IAC-AH-PC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00342/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 27th October 2015	**On 10th November 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

REZWAN SIDIQI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mrs R Pettersen
For the Respondent: Mr R O' Ryan

DECISION AND REASONS

1. I shall refer to the Appellant in this appeal to the Upper Tribunal as "the Secretary of State" and to the Respondent as "the Claimant". The Secretary of State appeals, with permission, against a decision of the First-tier Tribunal (Judge Myers) promulgated on 10 August 2015 allowing the Claimant's appeal against the Secretary of State's decision of 5th December 2014 refusing to vary leave to remain and deciding to remove him from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. By way of background, the Claimant, who was born on 3rd August 1996, is a national of Afghanistan. He entered the UK illegally, on a date in 2009, and on 16th September 2009 applied for asylum. The thrust of his claim was that he was from the Baghlan Province and that he was at risk there because of a feud between his tribe (the Lar Kwari Tribe) and the Andarabi Tribe. He said, in particular, that his family were in fear of the Andarabi Tribe. The Secretary of State did not believe he had given a true account regarding his claim to be at risk at the hands of the Andarabi Tribe but accepted that he is an Afghani national and accepted that, at the time he came to the UK, he was a minor. Accordingly, therefore, the Secretary of State did, on 18th January 2010, refuse his asylum claim but did also grant him discretionary leave to remain in the UK, pursuant to her policy, until 3rd August 2013. The Claimant sought further leave, maintaining his contention to be at risk upon return and this led to the Respondent's above decision concerning the refusal of further leave and removal. The Claimant then appealed to the First-tier Tribunal.

3. The First-tier Tribunal held an oral hearing at which both parties were represented. It heard oral evidence from the Claimant and also from his brother. It found the evidence of the Claimant and the brother to be credible. It attached particular importance to the brother's evidence that he had received information to the effect that the family in Afghanistan had recently been attacked and a cousin of the Claimant had been murdered. It concluded that the Claimant was at risk in his home area of Baghlan, that he would not be able to relocate by going to live with his sister and her family (the sister having remained in Afghanistan) and that it would be unduly harsh to require him to relocate to Kabul. Accordingly, it was concluded that he had a well-founded fear of persecution "for a Convention reason", that being a reference to the 1951 Refugee Convention. His appeal was, therefore, allowed on asylum grounds. It was also allowed on human rights grounds for the same reasons as it had succeeded on the asylum grounds and also under Article 8 of the European Convention on Human Rights as incorporated in the Immigration Rules, specifically Rule 276ADE.

4. The Secretary of State applied for permission to appeal to the Upper Tribunal. There were four separate Grounds of Appeal which may be briefly summarised as follows;

   (a) the First-tier Tribunal had erred in failing to resolve conflicts in the evidence;

   (b) it had erred in failing to specify any applicable 1951 Convention reason;

   (c) it had failed to adequately explain why the Claimant could not relocate at his sister's home in Afghanistan;

   (d) it had failed to adequately explain why the evidence of the brother was accepted.

5. On 28th August 2015 permission to appeal was granted by a Judge of the First-tier Tribunal. The salient part of that grant reads as follows;

> "Although there appears to be little merit in ground 1 which seems to be no more than a complaint that the judge accepted the evidence of the Appellant's brother, it is arguable that the judge's approach to internal relocation was flawed, and that failed to follow the current country guidance without any adequate reasons for departing from it. Moreover since the judge appears to accept that the Appellant could live in safety with his married sister and her family, the mere fact that it was not traditional to do so would arguably not offer any adequate reason why he should not reasonably be expected to do so. The international protection threshold would not be met merely because the Appellant preferred not to have to do so either long-term, or short-term whilst he re-established himself."

6. A hearing was convened before the Upper Tribunal to explore the question of whether the First-tier Tribunal had erred in law such that its decision ought to be set aside. At that hearing Mr O'Ryan raised an initial argument to the effect that permission had only been granted in respect of ground (c), in light of the wording of the grant as set out above. However, he decided not to pursue that in light of the content of Rule 34 of the Tribunal Procedure Rules 2014. Following the wording of Rule 34(4) and (5) it is the case that where a permission application is determined by the First-tier Tribunal and permission is granted only on limited grounds, notification of the right to make an application to the Upper Tribunal for permission to appeal must be given in respect of the unsuccessful grounds. Here, no such notification had been given which amply supported the proposition that, in fact, the grant of permission to appeal was intended to be and was unlimited. There was a further issue in that it appeared, from the wording of the grant, that the granting judge had identified what would have been a fifth ground to the effect that the First-tier Tribunal had, in considering the internal flight alternative, departed from applicable Country Guidance without sufficiently explaining why. However, Mrs Pettersen indicated that that was not a matter she would seek to pursue before me. She also indicated, quite correctly in my view, that she would not pursue grounds (a) or (d), those being no more than mere disagreement with the findings. This, then, left only two remaining grounds. I heard submissions from the representatives about those and have taken them fully into account.

