



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

Appeal Number: AA/04861/2014

**THE IMMIGRATION ACTS**

**Heard at UT (IAC) Birmingham  
Employment Centre  
On 13<sup>th</sup> March 2015**

**Determination Promulgated  
On 25<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR JUMA GUL KHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Woodhouse (LR)

For the Respondent: Mr David Mills (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Thomas, promulgated on 27<sup>th</sup> October 2014, following a hearing at Birmingham on 26<sup>th</sup> September 2014. In the determination, the judge dismissed the appeal of Juma Gul Khan. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of Afghanistan, who was born on 3<sup>rd</sup> April 1995. He appealed against the decision of the Respondent Secretary of State, refusing his application for asylum dated 24<sup>th</sup> September 2009, although he was granted discretionary leave to remain until 24<sup>th</sup> September 2012. The essence of the Appellant's claim is that his father worked for the Taliban, and the Appellant was beaten by the police several times because of this, occasioning scarring on his head, and that he also fears indiscriminate violence in Afghanistan if he was returned there now.

### **The Judge's Findings**

3. The judge dismissed the Appellant's claim on the basis that there was no independent evidence of scarring, and rejected the alleged mistreatment. The judge held that the Appellant's family must have funded his journey throughout to come to Western Europe. With respect to Article 8, the judge held that the Appellant could not satisfy the requirements of paragraph 276ADE, and rejected the Appellant's claim that he had wider Article 8 rights in relation to his foster family in the UK.

### **Grounds of Application**

4. The grounds of application state that the judge was wrong to say that there was no independent evidence of scarring as she failed to take into account the GP's letter at page 364 of the Respondent's bundle. The judge failed also to put the issue (at paragraph 26 before making adverse credibility findings against the Appellant. The judge also failed to follow the guidelines in **Dirshe** and in **JA (Afghanistan) [2014] EWCA Civ 450**.
5. No consideration was given by the judge either to **AA (unattended children) Afghanistan CG [2012] UKUT 00016**. But in particular, the judge erred in her assessment of Rule 276ADE given that the Appellant had spent almost half his life outside Afghanistan, and now spoke with a pronounced West Midlands accent. The guidance in **MM (Lebanon) [2014] EWCA Civ 984**, regarding the way in which proportionality assessments are to be carried out, was also ignored.
6. On 26<sup>th</sup> January 2015, permission to appeal was granted. It was granted specifically on the basis that at page 364 of the Respondent's bundle, there was a letter from the Appellant's GP which reads,

"I can confirm that he does have significant raised pale scar on the left side of the top of his scalp towards the front within his hairline. This is approximately 4cm long and slightly curved at its medial end ... it is my medical opinion that this scar is perfectly compatible with the explanation given".

This had been ignored.

### **Submissions**

7. At the hearing before me on 13<sup>th</sup> March 2015, Mr David Mills, appearing on behalf of the Respondent Secretary of State, intercepted Mr Woodhouse's

initial submissions by saying that he would have to concede that there was an error of law for two reasons.

8. First, with respect to the asylum issue, the Appellant had claimed that because his father was with the Taliban the Appellant was mistreated. He acquired scarring to his forehead. For the judge to have found this to be lacking in credibility because there was no cooperation is not right, but is particularly wrong given that there was medical evidence from the GP.
9. Second, as far as Article 8 was concerned the judge had referred to the Appellant's foster family, in particular from Joanna Robertson, who was the Appellant's foster mother, and she had fostered the Appellant for seven years now, and the evidence was that, "they have a solid and real relationship and he is a pleasure to have as a member of her family" (paragraph 10). There was also a special relationship between Joanna Robertson's son, Joshua, and with the Appellant (paragraph 10). The judge did not consider the position outside paragraph 276ADE in the light of this factual scenario. It was clear that paragraph 276ADE was not a complete code. It was necessary to look at wider Article 8 jurisprudence. The failure to do so was in error. Therefore, Mr Mills asked for there to be a remittal back to the First-tier Tribunal.
10. For his part, Mr Woodhouse submitted that he would have to agree. The appropriate course of action, given the extent of the flaws in this determination, was for there to be a remittal to the First-tier Tribunal.

### **Error of Law**

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007 such that I should set aside the decision. I come to this conclusion given the concession made by Mr Mills. Plainly, the judge was wrong to have found that the scarring required corroborative evidence and to have overlooked the medical evidence from the GP. The judge was also wrong to have failed to consider the wider jurisprudence on Article 8 given what she had determined at paragraphs 10 and 11 of the determination.

### **Notice of Decision**

12. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the appeal as follows. This appeal is remitted back to the First-tier Tribunal in Birmingham to be decided by a judge other than Judge Thomas under practice statement 7.2.
13. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

23<sup>rd</sup> March 2015