



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07907/2016**

**Appeal Numbers:
PA/07910/2016**

THE IMMIGRATION ACTS

**Heard at Manchester, Piccadilly
Reasons Promulgated
On the 29th September 2017
2017**

**Decision &
On 16th October**

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

**S N
Y N
(ANONYMITY DIRECTION MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel (Counsel)
For the Respondent: Mr Bates (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellants' appeal against the decision of First-tier Tribunal Judge Moore promulgated on the 31st January 2017, in which he dismissed the

Appellant's' appeal on asylum, humanitarian protection and human rights grounds. The lead Appellant SN is a National of Pakistan who was born on the 20th October 1968. The second Appellant YN is her son, and who was dependent upon SN's asylum appeal.

2. At the appeal hearing before First-tier Tribunal Judge Moore, SN had claimed that her husband had been killed in Pakistan for political and religious motives, such that there would be a real risk of persecution, were she and her son to be removed back to Pakistan. SN's asylum appeal had previously been determined by Immigration Judge McGarr on the 23rd February 2015. Both First-tier Tribunal Judge Chohan and Upper Tribunal Judge Rintoul had not granted permission to appeal against that decision.
3. In her fresh claim for asylum she provided further evidence including an updated death certificate for her husband Mr YZ dated the 22nd July 2015, post mortem report on him dated the 5th September 2014, a burial verification certificate for him dated the 5th September 2014, a letter of support from the general secretary of the Anjuman Azadaran-E-Maqdooma-E-Konanin dated the 19th July 2015, together with a country expert report from Ms Uzma Moeen dated the 27th August 2015.
4. In his decision Judge Moore agreed with the previous decision of Judge McGarr and did not accept that the Appellant's husband had been killed as claimed and did not accept that either Appellant would be at risk upon return.
5. The Appellant sought to appeal against that decision for the reasons set out within the Grounds of Appeal. That document as matter of record and is therefore not repeated in its entirety here. However, I have fully taken account of the same in reaching my decision.
6. Permission to appeal has been granted by First-tier Tribunal Judge Hodgkinson on the 23rd May 2017, when he found that it was arguable that the Judge fell into error in making adverse findings and relies upon the

findings of Judge McGarr prior to considering the fresh evidence which was before him and failed to simply treat the earlier Judge's findings as a starting point, despite the Judge's assertion at [35] of the decision that he had considered the evidence in its entirety prior to reaching any adverse credibility findings. He found it was also arguable that the Judge failed to consider the expert evidence which was before him and that he failed to give adequate reasons for certain findings made. He granted permission to appeal on all grounds.

7. Although within the Rule 24 Reply dated the 8th June 2017, it was argued by the Respondent that the Judge directed himself appropriately and that the Appellants' were simply attempting to reopen and reargue the matters before the Tribunal.
8. However, after discussions with the legal representatives, Mr Bates on behalf of the Secretary of State conceded that the Judge appeared to have been side-tracked in dealing with the chronology of the case and the timeline, and had not given adequate consideration to the expert evidence of Mrs Moeen. Mr Bates conceded that failing to properly take account of the expert report was a material error in the Judge's decision,. In that regard, I note that Judge Moore at [35] of his decision states that in reaching his decision he said that he must assess the expert evidence of Mrs Usma Moeen and that following the case of NA v UK Application 25904/07 2008 ECHR 616 the Judge had noted that "*in assessing such material consideration must be given to its source, in particular its independence, reliability and objectivity... The consistency of their conclusions and that corroboration by other sources are all relevant to considerations*". However, as Mr Bates conceded, other than the Judge stating that he had made his findings in respect of the death certificate at [36] "*notwithstanding the expert report, an addendum expert report that the expert was of the opinion that the death certificate was a genuine document*", he had not actually examined or assessed the expert evidence of Mrs Usma Moeen. I find in that regard, regrettably, Judge Moore has not adequately or sufficiently taken account of the expert evidence of Mrs Moeen, in regard to the death certificate and Mrs Moeen's consideration

of the authenticity of the death certificate between paragraphs 23 and 26 of her original opinion dated the 27th August 2015. Further, as Mr Bates conceded, there is seemingly no consideration by her of the expert's findings regarding the verification and authenticity of the FIR dated the 5th September 2014 or the post mortem report dated the 5th September 2014. Other than the Judge's one sentence that he had made his findings in regard to the death certificate notwithstanding the expert opinion, there is no analysis of the reasoning given by the expert, in making his findings. I therefore agree with Mr Bates that in fact the Judge has not adequately considered the expert evidence, when considering the evidence in the round when making his findings, and has not given adequate and sufficient reasons for rejecting that evidence, given that he has not actually adequately considered what findings the expert made or reasons for rejecting those findings, regarding the veracity of the FIR, post-mortem report and death certificate.

9. Further, the Judge found at [38] that the Appellant had provided no explanation as to the inconsistency regarding the husband's age at the date of death, the newspaper report of his death in the Karachi edition of Jang-e-paper dated the 6th September 2014, referred to him being 50 years old, a newspaper report at page 176 which referred to him being 48 years old, the death certificate indicating that he was 47 years old. The Judge further found that the Appellant's explanation of the newspaper article giving the wrong time of death as being 11:20 a.m. was that the newspaper reporter "*did not ask the family for the time. No one contact the family*". He stated "*I do not find such an explanation credible or plausible and would expect a newspaper to contact a least one family member, but even if that was not the case, such inconsistencies undermine the account*". I agree with the concession made by Mr Bates that in that regard, the Judge's findings are not adequate and sufficient to allow the losing party to know why they have lost, and that as Mr Bates conceded, the newspaper would not necessarily have spoken to the family, and could have got their information from other sources. I find that the Judge has not adequately explained why it would not be plausible that the newspapers had not contacted a family member, or that even if that was the case, why an inconsistency between what is reported in a newspaper and her

account, undermines her credibility. She was not responsible for writing the newspaper articles, as Mr Bates conceded, as she had not actually provided information to the newspaper, the Judge has not adequately explained why she should be held responsible for any inconsistencies between the death certificate and the newspaper reports.

10. In such circumstances, I do find in light of the concessions made by the Secretary of State at the appeal hearing, that the decision of First-tier Tribunal Judge Moore does contain material errors of law, such that the decision should be set aside in its entirety. Given the fact that credibility will have to be reassessed, I find that the appeal should be remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Moore.

Notice of Decision

The decision of First-tier Tribunal Judge Moore does contain material errors of law and is set aside;

I remit the case back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Moore.

I do make an anonymity order in this case, such an anonymity order having been made by the First-tier Tribunal, in light of the fact that the second Appellant is still a minor, and the case deals with an asylum claim. No report or transcript of these proceedings or this judgement may identify the Appellants or any members of their family, either directly or indirectly. This direction applies both to the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

RFMcGinty

Deputy Upper Tribunal Judge McGinty

Dated 29th September 2017