



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: PA/50314/2020
LP/00199/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 September 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

T N F
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Winter instructed by Latta & Co solicitors

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

Heard at Melville Street, Edinburgh on 22 August 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S P J Buchanan promulgated 19 January 2021. Permission to appeal against that decision was granted by UTJ Blundell on 10 May 2021, and the appeal was heard by the Upper Tribunal on 22 December 2021. The appeal was dismissed and permission to appeal to the Court of Session (Inner House) was granted on a renewed application.
2. Following that, on 22 June 2023, an interlocutor was issued by the Court of Session, setting aside the decision of the Upper Tribunal for the reasons set out in a Joint

Minute and remitting the appeal to a differently constituted composition of the Upper Tribunal to determine whether the decision of the FtT involved the making of law.

3. The appellant's case is, in brief, based on threats to him and his wife from her family due to her behaviour in the United Kingdom which is seen by her family as un-Islamic. The wife had claimed asylum in her own right before the appellant, but her claim was rejected and her appeal dismissed prior to her appellant's case being heard in the First-tier.
4. Since the matter was remitted by the Court of Session, there has been a significant development. Mr Winter explained that the appellant's wife and their children have been recognised as refugees by the Home Office subsequent to the submission to her of a fresh claim and they have been granted leave to remain. This was confirmed by Mr Basra.
5. In the light of this, Mr Winter sought permission to adduce this new evidence, on the basis that the test set out in Ladd v Marshall was met, and to amend the grounds of appeal to include this. Mr Basra did not object to either application.
6. In the particular circumstances of this case, and in the absence of any objection from the respondent, I am satisfied that it is in the interests of justice to waive any failure on the part of the appellant or his solicitors to comply with the requirements of the Tribunals Procedure (Upper Tribunal) Rules 2008 in making the applications.
7. I have applied the principles set out in E & R v SSHD [2004] EWCA Civ 49 at [91] - [92] per Carnwath LJ:
8. I therefore asked:
 - (i) Could the fresh evidence have been obtained with reasonable diligence for use at the hearing?
 - (ii) if given, would it probably have had an important influence on the result; and,
 - (iii) is it apparently credible although not necessarily incontrovertible?
9. Given the timing, the grant of refugee status could not have been obtained for use at the hearing, as it did not exist at the time, but it casts light on the strength of the wife's evidence, and would have had an influence on the result. Given the source is the respondent, it is credible.
10. Further and in any event, applying the principles set out in Akter (appellate jurisdiction; E and R challenges:) [2021] UKUT 272, at [39] and [40], I consider that it is in the interests of justice to permit consideration of the new fact, and that the grounds should be amended to permit this.

11. Taking a pragmatic approach to this case, Mr Basra accepted very fairly that the decision of the First-tier Tribunal involved the making of an error of law. I concur.
12. Given the new development which fundamentally alters the facts of the case, I conclude that none of the findings with respect to the threats can be sustained, and that any remaking of this case would need to be de novo.
13. Accordingly, for these reasons I conclude that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I direct that it be remitted to the First-tier Tribunal for a fresh decision on all issues.
14. As the appellant's wife and their children have now been granted refugee status, it may be appropriate for the First-tier Tribunal to hold a case management review and/or give further directions.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside

I remit the appeal to the First-tier Tribunal for it to make a fresh decision on all issues.

Signed

Date: 22 August 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal
Immigration and Asylum Chamber