IAC-AH-PC/SC-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/03808/2014
AA/03584/2014
AA/03586/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th December 2014	**On 13th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS B (FIRST APPELLANT)
MS A A (A MINOR) (SECOND APPELLANT)
MISS N (A MINOR) (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr M Iqbal, Counsel
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. The first Appellant was born on 11th February 1982. The second and third Appellants are her minor daughters and were born respectively on 2nd August 2012 and 30th

November 2007. All references herein unless otherwise indicated are to the first Appellant.

2. The first Appellant was granted a family visit visa in 2011 and arrived in the UK on 2nd August 2011 along with the third Appellant. The second Appellant was born in the UK. On 12th October 2012 the Appellant applied for asylum based on a fear that if returned to Pakistan she would face mistreatment as being a member of a particular social group. In particular the Appellant claimed that she had a well-founded fear of persecution in Pakistan at the hands of her in-laws, own brothers, people from her area, police officers and M because her alleged in-laws did not believe that her eldest daughter was her husband's child and because her second daughter was born out of wedlock.

3. The Appellant's application was refused on 7th December 2012. The Appellant appealed against that decision on 21st December but the appeal was dismissed on 25th February 2013. Permission to appeal was refused and the Appellant was considered to have had all appeal rights exhausted on 1st May 2013.

4. Further submissions were received on 31st July 2013. They were addressed in a Notice of Refusal dated 13th May 2014.

5. The Appellant appealed and the appeals came before Judge of the First-tier Tribunal Sweet sitting at Hatton Cross on 2nd July 2014. In a determination promulgated shortly thereafter the Appellant's appeals based on asylum and under Articles 2, 3 and 8 of the European Convention of Human Rights were refused and the Appellant's claim for humanitarian protection was dismissed.

6. The Appellant lodged Grounds of Appeal on 22nd July 2014 to the Upper Tribunal. On 1st August 2014 Designated First-tier Tribunal Judge McCarthy refused permission to appeal. Those grounds were renewed on 12th August 2014.

7. On 31st August 2014 Upper Tribunal Judge Chalkley had granted permission to appeal. In granting permission he was persuaded that it was arguable that the judge may have erred in his application of *Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702** (formerly known as *Devaseelan*). Further he noted that in reading the determination it appeared to him that in paragraph 41 the judge was seeking corroboration of the fact that the photos were of B's house and that suggested that it was arguable that the judge may have further erred.

8. On 21st November 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. That response opposes the Appellant's appeal. They contended that the Judge of the First-tier directed himself appropriately and that the judge took the determination of February 2013 as the starting point entirely in accordance with the guidance given in *D (Tamil) [2002] UKIAT 00702**. Further it was contended that paragraph 39

of the determination updated the position with current evidence and the judge made findings on those points at paragraph 41. The Rule 24 response contends that such findings were entirely open to the judge to make and are adequately reasoned and that it is submitted that the grounds are in reality a disagreement with the findings of the First-tier Tribunal Judge.

9. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Mr Iqbal. Mr Iqbal is familiar with this matter being the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Shilliday.

Submissions/Discussion

10. Mr Iqbal seeks to address the second ground first submitting that the judge did not address the quality of the oral evidence given by the Appellant in the course of the hearing. He submits that the further documentary evidence is highlighted at paragraph 40 of the determination and that paragraph 41 seeks to apply the principles to be found in *Devaseelan*. However, he notes that the judge rejects the evidence on plausibility and has not found the documents to be genuine. Firstly he submits that the judge should have done so and secondly as the pictures relate to the house of B the judge should have decided whether the Appellant was telling the truth or not.

11. Secondly he turns to the argument under *Devaseelan* submitting that the judge has not addressed the determinative factors as set out at paragraph 39(2) of the authority and that facts that have happened since an original judge's determination can always be taken into account by the second Tribunal. He submits that the second FIR was lodged in Pakistan after the conclusion of the first claim and the letter from the bishop in Pakistan and some photos relating to B and from B's sisters all fall to be considered under this. He submits that there is a material error of law and that the decision of the First-tier Tribunal Judge should be set aside.

12. Mr Shilliday submits that the judge has followed the correct approach in *Devaseelan* and that the second ground upon which the Appellant seeks to rely is extremely confused. The decision he submits was made following a hearing and he takes me to relevant paragraphs from *Devaseelan* and submits that the approach adopted by Designated First-tier Tribunal Judge McCarthy in refusing the permission was perfectly correct and that the first decision cannot therefore be re-litigated. He reminds me that the judge in the First-Tier initially found the Appellant was not credible and such findings stand.

13. Mr Shilliday acknowledges that facts not before the first hearing can be brought before a further hearing but that they have to be considered in context and that is not what has happened here. He indicates that you

require further facts in order to re-litigate and that the relevant threshold has not been overcome by the Appellant. He submits there is no material error in law and asks me to dismiss the appeal.

14. In response Mr Iqbal indicates that nowhere in the prior determination had the judge made any findings of credibility and takes me back to paragraph 41 of the determination of Judge Sweet which lists the circumstances he submits that postdate the previous decision.

The Law

15. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

16. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

17. The initial submission made is that the judge erred in his application of the principles of *Devaseelan*. This is completely contrary to the approach that was adopted by First-tier Tribunal Judge Sweet. The relevant principles are set out at paragraph 39 of *Devaseelan [2002] UKIAT 00702*. It is not necessary to recite them within this error of law finding but I have given due consideration to them. The basic facts are clear however. A first Adjudicator's determination is always the starting point and that is the approach that has been adopted by this judge. The facts can always be taken into account by the second Tribunal. Despite the fact that it is contended that that has not taken place here that I conclude admits to little more than argument and disagreement. The issues are initially addressed at paragraph 40 of the determination. Judge Sweet noted that the previous judge had doubts about the veracity of the FIR of 8th July 2008

and goes on thereafter to consider the later FIR of 17th May 2013 and arrest warrants. It is clear that the judge has given due consideration to the documents and at paragraph 41 sets out that he needs to consider the further evidence as to whether or not it assists the Appellant in her claim. He has noted that the fundamental issue of credibility remains and has made findings of fact within paragraph 41 which he is entitled to make both with regard to the prospective alleged vendetta against the Appellant some five years after a previous incident in 2008 and more than eighteen months after the Appellant came to the UK and has also gone on to consider the lack of corroborative evidence of the photographs of B's house.

18. What the grounds and the submission amount to is nothing more than argument and disagreement. The judge followed for all the reasons set out above the principles in *Devaseelan* and the findings are clearly recorded. Further the judge went on to make findings on all the evidence that was presented and there is nothing whatsoever in the determination nor am I persuaded by any of the submissions to suggest that the judge determined appeal on the papers and failed to properly consider the evidence. In such circumstances there is no material error of law whatsoever in the determination of the First-tier Tribunal Judge and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal renewed an anonymity direction made on 16th June 2014. No application is made to vary that order and that order is maintained.

Signed Date 11/02/2015

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date 11/02/2015

Deputy Upper Tribunal Judge D N Harris