



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: AA/07760/2014

THE IMMIGRATION ACTS

Heard at: Field House
On: 11 August 2015

Decision and Reasons Promulgated
On: 27 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR SAMIULLAH SHAHABZAI
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr J Waithe, counsel (instructed by Fadozai Solicitors)

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Afghanistan, born on 10 November 1993. His appeal against the respondent's decision to grant him further leave to remain in the UK dated 19 September 2014 was dismissed by First-tier Tribunal Judge Ruth in a determination promulgated on 27 May 2015. Judge Ruth dismissed his appeal on asylum, humanitarian protection and human rights grounds.
2. The appellant appeals with leave granted by First-tier Tribunal Judge Landes in a decision dated 23 June 2015. Judge Landes did not consider that there was any merit

in Ground 2 where it was argued that the Judge erred in finding that the appellant would not be at risk of forced recruitment by insurgents in his home area. Judge Landes found that Judge Ruth had explained fully and carefully why he was departing from the earlier decision of the Tribunal dated 24 July 2006 and the 2013 decision relating to the appellant's brother and why there was at the highest a mere possibility of forced recruitment in his home area. He had explained why the appellant would not be at risk in Kabul in this respect.

3. Ground 1 was arguable because the Judge overlooked considerations of the expert's point relating to the risk to the appellant of kidnap on return, or that he did not give adequate reasons for so doing. The country guidance cases did not explicitly consider the risk of kidnap to those returning from Europe. Even though it may be said that it would have been considered if it were a significant risk to returning asylum seekers, Judge Landes did not consider that the point is unarguable.

Background to the appeal

4. The appellant arrived in the UK on 4 May 2006 when he was about 12 years old. His application for asylum was refused in June 2006 but he was granted discretionary leave on account of his age until 7 June 2009. There had been no interview by the respondent.
5. His upgrade appeal was dismissed on 18 July 2006. His application for further leave to remain was lodged on 12 May 2009. However, no decision on that application was made until 19 September 2014. The respondent refused the application under paragraph 276ADE and Appendix FM of the Immigration Rules. There were no reasons justifying a grant outside the rules.
6. The appellant appealed that decision to the First-tier Tribunal on asylum, humanitarian protection and on human rights grounds.
7. Judge Ruth had regard to the respondent's reasons for refusing the appellant's application for further leave in 2014. There was no additional information that had been provided since the claim for asylum nine years before. He would not presently be at risk.
8. The Judge had regard to his Article 8 claim. There was no dependency beyond normal emotional ties with his brothers in the UK. Those could be maintained through modern means of communication and visits. His private life had been established through employment and academic studies but was of a type which could be re-established in Afghanistan.
9. Any interference with his private life would be proportionate in the circumstances.
10. The respondent had regard to the suitability of the appellant being granted leave to remain, including his character, conduct and associations. He had been convicted of four offences including possession of cannabis, shoplifting and robbery. There was also police information that he had been involved in further nefarious activity

including possession of an offensive weapon, handling stolen goods, attempted robbery, robbery and kidnapping of a child.

11. His character and conduct were unacceptable and it was conducive to the public good that he should not be granted leave.
12. At the hearing before Judge Ruth, the appellant submitted a bundle of documents as well as witness statements from himself and both brothers in the UK. There was also an expert report into the situation in Afghanistan prepared by Mr Jawad Hassan Zadeh. The Judge also had regard to the respondent's bundle including statements from Detective Constable Turney of the Metropolitan Police Force. There was also a further witness statement and an additional extract from the PNC reflecting an additional allegation regarding the appellant's further alleged nefarious activities which came to light after the refusal of his application.
13. The Judge heard evidence from the appellant speaking through a Dari interpreter. He also heard oral evidence from the appellant's older brother.
14. The elder brother's evidence substantially differed from that given by the appellant. During the hearing it became clear that the appellant's representative (who was not Mr Waithe) was surprised by the evidence and was in some difficulty. As a result the Judge gave the appellant's representative the opportunity to take further instructions from the appellant, given the new information provided by his elder brother.
15. It became evident on resumption that the appellant had been speaking to his brothers outside the hearing centre despite the Judge's explicit instructions not to do so.
16. The Judge nevertheless allowed the recall of the appellant informing the parties that given the situation which had arisen, it was unlikely that any weight could be given to an explanation that the appellant might now give [51].
17. In his initial oral evidence relating to the asylum claim, the appellant said that he had grown up with his parents, younger brother and elder sister. He repeated his claim that his father had been fighting against the Americans when he disappeared in 2005 (presumably in battle) [56]. He knew that his father was a commander.
18. The maternal uncle took the family to his own home to hide them. Government soldiers visited and threatened the family, "hitting the appellant and his mother." [57]
19. They were looking for his father. His uncle concluded that the family was not safe and took them to Pakistan, after which the appellant left for the UK in 2005.
20. After arrival in the UK, the appellant stated that his younger brother who had arrived in the UK himself, that the authorities were still looking for the appellant. The appellant also said that his older brother in the UK told him that their mother was missing around three or four years ago. He confirmed that his elder brother had