7. As to ground (b) it was clearly the intention of the First-tier Tribunal to allow the appeal on asylum grounds. Indeed, it specifically said at paragraph 37 of its determination that that is what it was doing. It is true that it did not say, in terms, which of the five available 1951 Convention reasons it had identified as being applicable. Mr O' Ryan pointed to the Claimant's evidence to the effect that his parents, two brothers and two sisters had been killed in a blood feud with the Andarabi Tribe, that there was an additional element to the conflict because his father had been involved with Hezb-e-Islami and that the First-tier Tribunal had found that he was at risk in his home area of Baghlan because of the adverse history his family had in that area with that particular tribe. Mr O Ryan submitted

that, in these circumstances, it was obvious that the judge was accepting that he was at risk because of his membership of his family (a particular social group) and that he was also at risk on the basis of imputed political opinion (with respect to his father's claimed links with Hezb-e-Islami).

8. Essentially, for the most part, I accept Mr O Ryan's submissions on the point. The First-tier Tribunal clearly did, as I have indicated, accept the oral evidence as given to it and accepted that the Claimant was at risk on the basis of his family's difficulties with the Andarabi Tribe. I am not sure it can properly be said that it also accepted risk on the basis of his father's association with Hezb-e-Islami but I am satisfied that it was finding, albeit it did not express this in precise and clear terms, that there was risk as a result of the Claimant's membership of a particular social group.

9. As to the question of internal flight, I accept Mr O' Ryan's submissions to the effect that the draughtsperson of the grounds misunderstood what the First-tier Tribunal was saying at paragraph 29 of its determination. It was not saying that the Claimant was stating he would choose not go to live with his sister for cultural reasons. It was, in fact, finding that, for cultural reasons, his sister and the family into which the sister had married would not allow him to live with them. It seems to me that that finding, on the evidence, was clearly open to the First-tier Tribunal. Mrs Pettersen did not, in fact, urge me to read paragraph 29 in a different way but, instead, suggested that the First-tier Tribunal had merely speculated on the point that the sister and his family would not allow him to live there. I do not accept that. It had evidence from the Claimant, which it found to be credible, to the effect that he would not be allowed to live in the sister's household and it had to take a view on that evidence. That is what it did and what was required of it. There is, in any event, a further point. As Mr O' Ryan again points out, the evidence before the First-tier Tribunal was that the area where the sister lived was also in Baghlan Province, the same province where the First-tier Tribunal had found risk for the Claimant existed. As such, the sister's home was not a potential place of safety. Mrs Pettersen sought to make some more general challenges to the First-tier Tribunal's reasoning with respect to internal flight, suggesting that it had failed to take into account his advantage of having had a United Kingdom education and the availability of a support package available for persons being repatriated. However, its consideration of the question of an internal flight alternative was, to my mind, most thorough and holistic. That consideration appears in a passage from paragraph 31 to 36 of the determination. It carefully balanced a number of factors including his having become fluent in English, his having done well at school and the availability of a support package but it also noted that the support package was intended to help only with immediate costs, that he had no personal recollection of living in Afghanistan, a country which he had left as a 5 year old child albeit that he had returned at the age of 12 for a period of some two weeks, and evidence of a lack of basic infrastructure for displaced persons in Kabul. There was, as I say, no maintained challenge regarding any contention that there had been an insufficiently

explained departure from country guidance. As such, the consideration of internal flight was free of any properly identified legal error.

10. In light of all the above I conclude that the First-tier Tribunal reached findings and conclusions which were clearly open to it on the evidence and which were all properly explained. Further, what it said when read in its totality was sufficient to identify an applicable 1951 Convention reason for the persecution it found the Claimant would face.

11. In light of the above the First-tier Tribunal did not err in law and its decision shall stand.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no anonymity order.

Signed Date

Upper Tribunal Judge Hemingway

TO THE SECRETARY OF STATE
FEE AWARD

The Claimant has succeeded. In any event no fee is paid or payable. There can, therefore, be no fee award.

Signed Date

Upper Tribunal Judge Hemingway