



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

Appeal Number: AA/10958/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd April 2014**

**Date Sent
On 19th May 2014**

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Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR S R

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel instructed by Rahman & Co Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 1st January 1993 and is a national of Afghanistan.
2. The appellant claimed to have arrived in the United Kingdom from Pakistan on 17th July 2009, the day when he was arrested in the UK. He claimed asylum on 17th July 2009. On 19th July 2009 absconded from the care of Kent County Council.

3. The appellant resurfaced as far as the UK authorities were concerned in September 2011 by making a claim for asylum support.
4. The appellant's claim was refused on 27th November 2013 and on 2nd December 2013 a decision was made to remove the appellant from the United Kingdom.
5. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Prior on 13th January 2014. The appeal was dismissed in all respects.
6. Grounds of appeal were submitted to the effect that the Judge had failed to make material findings of fact or provide adequate reasons why removal was not disproportionate and an interference with Article 8 rights. Leave to appeal was granted on the basis that the Judge had not made adequate findings as to private life and therefore that the proportionality exercise was flawed. Thus the matter comes before me in pursuance of that permission.
7. The centrepiece, which was before Judge Prior was essentially the claim for asylum. It is the claim of the appellant that in December 2007 he had been accused of the murder of an individual and convicted without due process. He managed to escape from his sentence of life imprisonment by payment of a bribe and eventually came to the United Kingdom.
8. Although it was his claim that he came to the United Kingdom directly evidence was presented that he had been fingerprinted in a Greek island in July 2008 and again in Greece in August 2008 and February 2009 and again in Hungary in June 2009.
9. The determination was a careful one which looked at all the ingredients of the claim there was a finding in particular that the chronology of the movement of the appellant, as evidenced by the fingerprints, was inconsistent with his claim as to the events in Afghanistan.
10. The conclusion of the Judge was that it was a fabricated claim with no substance whatsoever. Accordingly the claim of asylum was dismissed as was that for humanitarian protection. Significantly there has been no appeal lodged against such findings.
11. The grounds of appeal relate to the approach taken by the Judge to Article 8 of the ECHR contending that it was wholly inadequate in the circumstances.
12. Mr Gilbert, who represents the appellant, submits that it was a material factor that the appellant had come to the United Kingdom as a juvenile and was a matter to weigh heavily in the scales of proportionality against removal.

13. Although he had absconded from UK authority care he had reassumed contact with the authorities in 2011 and that had permitted him to undergo study at the Harrow College. Two letters were submitted to the Tribunal from that college both dated 9th January 2014.
14. One of the letters confirms that the appellant had been a student at the college for three years having joined it in September 2011. He has progressed from this initial ESOL course and was now studying the first year of a two year BTEC level diploma in science. He is said to be a valued member of the student community and a member of the student union. In October 2013 he had been elected by fellow students to take up the role of enrichment and entertainments officer. He was a valued student member, worthy student officer. The other letter confirmed that the appellant made excellent progress in his studies. Apart from his studies he lived with friends and had a course of friendship.
15. It is argued that the Judge was wrong to place such little weight upon such evidence in the establishment of a private life in the United Kingdom.
16. It is to be noted that the Judge paid regard to those letters as specific reference is made in paragraph 8 of the determination to those letters.

The Judge noted what the appellant had to say about his family in Pakistan. He had indicated to the Immigration Officers on 17th July 2009 that his parents were in Pakistan and that he had five sisters. The appellant had maintained at the hearing that his parents were no longer in Pakistan because his father had long since died and that what he had said in the interview was incorrect. The Judge looked at that matter and preferred that which was said to the Immigration Officers.
17. It was noted in paragraph 20, that in the context of Article 8, the appellant's evidence had been that he had a mother and five siblings in Pakistan and that he had been at least until three months previously in contact with his mother. The appellant's evidence in interview was that he had no partner in the United Kingdom and no contact with two uncles that he believed he had in the country.
18. The position facing the Immigration Judge upon the conclusion of the asylum appeal was that the appellant sought to remain in the United Kingdom on a false basis namely upon a fabricated asylum claim. He had not fully cooperated with the authorities in that matter in that he had absconded for several years. There was no evidence of any family life.
19. Such evidence of private life was essentially his various friends and his college studies. It was the finding of the Judge that the appellant had family to return to in Pakistan if not in Afghanistan.
20. It was noted by the Judge at paragraph 26 of the determination that at no time in the four and a half years that the appellant had been in the United Kingdom could he have had any expectation of being permitted to remain in the country. Indeed according to the appellant it was his fear of being

returned to Afghanistan which had caused him to abscond in the first place.

21. The Judge, therefore, noted all relevant matters that are currently relied upon by the appellant in support of his Article 8 claim. The Judge having noted such matters did not find that his removal would be disproportionate.
22. It is argued by Mr Gilbert that for the Judge to find that there was no private life was an error because clearly there was some private life particularly in college and among his friends. It was very important for a young adult to have a sense of security and purpose.
23. I find that the Judge had taken proper account of all matters that had been raised as to the appellant's private life in the United Kingdom. He had taken account of the letters that were produced and has noted clearly that the appellant had been in the United Kingdom for four and a half years. Whilst it was clear the appellant had shown initiative not only in coming to the United Kingdom initially but also in taking matters into his own hands by absconding and living of his own devices for two years in the United Kingdom. He was, however, somebody who had deceived the authorities as to the true purpose for his coming to the United Kingdom and had been found to be someone who had fabricated his claim to remain in the United Kingdom on the basis of asylum. The Judge clearly concluded that the appellant had family to return to and was in any event a young adult as at the time of the hearing.
24. Although the remarks of the Judge could perhaps have been better structured it is difficult to understand without more why it can be said that the circumstances of the appellant are so compelling or as to prevent removal; alternatively, why it would be unreasonable or unjust or unduly harsh for him to be expected to return to Afghanistan in all the circumstances.
25. This was not a case where the Judge had overlooked a material factor might have made a material difference to the outcome. I do not find, therefore, that the Judge was in error in the approach which was taken. Alternatively, if in error, I do not find that that error was in the circumstances a material one.
26. The appeal before the Upper Tribunal is therefore dismissed. The decision of the First-tier Tribunal shall stand namely that the appellant's appeals in respect of asylum, humanitarian protection and human rights stand dismissed.

Signed
Upper Tribunal Judge King TD

Date