

Judgments

**CA, CIVIL DIVISION**



Case No: C5/2012/1305

**Neutral Citation Number: [2012] EWCA Civ 1619**

**IN THE COURT OF APPEAL (CIVIL DIVISION)**

**ON APPEAL FROM THE UPPER TRIBUNAL**

**(IMMIGRATION AND ASYLUM CHAMBER)**

**(IMMIGRATION JUDGE DEBORAH TAYLOR)**

**[Appeal No: AA/15896/2010]**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Monday, 5<sup>th</sup> November 2012

**Before:**

**LADY JUSTICE RAFFERTY**

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**Between:**

**AH (INDIA)**

**- and -**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**Respondent**

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(DAR Transcript of

WordWave International Limited

A Merrill Communications Company

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7831 8838

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**Mr Adam Pipe** (instructed by Thaliwal Bridge Solicitors) appeared on behalf of the Appellant.

The **Respondent** did not appear and was not represented.

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**Judgment**

**(As Approved by the Court)**

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1. The applicant is a refugee from India. She arrived in the United Kingdom with her two dependent children on 12 October 2007 and claimed asylum. The basis asserted was that she feared persecution or breach of her Article 3 rights as a consequence of her membership of a particular social group were she to return to India. She asserted she was a victim of domestic violence and feared the family of her late partner, the family being politically powerful. She and her children have consequential psychiatric problems.
2. Her application was refused by the respondent on 27 October 2008. Her appeal on 10 December 2008 was a concession by the respondent, but the sole issue was credibility. In a determination promulgated on 22 December 2008 her appeal was dismissed.
3. She made a fresh asylum claim on 20 March 2009, relying on medical evidence which she said supported her credibility. On 13 July 2009, the respondent accepted that that amounted to a fresh claim. On 4 November 2010, the respondent refused it. In the refusal letter she concluded that she would not depart from the credibility findings of the previous judge.
4. The appellant sought to appeal and Immigration Judge Lloyd in a promulgation of 16 March 2011 dismissed her application. He found that though she was credible there was protection available for her in India.
5. Immigration Judge Kebede on 31 March 2011 granted permission to appeal on the basis it was arguable that there had been a failure to give any or any proper consideration to the respondent's concession in the first appeal. On 10 January 2012 Deputy Upper Tribunal Judge Bowen upheld the determination of Immigration Judge Lloyd, there being no discernible error of law. Permission to appeal sought through the Upper Tribunal was, on 2 May 2012, refused by Upper Tribunal Judge Taylor.
6. The first ground is that a concession that credibility was the only live issue should be seen thus: Immigration Judge Lloyd found the applicant credible and should have allowed her appeal. As a consequence the DUT judge should have set aside that conclusion and substituted one allowing the appeal on refugee grounds.
7. Concessions in asylum appeal are not limited to concessions of fact. I have reminded myself of Carcabuk v SSHD 18 May 2000, Collins J sitting as president at the immigration appeal tribunal, when the court gave guidance. It is uncontroversial and need not be rehearsed.
8. The suggestion is that this ground raises an important point of principle and that this is a compelling case. The second ground is a failure properly to consider the medical evidence resulting in a failure to treat the best interests of the children as primary. Immigration Judge Lloyd, it is said, recognised that the best interests of the children are of primary consideration, but failed to put that principle into practice.
9. Reliance is placed on the opinion of Dr Newth, whom Judge Lloyd said did not diagnose any particular health condition for the children. The contention is that in fact in relation to Saad, whilst the doctor could not make a firm diagnosis, he could give a potential diagnosis of selective mutism and post-traumatic stress disorder. The problems could be attributable to abuse, neglect or a disorder on the autistic spectrum. As to Uzaif, Dr Newth thought him totally dependent on his mother, and if her health deteriorated so consequentially might Uzaif's.
10. The difficulty for the applicant is the concession that the medical evidence ground is inextricably linked to the

first, as going to credibility.

11. Both the First Tier and the Upper Tribunal were entitled to go behind the apparent concession that credibility was the only issue. It would have been puzzling had the position been otherwise. In those circumstances, the challenged decisions are unimpugnable. It also therefore follows there can be nothing in the second ground of appeal.

12. Lord Justice Laws on paper refused permission on 26 July 2012. Like him, although I of course have cause to be grateful to Mr Pike who has appeared here, I refuse the application.

**Order:** Application refused