visited Pakistan and confirmed in cross examination that he had not travelled to see family.

21. The appellant contended that he would be of interest to the authorities in Afghanistan as a result of his father's previous activity [60].
22. The appellant's elder brother gave evidence as to why he came to the UK. The Taliban had come to the village and spoken to the mullah, requesting that all local young men should join them. His father was away fighting jihad at the time and his uncle arranged for him to travel out of Afghanistan to safety.
23. His elder brother stated that he subsequently heard from the appellant that their father had died of cancer and that their mother was ill [62].
24. When asked to explain the circumstances of the appellant's departure from Afghanistan, the elder brother stated that the appellant had told him that he had been working with a butcher in the local bazaar and this butcher had made sexual advances towards him. When he told his mother, she and the uncle decided it was not safe for him to remain and that is why he left Afghanistan.
25. Moreover, the appellant's elder brother stated that the appellant told him that he did not wish to return to Afghanistan because he had studied here and wanted to remain in the UK. Furthermore, the father was dead and the family had no recent contact with the mother. The appellant told him that the reason he did not wish to return to Afghanistan was because he was afraid of the butcher, who was a powerful person.
26. When recalled to give evidence, the appellant said that he left Afghanistan to escape from the government as well as to escape from the butcher. He was too embarrassed to mention that but repeated his claim that government soldiers had come looking for his father and his mother was scared that they might take the appellant. He stated that his uncle had three daughters and one son. It was put to him that his elder brother had said that his uncle had no children, he stated that that was not correct [68].
27. The police evidence set out the appellant's criminal activity.
28. In his findings and reasons relating to international protection, the Judge had regard to the respondent's COIs report as well as operational guidance notes and UNHCR reports, and the relevant country guidance cases such as PM and Others; RQ (Afghanistan); HK and Others (Minors - indiscriminate evidence - Forced recruitment by Taliban - contact with family members) [2010]; AA (Unattended children) Afghanistan CG [2012]; and AK (Article 15(c)) Afghanistan CG [2012]. He noted that there could clearly be potentially disastrous consequences for the appellant if he concluded that he is not in need of international protection when he is in fact in such need. He stated that he had given most anxious scrutiny to this case.
29. The Judge decided to depart from the findings made by the previous Tribunal in 2006, having concluded that the appellant could be given no credence in relation to

any of his claims. The Judge set out his reasons for such a departure. There has been no challenge to the Judge's departure from the 2006 determination. I am satisfied that the Judge has given proper reasons justifying that departure, set out at paragraph 101.

30. The Judge in assessing the appellant's credibility noted serious and material discrepancies not only within the account given by him but also between the account given by the appellant and that given by his brothers [102].
31. This included the make up of the appellant's family, which called into question these three "brothers" and whether they are related as claimed.
32. The appellant stated that his family was made up of his parents, himself, his younger brother and one sister. He made no mention of an elder brother or of two additional sisters. Given that the alleged elder brother only left Afghanistan about three years before the appellant, the Judge found it surprising that he was unable to recall either during 2006 or during the hearing in adopting his witness statement that he had an elder brother in Afghanistan. [104]
33. His younger brother said in his witness statement provided to the Tribunal in 2013 that he lived with his mother and three sisters. He did not mention having two other brothers who left Afghanistan many years before. There was however the fact of his having three sisters rather than one which was "very strange" in the context of the family background discussed by the appellant himself. [105]
34. The appellant stated that he had no contact with his mother and that she was missing for around four years. He stated that although his elder brother travelled overseas, he had not done so to visit any family member.
35. However, the elder brother stated that in 2013, he heard that his mother was ill in Pakistan. He travelled there and spent 45 days with her. The younger brother stated that he had spoken to his mother about six months before. These contradictory accounts contribute to the Judge's conclusion that the appellant had not told him the truth. [108]
36. Another serious and material discrepancy was found to exist as to the explanations given by the three brothers relating to the cause of death of their father. The appellant was the only one to claim that his father died in battle in 2005, fighting the Americans. The other brothers stated that the father died of an illness described by the elder brother as cancer. The failure of the three alleged brothers to give a coherent account of the death of their father, particularly in the light of the nature of the asylum claims of the two other brothers, led to the conclusion that there was a strong indication that the appellant is not a truthful witness [109].
37. The Judge referred to the submission that all three brothers had given similar accounts which lent support to the credibility of the appellant's claim that he is in danger as a result of his father's background as a former member of the Taliban.

