



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/03845/2014
AA/03852/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 5 April 2016**

**Decision and Reasons
Promulgated
On 28 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**IS (1)
MA (2)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, instructed by J M Wilson Solicitors

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

DECISION AND REASONS

The First-tier Tribunal made an anonymity direction in relation to the appellants because of the nature of the case. I consider it appropriate to make a similar order in the Upper Tribunal under Procedural Rule 14(1) to prohibit the disclosure or publication of any matter likely to lead members of the public

to identify the appellants. To give effect to this order the appellants are to be referred to by the initials above.

1. The appellant appeals with permission against the decision and reasons statement of First-tier Tribunal Judge Birk that was promulgated on 18 May 2015.
2. The complaints raised are all focused on the judge's consideration of the evidence of the second appellant. At the date of hearing he was just under 12 years old. He did not give oral evidence but provided a handwritten letter explaining why he feared return to Pakistan and a drawing of an incident when his father killed another person. The appellant's fear of returning to Pakistan is also recorded in a letter from his consultant paediatric nephrologist and in a psychological report.
3. To understand the arguments, it is necessary have regard to the paragraph that offends the appellant.

"28. I find that it is difficult to assess the veracity of the Second Appellant's evidence as he was aged under 10 when the incident of shooting is said to have occurred and so is a minor and so I have to deal with his evidence as a vulnerable person under the guidance given to me when dealing with such persons. I am aware on the First Appellant's evidence as to how close she is to her son and how concerned and keen she is to provide him with the medical evidence that he requires. I cannot rule out, having heard and seen the First Appellant's evidence that the Second Appellant will also have been made aware of this and I cannot rule out that he would be significantly influenced by his mother, who was also present in the psychological assessment interview. In those circumstances, I am not satisfied that the Second Appellant's evidence is sufficient to override or undermine the adverse credibility of the First Appellant who provides the main account."

4. In summary, the grounds of appeal argue the following.
5. The judge was wrong to have regard to judicial guidance regarding how to assess evidence from a vulnerable witness as the Joint Presidential Guidance only applies where there is live evidence.
6. The judge was wrong to approach the second appellant's evidence on the basis that she could not "rule out" that he might have been influenced by the first appellant, his mother. The judge had to examine the evidence of the second appellant in the round.
7. The judge failed to have regard to a number of matters central to the second appellant's evidence, namely the fact two medical professionals had assessed him and accepted that he feared return to Pakistan.
8. The judge was wrong to approach the second appellant's evidence on the basis that it might be capable of overriding the negative credibility findings made against the first appellant. The proper approach would have been to assess the second appellant's evidence in isolation before reaching conclusions in the round.
9. The appellant also argued that if the judge's approach to the second appellant's evidence was wrong in law, then it affected her decisions in

respect of the appeal against the refusal of the asylum claim and against the refusal of the human rights (private and family life) claim.

10. In his submissions, Mr Pipe withdrew the first argument because he appreciates that the judge had to have regard to the second appellant being a child and therefore that he was by law a vulnerable person.
11. Mr Pipe elaborated the other grounds. He said Judge Birk failed to make a specific finding about the handwritten letter provided by the second appellant and the fact that letter was prepared in the presence of a student support and welfare officer. He added that the judge made no findings regarding the drawing provided by the second appellant about what had happened in Pakistan before he left. Mr Pipe also submitted that the idea that the first appellant was able to influence the second appellant to the extent that the second appellant was able to deceive medical professionals and the student support and welfare officer was unsound since the second appellant had learning difficulties as shown by the psychological report.
12. The Home Office's rule 24 response and Mr McVeety's reply are arguments in support of the judicial decision. They argue that Judge Birk made clear findings that the account given by the first appellant was to be rejected and comment that the judge gave good reasons for finding the documents relied upon by the appellants to be unreliable. The findings regarding the documentary evidence was not challenged in the grounds and Mr Pipe did not seek to amend the grounds to include this issue.
13. Both representatives described the decision and reasons statement as being poorly structured and there were concerns about numerous typographical errors but both recognised these points did not identify legal errors and merely undermined the confidence they had in the decision.
14. I reserved my decision and reasons which I now give.
15. Although I accept that the decision and reasons statement is not particularly well structured, I do not find that it is so badly structured as to reveal legal error. When examined, it is clear that Judge Birk has considered and assessed the separate strands of evidence before bringing her findings together for an overall assessment.
16. The strands of evidence she had were: (i) the evidence from the first appellant, (ii) the evidence from the second appellant, (iii) the documentary evidence relied on by the appellants, and (iv) documents relied on by the respondent. Judge Birk dealt with these strands in turn. In paragraphs 21 to 26 she gave cogent reasons for finding the first appellant not credible and those findings are not challenged. In paragraphs 27 and 28 she found the evidence of the second appellant to be weak and gave reasons for her findings. Those findings are challenged as I have indicated. In paragraphs 30 to 32 Judge Birk rejected the reliability of the documentary evidence provided by the appellants and her reasons are unchallenged. In paragraph 33 she found the dealt with the first appellant's admission that she had provided false and incorrect information in her visa application and again those findings are not

challenged. At paragraphs 21 and 29 Judge Birk gave summaries of her findings, and brought all her findings together in paragraph 34 where she decided the appellants' evidence was not reliable and therefore they were not refugees.

17. It is in this context that I have to consider the findings in paragraph 28. In this context they make sense and do not show any failure to consider the evidence of the second appellant or to apply the wrong test. It is clear from the last sentence of that paragraph that Judge Birk recognised the possibility that the child's evidence might lead to a different conclusion than the conclusion she reached regarding the first appellant. But as she indicated in paragraphs 27 and 28, the child's evidence was weak.
18. The complaint that Judge Birk was wrong to suggest that the child was significantly influenced by his mother is not sustainable for the following reasons. It is acknowledged that the child has a learning disability. It is reasonably likely that the first appellant would have talked to him about what had happened in Pakistan and that the child's memories would be affected by the information provided by her albeit inadvertently. This is a normal process, recorded in many studies involving the memories of adults and children, which show that memories change. In this way it was open to Judge Birk to infer that the child's evidence would be influenced by the first appellant. Mr McVeety identified that the psychological evidence shows that the child was not asked any probing questions when examined. This is understandable given his learning disability but means there was no assessment as to what influence the mother had had on the child's memories. Judge Birk concluded she could not give significant weight to the child's evidence and in my opinion her reasoning is sufficient to sustain that conclusion even though it might have been expressed more clearly.
19. In this situation there was no need for the judge to make specific findings about the drawing or the handwritten letter. They were clearly before her and there is no basis on which to think she did not take them into consideration. Her reasons are sufficient to show they were not to be given any significant weight.
20. For these reasons, I find Judge Birk's decision to be free from legal error and I uphold her decision.

Decision

The appeal to the Upper Tribunal is dismissed because there is no legal error in the decision and reasons of Judge Birk and her decision is upheld.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal