

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Numbers: PA/12454/2016**

**PA/12457/2016**

**PA/10740/2016**

**THE IMMIGRATION ACTS**

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| **Heard at Manchester Civil Justice Centre** | **Decision & Reasons Promulgated** |
| **On 29th May 2018** | **On 12th June 2018** |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**SRB**

**rs**

**syb**

(anonymity direction MADE)

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Lay of Counsel, instructed by Abbott Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Asjad, sitting at Birmingham on 25th September 2017, when by way of a decision promulgated on 24th October 2017 she had dismissed the Appellants’ appeals on all grounds, including on protection and human rights grounds.

2. Anonymity orders were made and therefore anonymity should continue.

3. This matter had been adjourned previously on 2nd March 2018 when there were significant travel difficulties because of serious adverse weather when Deputy Upper Tribunal Judge McGinty adjourned the matter for a further hearing before me today.

4. The grant of permission in this case by the First-tier Tribunal Judge noted that the grounds seeking permission contended three aspects:

(1) Failure to consider whether there was family life between the first and second Appellants and their British grandchildren in the United Kingdom for the purpose of Article 8.

(2) There were findings of fact based on misconstrued oral evidence and without regard to background evidence.

(3) Failure to apply the lower standard of proof. Nowhere in the decision did the judge cite or consider the standard of proof in an asylum claim or when considering Article 8.

5. The judge granting permission said at paragraphs 4 and 5:

“4. In respect of the second ground, it is arguable that no regard was made by the judge to background evidence in relation to whether or not it is credible that the first Appellant was a local Sufi leader in Pakistan as claimed in his evidence.

5. In addition, the failure to consider the existence of family life as between the first and second Appellants and their British grandchildren whom they have a relationship with as confirmed in evidence is also arguably an error of law. Appropriate findings should have been made by the judge however small in relation to this part of the claim.”

6. Before me today, Mr Lay said he relied upon a skeleton argument dated today and he said that there are three grounds and he deals firstly with matters in respect of Article 8. He said that despite the issue of family life and a relationship between grandparents and grandchildren having clearly been put to the judge the judge failed to deal with that aspect. Additionally, he refers to grounds 2 and 3, which, he says, could be taken together, and he acknowledges that the judge saw and heard from the Appellants and that therefore seeking to upset adverse factual findings is something that is not easy to persuade the Upper Tribunal in respect of.

7. In the end, however, he submits that this was a case in which there was simply no language whatsoever in relation to the burden of proof and the standard of proof which was applied by the judge. He says there is a foundational issue what were the bases of the findings in relation to whether or not the main Appellant was a Sufi leader or not. He also says that in relation to paragraph 8 of the judge’s decision in effect the judge appeared to take judicial notice of what a leader may or may not be like if they operated in Pakistan and who follows Sufism.

8. Mr McVeety in his submissions acknowledges that there is an error of law in relation to the judge’s decision. However, Mr McVeety’s says that the error of law is not material. He refers to the case of **Kugathas**. He asks what is the difference within this family compared to the many other families, grandparents and grandchildren here in the United Kingdom? Ultimately, Mr McVeety said, although the judge did not deal with the foundational aspects which Mr Lay refers to, the issue was not a material one. Insofar as the protection claim is concerned Mr McVeety took me through the judge’s decision and he referred to various paragraphs where the judge had made adequate findings in respect of why the adverse credibility findings had to be made. I then also heard from Mr Lay in reply.

9. Having considered the judge’s decision it is clear, in my judgment, that the judge did not set out that the party losing knew sufficiently why that was to be the case. In my judgment there are two significant and fundamental flaws. The burden and standard of proof is well-known. However, it still has to be at least cited impliedly if not by way of reference to case law. In this case, when one ties in with that certain knowledge that the judge may or may not have had some specialist or other background knowledge (paragraph 8 of her decision) it was all the more important for her to have set out why she concluded that this Appellant’s claim did not meet the lower standard of proof. In my judgment it was essential for the judge to have explained her findings with that foundation in mind rather than for there to be the sweeping statements which appear in the decision.

10. The protection claim was a relatively complicated one and of course the judge was right to refer to the late claim for asylum but that of itself did not make the claim one which had to be rejected. The late claim aspect was a matter that was to be taken into account, not a starting point.

11. I also consider the matters in relation to the grandchildren and the excellent skeleton argument and indeed grounds presented by Mr Lay do properly explain the fundamental flaw in respect of the consideration of the British grandchildren. Not only, as acknowledged by Mr McVeety, was there an error of law, the error was material. In my judgment it is clear when reminding myself of the Court of Appeal’s judgment in **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31** and indeed looking to the Supreme Court’s decision in **Agyarko** that the fundamental way in which the First-tier Tribunal Judge had to deal with the issues which were properly raised by the Appellants were simply not dealt with. The Judge should have dealt with the Article 8 issues. It is sufficient for Mr Lay to be able to show, and which, in my judgment, he has, that the judge could have come to a different decision had she taken the correct matters into account.

12. Overall, therefore I conclude that both in respect of the protection claim but also in relation to the human rights claim there are fundamental flaws in the decision-making in this case. In the circumstances the Appellants have not had a proper hearing at the First-tier Tribunal and it is appropriate therefore for the case to be heard afresh at the First-tier Tribunal

13. Having checked with Mr Lay, as his clients live in Nottingham, it would appear best that this case is heard at the First-tier Tribunal at Nottingham. I order that the Appellant’s solicitors shall contact the First-tier Tribunal at Nottingham and at Birmingham (where the case was first heard) to seek the hearing at Nottingham.

**Notice of Decision**

The decision of the FTT contained a material error of law. It is set aside. None of the findings shall stand.

There shall be a re-hearing at the FTT at Nottingham.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Abid Mahmood Date: 29 May 2018

Deputy Upper Tribunal Judge Mahmood