38. The Judge had regard to the expert report which he had no reason to dispute. He described the alleged events which took place according to the appellant as plausible in the context of a person related to such a father. The Judge agreed that the events are plausible but that this did not mean that they are true. Their plausibility depended on the appellant's claims as to his father's background and death being credible.
39. An examination of the asylum claims of the elder and younger brother reveals that they are not similar to that of the appellant. The appellant's claim was very particular. He had stated that it was as a result of his father's past as a commander with 150 men under his personal control and the interest shown by the government soldiers in finding him following his death in battle with the Americans that he, the appellant, would be at risk.
40. The elder brother's claim, however, was not that his father's past activities, rank or position placed him at risk. His claim was that members of the Taliban had come to the village and asked the mullah to gather all the young men in the area for recruitment to the Taliban. That is why he fled, to avoid the Taliban recruitment and not to avoid harm as a result of his father's profile [112].
41. The younger brother's claim was that he had been studying in a madrassa when he and two other boys went voluntarily with a mullah who subsequently turned out to be a member of the Taliban. He was taken to a training camp. From there, he escaped. He did not claim that his fear related to past profile and activities of his father.
42. The Judge noted that if the father died of cancer rather than dying in battle as two of the three brothers have said, it is difficult to understand why government soldiers would have come looking for him as claimed by the appellant. The younger brother had said that after the death of his father which he described as being a long time ago, the family worked on the land which they owned with the assistance of their maternal uncle. That was completely different from what the appellant said. He claimed that the family had no resources after the death of the father and that they had to move in with and rely upon the maternal uncle who assisted them. [114]
43. The Judge also noted the discrepancy relating to the uncle's family. The appellant claimed that he had three daughters and one son and that because he had his own children, it was necessary for the appellant to go out and work. The older brother stated that the uncle had been in a position to assist the family after the death of the father as he had no children of his own [115].
44. The Judge identified what he called the most serious discrepancy in the evidence. The appellant's claim was that he fled Afghanistan and did not wish to return because of his father's background and government interest shown in his father, resulting in both he and his mother being beaten. That was what the appellant stated in 2006 and was the account he gave when initially giving evidence before Judge Ruth.

45. That account was however “fatally undermined” by the evidence of the elder brother who stated that when he met the appellant in the UK that the appellant gave the reason why he left Afghanistan was because of sexual approaches made against him by a butcher in the bazaar. Moreover, he had stated that he did not wish to leave the UK because he had studied and settled here. There was no suggestion from the older brother of anything similar to the reasons for flight given by the appellant himself [117].
46. The Judge found that it was significant that the appellant had not seen fit to state to his alleged elder brother that he fled Afghanistan as a result of interest shown in the family by government soldiers visiting the uncle's house. He gave a completely different account to his elder brother and appeared not to have corrected it even at the point of his own appeal against the refusal of asylum [118].
47. Furthermore, the appellant had been in the UK for almost a decade and is now in his 20s. He has been legally represented throughout that period. He has been in close contact with the local authority, social workers and foster parents. It did not appear that the appellant had ever mentioned these events to anyone other than his brother [119].
48. The Judge accepted that a child experiencing sexual advances of this kind might be embarrassed. He noted that nothing had actually happened apart from advances. Accordingly, the Judge accepted that it might be difficult to discuss such matters, at least initially.
49. However, the Judge did not accept that when he was a child in 2006 or an adult such as he now is, he would not have mentioned to his elder brother what he asserts to be the real reason for his departure from Afghanistan; risk as a result of his father's activity if that had been the reason for his departure [121].
50. It was also very damaging that the appellant told his elder brother that the real reason he did not wish to return to Afghanistan was because he had studied in the UK and has settled here. If the appellant were afraid of his father's profile, it was inconceivable that he would never have mentioned that to his elder brother [122].
51. Neither the elder brother, nor the younger, has expressed similar fears. That seemed to the Judge to constitute a clear indication that the appellant's claims about his reasons for flight and fear of return as given up to the point of his elder brother's evidence to him were simply untrue [123].
52. There was accordingly too much uncertainty, too many discrepancies and too much falsity in the appellant's account to enable the Judge to conclude that any credence can be attached to anything he has said [124].
53. The Judge stated that in reaching that conclusion, he has not disregarded the expert report. That report however gives the opinion that the events claimed by the appellant are plausible in the context of a father with the background claimed.

