Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: AA/07074/2014**

AA/06722/2014

THE IMMIGRATION ACTS

Heard at Newport Upper Tribunal IAC **Decision & Reasons Promulgated**
On 10 February 2016 **On 29 April 2016**
Prepared 10 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS D K

MR D K

(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Neale, Counsel instructed by Migrant Law Project (Cardiff)
For the Respondent: Mr I Richards, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Georgia, appealed against the Respondent's decision dated 21 August 2014 to refuse their claims based on asylum, human rights and Humanitarian Protection grounds. The matter came before First-tier Tribunal Troup(the judge) who on 7 September 2015, dismissed their appeals with reference to the Refugee Convention, Articles

2 and 3 ECHR and in respect of Humanitarian Protection. He also dismissed their appeals with reference to Article 8 ECHR.

2. It is clear that when this matter came before the judge he received a range of evidence concerning amongst other things the Yazidi an ethnic and religious group found in Georgia. The complication was that part of the Appellants' respective families were either supporters of Jehovah's Witnesses (JW) or else were opponents of JW. In the circumstances what then arose from the facts became something of a confusion of issues as to what extent the first Appellant, as a Yazidi woman and a JW, would come into difficulties because of her being pregnant by a relationship with a non-Yazidi and non-JW partner. This situation might bring trouble down upon the Second Appellant's head through the First Appellant's brother and for him failing to ensure that she did not act outside of the Yazidi faith and or have such a relationship leading to the pregnancy.

3. The matter was to a degree further complicated by a somewhat old dispute over money arising between the first Appellants' elder brother M who it was said had been in difficulties with local police officers over the purchase of a motor car and the return of the monies provided to effect the purchase. This conflation of events over a period of time led the Appellants to come to the United Kingdom; having been sent or it was intended to send them on for some reason to Barbados in the West Indies.

4. Permission to appeal was given by F-t Tribunal judge Ransley on 1 October 2015.

5. The judge made a number of findings upon their ethnic group and upon many of the factual issues raised. There was really not significant challenge to a lot of the findings of fact but what was complained was that the judge, perhaps in the circumstances in which the matter came before him and the paperwork as provided, confused issues and or did not determine them correctly by reference to the evidence before him. It was

certainly possible individually they might be disregarded or discounted in terms of the overall outcome but in this case what was said was that they are cumulatively sufficient to show that the judge failed to properly consider the evidence. In particular and in short it was said that at paragraph 42 of the decision the judge had misunderstood an answer, given in interview, by the first Appellant as to what impact these events might have upon her family, whoever her family were included within the meaning of that word. In other words close blood relations or more distant relations and it was said that the judge misconstrued answers given so as to demonstrate he accepted that there was no wider family who posed a risk to the Appellants in Georgia.

6. Secondly, it is said that the judge having accepted the Appellants were Yazidi in background and family had really failed to address the significance of the Appellants being Jehovah's Witnesses and had wrongly assumed the wider family were also Jehovah's Witnesses. Thus such activities as had happened faced the greater prospect of being tolerated or accepted or certainly not forming the basis of risk. At paragraph 43 of the decision the judge having made findings in these matters did not appear to appreciate the potential difference between conduct which might otherwise have been subject to criticism carried out by Yazidi men might face different treatment and outcomes if it was carried out by a Yazidi woman. In this sense it was said having regard to the expert evidence that the judge had simply not got to grips with the potential issues associated with dishonour or bringing shame on the family. In this respect again it was said, as I have already adverted to, the judge failed to appreciate the potential difference between the treatment likely to be faced by the first as opposed to the second Appellant arising from her pregnancy. It was argued before the judge that the second Appellant for different reasons faced risk of harm associated with the same events.

7. Finally it was said that at paragraph 45 of the decision the judge had simply not understood the extent to which threats were posed by the

wider family both in the UK and elsewhere as to pose a risk to the Appellants as claimed. Of themselves, despite the trenchant submissions made, I could have taken the view that any other Tribunal, if these matters were highlighted, might well have reached the same decision: However I do not have confidence in that outcome. I find the Original Tribunal's reasoning fell short and was inadequate in terms of properly addressing the basis of assessment of risk on return, its sources and likely consequences. The decision's lack of reasons was an error of law. This was not to say that if the matter was re-made the same result would not be achieved but it seemed to me the gravamen of the complaint was essentially one of an error of law which took away the reasonable certainty that the outcome has been arrived at by properly addressing the key elements of the claim and the key fears of risks on return.

8. A further point of attack without addressing all of Mr Neale's grounds was that the judge speculated on why the Appellants' father, bearing in mind they were children at the time would have spent money on their travel to Barbados and the later travel of the Appellants' mother and elder sister to London when such costs could have met what was assumed to be the basis of the financial civil dispute in being at the time. It seemed to me the judge's consideration of that undoubtedly had an element of speculation but on the other hand it is clear that that issue was not going to the centrepiece of the claim of fear on return. In those circumstances I find, whilst it might have been unwise to speculate to the extent that he did, that of itself and by itself would not have demonstrated a material error of law.

9. For these reasons I find that the Original Tribunal cannot stand and the Appeals are allowed to the extent and the decisions will have to be re-made in the First-tier Tribunal.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

In this matter the First-tier Tribunal Judge had made an anonymity order in respect of both of the Appellants and in the circumstances I consider it necessary and appropriate for that anonymity order to be continued.

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

Signed Date 27 February 2016

Deputy Upper Tribunal Judge Davey