Kingdom on visit visas having entered on their own passports. They claimed asylum on February 21, 2012. The first-

named appellant was subsequently interviewed on April 18, 2012 and on July 1, 2014 they were refused asylum under paragraph 336 HC 395. A decision to remove them from the United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 to the Immigration Act 1971 had previously been taken on February 27, 2012.

2. The appellants appealed those decisions under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on July 11, 2014.
3. The appeal came before Judge of the First-tier Tribunal Davey (hereinafter referred to as the Judge) on July 3, 2015 and in a decision promulgated on November 16, 2015 he refused the appellants' appeals on all grounds.
4. The appellants lodged grounds of appeal on December 7, 2015 submitting the First-tier Judge had erred by failing to demonstrate he had dealt with all of the evidence in reaching his decision in the round and that there had been a lengthy delay in promulgating the decision. Judge of the First-tier Tribunal Astle gave permission to appeal finding the grounds arguable.
5. A Rule 24 response was filed by the respondent on December 30, 2015 in which the respondent opposed the application.
6. The matter came before me on the above date and I heard submissions from both representatives. Mr Iqbal accepted the delay in promulgation was not sufficient, on its own, to show an error in law but submitted that the Judge's omissions were.
7. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order in the light of the sensitive matters raised in this appeal arising out of the appellant's international protection claim. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure in breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or Court.

SUBMISSIONS

8. Mr Iqbal relied on the grounds of appeal and submitted for the reasons contained therein and his oral submissions there was an error in law and this matter should be remitted to the First-tier for a fresh hearing. Mr Iqbal drew my attention to the content of the Decision and argued that the Judge had failed to set out anywhere in his decision the appellant's oral evidence or the submissions made by both him and the respondent's representative. He highlighted the first-named appellant's memory issues and pointed to sections of her screening and substantive interviews as evidence of this being something the Judge should have addressed.

9. Mr Bramble opposed the application and relied on the Rule 24 response. He stated the Judge did not have to set out all of the evidence he heard as long as he demonstrated an engagement with the evidence overall. The mere fact there was no examination or consideration of the oral evidence did not mean the Judge had ignored it. In fact, he submitted there was clear evidence that the Judge had had regard to both the oral and written evidence and he directed me to paragraphs [29] and [37] in particular. There was no evidence adduced by the appellant that matters contained in oral evidence had not been addressed in the Judge's assessment. The grounds of appeal argued today referred to the appellant's memory issues but the Judge clearly was aware of her oral and written evidence on this issue as he referred to it in paragraph [37] of his decision. On the issue of the delayed promulgation he relied on the Rule 24 response and submitted that delay on itself could not amount to an error in law. He invited me to find no error in law on the substantive part of the appeal.
10. I reserved my decision.

DISCUSSION AND FINDINGS

11. Both representatives agreed that the fact the Judge took almost four months to promulgate his decision is not in itself a reason to find an error in law. The delay in promulgating a decision only becomes a factor if the decision itself is defective. Mr Iqbal's submission is that the decision is defective because the Judge did not demonstrate he had any regard to anything that happened at the hearing.
12. Mr Iqbal represented the appellant, as counsel, at the First-tier hearing and in bringing these grounds of appeal he chose not to serve any contemporaneous note of what happened at the hearing and seeks to rely on the absence of any findings in the decision on the appellant's evidence. I asked Mr Iqbal what he was alleging the Judge had failed to have regard to and his response with which I take no issue, was that he was unable to give evidence as he was representing the appellant in the appeal.
13. Mr Bramble pointed out the mere fact the Judge did not set out everything in his decision did not mean there was an error in law. In bringing today's appeal on the basis he does Mr Iqbal finds himself in a difficult position for the reasons I will expand on hereafter.
14. Mr Iqbal's submission was the Judge decided the case on the "papers" and that must be an error in law. That submission would have force if something was said in the oral evidence that undermined or dealt with the subsequent findings made by the Judge. A failure to consider evidence can, in certain circumstances, amount to an error in law. For example, if in assessing credibility about how injuries were received the Judge did not have regard to medical reports that supported his claim then that almost certainly would amount to an error in law.

15. The thrust of Mr Iqbal's submissions surrounded the appellant's memory issues. Mr Bramble submitted the Judge considered that aspect of the case and directed my attention to the relevant paragraphs.
16. I am left in no doubt that the Judge had all of his papers before him when he prepared his decision. The notes of the hearing were contained on the court file so this was not a case where the notes were lost and the Judge made a decision without them.
17. In considering the appellant's claim the Judge properly set out the claim and nothing advanced today or in the grounds of appeal suggested that the Judge failed to take into account anything that was said at the hearing itself.
18. Mr Iqbal's grounds of appeal make no reference to any facts stated at the hearing which the Judge had no regard to. Significantly, at paragraph [29] the Judge concluded as follows-

"Having considered the appellant's evidence as a whole and all the documentary evidence it seemed to me that the appellant coming to the United Kingdom with the children was a planned exercise in migration ..."
19. The appellant's case was based on her account supported by documents she had submitted. The Judge assessed those documents and her account. As stated above Mr Iqbal has not referred in the grounds of appeal or his oral submissions today to any evidence the Judge ignored.
20. Mr Iqbal referred to her medical condition and memory issues and directed me to documents in the bundle. Again, there was nothing in the grounds of appeal on this specific issue but in any event the Judge at paragraph [37] made it clear he had regard to the appellant's oral and written evidence when considering her complaint.
21. In writing his decision the Judge could have detailed what was said at the hearing but in the absence of any evidence that something of significance was said in oral evidence that would have affected the decision I find no merit in these grounds.
22. In arguing the Judge failed to have regard to something it is incumbent upon the party making the allegation to demonstrate what it was the Judge failed to regard. To simply argue the Judge failed to mention a matter does not amount to an error in law.
23. Mr Iqbal submitted in his grounds that if the notes of evidence were on file then this added strength to his complaint. I disagree. The fact the notes were on the file merely confirms the Judge kept a full note. If the Judge is said to have failed to have regard to a material matter then it was incumbent on the party making that claim to put forward some evidence to support the claim.

24. For the reasons set out above I am satisfied there has been no unfairness or an error in law.

DECISION

25. I uphold the original decision and dismiss this appeal

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeals.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis