



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05112/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 August 2013
Prepared 12 August 2013

Determination Promulgated
On 21 August 2013
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Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

GUL MOHAMMAD KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Jones, Counsel, instructed by Farani Javid Taylor Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Afghanistan, born on 5 February 1978, appeals, with permission, against a determination of Judge of the First-tier Tribunal Chana who, in a determination dated 11 June 2013 dismissed the appellant's appeal against a

decision of the Secretary of State to refuse him asylum and to issue removal directions to Afghanistan.

2. The basis of the appellant's claim to asylum was that he had worked for a garage in Jalalabad specialising in engines and gearboxes. In January 2010 he started repairing Humvees vehicles belonging to the United States Armed Forces. In February 2013 he had received a telephone call from a person who had identified himself as a member of the Taliban who had told him that he was committing a sin by repairing vehicles which were used by the American forces against fellow Muslims. He had then received a letter which had stated that the person who had written to him was a member of the Taliban and that he should pay 3,000,000 Afghani by the end of the week. He then received a further telephone call asking if he had received the letter. Finally he received a call asking if he had made arrangements for the money. The appellant said that he had not yet made such arrangements but he had had no intention in any event of giving the Taliban any money.
3. The appellant then left Jalalabad for Kabul, changing his mobile telephone number.
4. While he was there four members of the Taliban had gone to his home in Jalalabad and threatened his family. His mother, under duress, had provided them with his new mobile number and his photographs.
5. The Taliban then contacted the appellant twice in March 2013 telling him to return to Jalalabad and stating that if he did not the Taliban in Kabul would find him and kill him. The appellant had not returned but instead made arrangements for his mother wife and children to go to Pakistan to live with his father-in-law. He then made arrangements to leave and come to Britain.
6. The Secretary of State did not find that the appellant's claim was credible and refused the application. The appellant appealed.
7. The Judge noted his evidence and in paragraphs 29 onwards made detailed findings of fact. She did not find the appellant was credible. In paragraph 36 she noted that he had said that the gearbox had five gears plus an additional help gear but had then stated that it had "five speeds" and that "the gear is made up of five elements. N-Neutral P- Parking D-Drive R-Reserve and L-Low gear". She said that the background evidence stated that the transmission in the Humvees used by the Americans was a three speed automatic. She said that the appellant had been equally vague about the mechanics of a car and that that demonstrated he had never worked on American Humvees or that he was a mechanic.
8. She added to say there was no evidence had been provided that the United States Army would outsource the servicing and repairs of their vehicles to a local garage in Afghanistan and stated:

“I do not find it at all credible that the American Armed Forces would put their cars and personnel at risk and instead of repairing their vehicles with their own mechanics and their own engineers, they would send their vehicles outside their compound to be repaired by Afghan nationals.”

9. The Judge said that that she did not accept that the appellant would have been paid 100,000 Afghani by the owner of the garage where he worked as that was the equivalent of £1,200 per month. She next stated that she did not believe that the Taliban would make three requests to the appellant for money and not think the appellant would run away which in fact was what he did. She placed weight on the fact that the owner of the garage where the appellant worked had not himself been targeted.
10. The appellant had sought asylum in Belgium in 2007 because he feared being killed in a family dispute and had then returned to Afghanistan because his father had a medical condition. The Judge stated that a genuine refugee would not return to a country where he feared persecution. She added that she did not believe the authorities in Kabul had told the appellant that they could not protect themselves and therefore could not offer a mere mechanic protection.
11. The judge also stated that she found the appellant’s credibility was damaged by the fact that he had said that he did not know another Afghani who was in Harmondsworth Detention Centre whose appeal she had heard immediately before that of this appellant. She placed weight also on the fact that that appellant had produced a certificate from the provincial reconstruction team in Nangarhar which stated that it was a certificate of appreciation presented to mechanical “Gul Mohamed Khan” which had been signed by the head mechanic and the lead engineer and the commander of the US Army Corps of Engineers in Jalalabad.
12. The grounds claimed that the judge had erred in law in her findings of credibility and that she had reached negative findings of credibility without evidence on which to reach those findings.
13. Miss Jones, in her submissions to me amplified the grounds of appeal. She first argued that the judge had made an assumption that local nationals would not be employed by the American Army. In that regard she referred to a number of documents relating to the maintenance and supply of operational support in Afghanistan by a company known as AECOM which said that it employed 5,100 persons spread across almost 50 locations and referred to one of the aims of the AECOM contract of the US Army being to “develop and train local nationals in vehicle maintenance operations which had not been before the First-tier Judge. Secondly she stated that the judge had made an assumption that a person seeking asylum would not return to his home country to see a parent who was unwell.
14. There was nothing to show that the appellant would have known the other Afghani in the Harmondsworth Detention Centre – the judge certainly did not know how

many people were detained there. She stated that Harmondsworth Detention Centre had a rapidly changing population of up to 620 single male adults.