However, the appellant is not such a person in much of the discussion and the report simply falls away. [125]

54. The Judge accordingly was able to find that the appellant is an Afghan national born on 10 November 1993. There is nothing else known about him although it is not disputed that he comes from Nangarhar province.
55. The Judge then considered the potential future harm, having regard to the accepted profile of the appellant when compared to guidance in various cases including the background information.
56. In assessing the question, he had careful regard to the guidance in HK and Others (CG), supra. The question is whether the risk of recruitment is a mere possibility, or may be a real risk for this particular appellant.
57. The Judge found that the only thing established is that the appellant comes from this area. Nothing else in the profile realistically raises the prospect of anything other than a mere possibility of forced recruitment. Given his lack of any particular background or profile, it is not clear or established why government authorities in the local area would have any adverse interest in him, particularly given that on the accepted evidence, the authorities have shown no interest in the past. Nor had either of the two brothers suggested any difficulties with the authorities in their asylum claims [133].
58. The Judge noted that even if he is wrong in that respect and the appellant is at risk in his own home area, he could safely and reasonably relocate to another part of Afghanistan. The only possible area of relocation would be Kabul [135-136]. The only profile the appellant has is that of a person from his home province. There is nothing to distinguish him from others and the country guidance cases are clear. In such a situation, he would not face a real risk of serious harm in Kabul [136].
59. The Judge had regard to whether it would be reasonable for him to relocate to Kabul and whether it would not be unduly harsh. The country guidance authority suggested that a healthy adult such as the appellant, given his education in the UK, would be able to survive and live a relatively normal life judged by local standards [137].
60. The Judge had regard to the expert report which set out a different view, considering that the appellant would not be able to survive to the appropriate level in Kabul and may be at risk of exploitation. However, the Judge preferred the information contained in the country guidance cases on the basis that the Tribunal has had regard to a very wide ranging amount of background information from various sources, including a number of well known experts, and those cases continue to bind him [138]. He therefore declined to depart from the guidance contained in the country guidance cases, finding that the appellant can reasonably and safely relocate to Kabul [140].

61. Nor was the level of indiscriminate violence in Kabul sufficiently high to justify humanitarian protection.
62. The Judge accordingly found that his return would not involve a breach of his rights under Articles 2 and 3 of the Human Rights Convention [145].

Submissions

63. Mr Waithe referred to the expert report at paragraph 30, page 77 of the bundle. However, as already noted, the expert stated that the appellant's case is consistent and plausible in the context of Afghanistan. However, the Judge having heard all the evidence, found that the appellant had not shown that he is a family member of a Taliban commander and is at risk of prosecution by the Afghan government. Mr Waithe also had regard to paragraph 43 where conditions in Kabul in the absence of a well connected and well resourced immediate and extended family would mean that he would have to live in an inn, where there are squalid and unhygienic conditions. There is much sexual exploitation of men by men.
64. He also referred to paragraph 53 of the report where it is asserted that for a person to survive in Kabul or other Afghan provinces, he must have immediate and extended family members who are willing and capable of providing support. This would not apply to the appellant.
65. Mr Waithe also referred to paragraph 13.17 in the Home Office country information and guidance report, dated February 2015, where it is stressed that in all cases, consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis. He also referred to the Danish immigration service report of May 2012 (paragraph 2.5.6). The police are considered to be corrupt and weak. Corruption is even higher in the big cities.
66. Mr Waithe also relied on the expert report regarding Afghans living in the UK who are thought to be rich. He referred to paragraph 38 of the expert's report where it is stated that a person such as the appellant is at risk of being kidnapped throughout Afghanistan and remains a high and constant threat. The risk of kidnap for the Afghan who returns from Europe is very high.
67. The appellant has lived in the UK for nearly nine years. After his arrival, his past in the UK either in Kabul or in the other Afghan provinces will be known to the local residents. Such Afghans who have lived in the UK are thought to be very rich. It is asserted that some people visiting or returning from the UK or other parts of Europe have been kidnapped for a reason of as little as £100. In some cases the person has been killed. The source of this assertion relates to a conversation with three Afghans who visited Afghanistan in September 2014, December 2014, and February 2015.
68. Mr Waithe also relied on ground 2 in which it is asserted that the Judge dismissed the expert report without any justification, especially taking into consideration that the appellant's family history had already been accepted in his brother's determination.

