



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00883/2017**

Appeal Number:

P

A/00913/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 23 May 2017**

**Decision Promulgated
On 31 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

**ZFT
MTR**

[ANONYMITY DIRECTION MADE]

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Mr A Bandegani, instructed by Duncan Lewis & Co

For the respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are the appellants' linked appeals against the decision of First-tier Tribunal Judge Farmer promulgated 1.3.17, dismissing on all grounds their appeals against the decisions of the Secretary of State, dated 12.1.17, to refuse their protection claims.
2. The Judge heard the appeal on 27.2.17.
3. First-tier Tribunal Judge Kelly granted permission to appeal on 11.4.17.
4. Thus the matter came before me on 23.5.17 as an appeal in the Upper

Tribunal.

Error of Law

5. I found such error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Farmer should be set aside. I reserved my reasons, which I now summarise.
6. In granting permission to appeal, Judge Kelly specifically refused to grant permission in respect of several of the grounds pleaded. However, he found it arguable that the Tribunal (a) misinterpreted both the narrative of the second appellant and the findings in respect thereof contained within the report of Dr Mason, as set out at [3] of the grounds; (b) failed to have regard to material evidence, as set out at [13] and [14] of the grounds; and (c) made adverse credibility findings that were based upon an erroneous chronology of events, as set out at [15] of the grounds.
7. Whilst the judge's statement at [27] of the decision that Dr Mason found the second appellant's injuries to be consistent with being attacked by sticks and bottles may have been inaccurate, it was not material to the outcome of the appeal, as the judge accepted it was capable of supporting the second appellant's account. However, it was the inconsistencies between the hospital records of the scars and those noted by Dr Mason that led the judge to conclude that they were not caused in the manner alleged, and at [30] to place no weight on the hospital notes. In the circumstances there is no merit in this ground of appeal.
8. Neither do I find a material error of law in the judge's assessment of the interest that others in Bangladesh might have in the appellants on return, as pleaded at [13] and [14] of the grounds. The judge assessed the evidence at [33] of the decision and concluded there was no (independent) evidence that the Home Minister, or anyone of rank or influence, had any interest in them or their marriage. The points made at [13] and [14] of the grounds are no more than a disagreement with the findings of the Tribunal.
9. However, despite an otherwise careful and detailed assessment of the evidence, Judge Farmer made a material error in relation to the chronology. Setting out the immigration history at [5] the judge suggested that the asylum claim was made on the same date, 18.7.16, the appellants private life claims were refused. At [38] the judge took as an adverse credibility point that the appellants only made their asylum claim after they failed in their private life claims, adding, "I find that had they a genuine fear for their life they would have made a claim for asylum on arrival in the UK." Part of this latter point, the failure to claim asylum on arrival in the UK, is certainly relevant to credibility. However, the judge was wrong to suggest that the claim was only made after the private life claim was refused. In fact, the private life claim was refused by letter dated 8.7.16, whilst the appointment for an asylum screening interview was made on 6.7.16. The screening interview of the second appellant took place on 15.7.16 and that of the first appellant on 18.7.16.

10. It follows that part of the credibility assessment was founded on an erroneous assessment of the chronology. This undermines the entire credibility assessment, as it is not possible to separate out this issue from the overall credibility assessment.
11. Mr Nath told me that he could not counter this ground of appeal and thus did not resist the appeal.
12. It follows that the decision of the First-tier Tribunal was flawed for material error of law and cannot stand.

Remittal

13. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
14. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusions:

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



Signed

Deputy Upper Tribunal Judge Pickup

Consequential Directions

16. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross;
17. The appeal is to be decided afresh with no findings of fact preserved;
18. The ELH is 3 hours;
19. A Bengali interpreter will be required;
20. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Farmer;

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. However, given the circumstances, I make an anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I make no fee award.

Reasons: The outcome of the appeal remains to be decided.



Signed

Deputy Upper Tribunal Judge Pickup