15. The judge had referred to the gearbox in the Humvees as being an automatic three speed gearbox but the reality was that Humvees vehicles had been used by the American forces since 1981 in a bewildering number of types and options. Moreover the judge had nothing on which to base the assertion that the appellant's claimed salary was too high to be plausible. Finally she had no evidence on which to suggest that maintenance work on vehicles would not be outsourced by the US Army.
16. In reply Mr Melvin argued that although he accepted that some matters on which the judge relied were clearly speculative and in particular he accepted that the appellant might well, in 2007, have returned to Afghanistan to see a sick relative, the reality was that the judge reached conclusions which were fully open to her on the evidence and indeed reflected the comments made in the letter of refusal. He objected to the further evidence which had been submitted by Miss Jones, stating, of course, that it would not be an error of law for that not to have been taken into account by the judge. He argued that the judge had pointed out contradictory evidence and that in any event the appellant had not produced evidence to back up the various claims he had made on matters such as his salary. He referred to the criticisms of the documents of appreciation which he argued did show, as the judge had indicated, grammatical mistakes. He also argued that the judge was entitled not to believe that the appellant had been contacted by the Taliban who would, if the appellant were to be believed, have been able to kill him in Kabul.
17. I find that there are material errors of law in the determination of the First-tier Tribunal Judge. I am concerned that many of her findings appear to be based on speculation and there was no evidence on which she could reach the findings which she did. These matters include her belief that the appellant was not telling the truth when he said that he did not know the appellant in the previous case who was also detained at Harmondsworth – given the size of Harmondsworth it would not be impossible for the appellant not to know the other Afghan – and her conclusion that the appellant had sought asylum in Belgium claiming a well-founded fear of persecution in Afghanistan but had been untruthful when he had made that claim, as was shown by the fact that he had returned to Afghanistan. The reality is that an asylum seeker might well return to their own country if they feel that they should return to see an extremely ill parent.
18. Moreover, I do not fully understand the point made by the judge regarding the number of gears in a Humvee. I consider that the point is well made that there are many types of that vehicle in operation and therefore there is likely to be variety to gear systems, but in any event the reality is that the appellant, although naming five gears, only three of these referred to motion – drive, reverse and low. The appellant was, of course, correct to state that the gears were automatic.

19. There was also no basis on which the judge could comment on the appellant's salary or, if there was, she gave no reason other than stating that she did not believe that the appellant was telling the truth.
20. Finally the judge, who, as Miss Jones pointed out, made a number of typographical errors in the determination, was, I consider, incorrect to state that the certificates of appreciation produced by the appellant were clearly not genuine. I can see no reason, on the face of them, for reaching that conclusion.
21. I therefore set aside the determination of the Judge and I direct that the appeal proceed to a hearing afresh on all issues.
22. I would add that there are a number of matters such as the number of gears in the Humvees, the way in which local mechanics might be employed in the service of the UN forces and the genuineness of the certificates of appreciation on which there should be further evidence which could be obtained relatively easily. In particular I consider that there may well be some way in which those who signed the certificates of appreciation could be contacted. I consider that the onus is on both parties and not merely on the appellant to ascertain if further evidence regarding those certificates and the other matters which I have mentioned can be obtained.
23. Having set aside the determination of the judge I have also concluded that this is an appropriate case in which, following the Senior President's Practice Statement at paragraph 7.2(a) are met and that therefore the appeal should be remitted to the First-tier Tribunal.

Decision

This appeal is allowed to the limited extent that it is remitted to the First-tier Tribunal for a hearing afresh.

Direction

I direct that the appeal be heard again in the First-tier on all issues.

Signed

Date

Upper Tribunal Judge McGeachy