69. On behalf of the respondent, Mr Tarlow submitted that there has been no material error in the determination.
70. He submitted that the Judge directed himself appropriately. The risk of kidnapping was a remote one and not one that met the real risk test, especially in the light of the Judge's findings at paragraphs 133 and 138.
71. Moreover, the Judge has stated expressly that he has not disregarded the expert report. The Judge has given substantial reasons why the appellant is not such a person as claimed by him in the report. Accordingly much of the discussion falls away.
72. The Judge moreover had regard to the country guidance cases, finding that although the expert appeared to have a good knowledge of Afghanistan, this was not sufficient to displace the findings made over a period of several years by several country guidance cases. There is accordingly no basis for displacing the wide ranging sources consulted by the Tribunal in those cases which led to the guidance in AK [144].
73. He submitted that that finding was open to the Judge having looked at the report in the light of the country guidance decisions.

Assessment

74. I have set out the reasons and findings of the Judge who has given a careful decision. He has explained in great detail his reasons for departing from the 2006 determination. He has also given full reasons as to why, notwithstanding the decision in respect of the appellant's brother in 2013, there was in any event at the highest a mere possibility of forced recruitment in his home area. The Judge has fully explained why he would not be at risk in Kabul in that respect.
75. The Judge noted that his younger brother had claimed that he had been studying in a madrassa when he and two others voluntarily accompanied the mullah who subsequently turned out to be a member of the Taliban and were taken to a Taliban training camp, from where he escaped. He did not claim that his fear related to his past profile and activities of his father. Moreover, two of the brothers stated that the father died of cancer rather than in battle against the Americans.
76. The Judge was accordingly entitled to find that it was not easy to understand why the government soldiers would have come looking for him as claimed by the appellant. His account differed entirely from that of the younger brother who stated that after the death of their father, a long time ago, the family worked on the land which they owned with the assistance of the uncle.
77. It is contended that although referring to the country guidance cases, the Judge did not expressly consider the risk of kidnap addressed by the experts. It is not clear, as noted by Judge Landes in granting permission, whether it would have been considered by the Tribunal if it were a significant risk to returning asylum seekers.

78. I have had regard to the expert's report on the issue of risk of getting kidnapped for those who return from Europe. It is contended that this is very high [paragraph 38 of the report].
79. The expert has asserted that some people visiting or returning from the UK or other parts of Europe have been kidnapped for ransom, for as little as £100. In some cases, the person has been killed. The basis for such assertion is provided by footnote 42, which refers to "conversation with three Afghans who visited Afghanistan in September 2014, December 2014 and February 2015." However, no detail is given as to where such kidnapping took place, nor when this took place. Nor is there any evidence produced relating to the background and circumstances of those who have been kidnapped, nor how many were involved. The author of the report has not set out the conversation he had with the three Afghans.
80. The evidence presented relating to the risk of being kidnapped throughout Afghanistan is sparse.
81. Judge Ruth has stated that he has "not disregarded the expert's report" [125]. He found that there was nothing in the appellant's profile that realistically raises the prospect of anything other than a mere possibility of forced recruitment.
82. I find that the evidence relating to the possibility of kidnapping is so sparse and vague that the appellant did not establish through the expert's report that he would face a real risk of serious harm in his home area. In any event, he could safely and reasonably relocate to another part of Afghanistan which would be the city of Kabul. His only profile would be that he is a person from his home province.
83. In the circumstances, even assuming that the First-tier Tribunal Judge erred in not expressly considering the risk of kidnap referred to by the expert, I find that from the evidence produced in relation to that risk, it has not been shown that there is or would be a significant risk to this appellant.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. It shall accordingly stand.

No anonymity direction is made.

Signed
Judge C R Mailer
Deputy Upper Tribunal Judge

Dated 24 August 2015