



IAC-AH-SAR-V1

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

Appeal Number: AA/04979/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision &

Reasons

On 3rd February 2016

Promulgated

On 9th March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**S A
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms T Jaber, Counsel instructed by Sutovic & Hartigan

For the Respondent: Ms N Willock-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan whose claim that it would breach his rights under the Refugee and Human Rights Conventions if he was removed from this country was dismissed by First-tier Tribunal Judge Archer in a decision promulgated on 24th August 2015. Grounds of application for leave to appeal were lodged. They can be summarised as follows.

2. In Ground 1 it was said the Tribunal failed to consider or give adequate or any reasons for refusing the Appellant's entitlement to humanitarian protection given the current level of violence in Afghanistan. The Tribunal did not consider whether the Appellant's particular profile put him in an enhanced risk category and erred in finding that he would not be at risk as he was no longer a child. The Tribunal failed to give adequate reasons as to the effect of the failure of the Secretary of State to undertake a duty to trace his family particularly since it was accepted that he would be without family support. The Tribunal failed to give adequate reasons as to the effect on the delay in dealing with the Appellant's claim for protection. The Tribunal had erred in whether he would be returning to Afghanistan as a vulnerable young adult and the Tribunal should have considered whether his profile would make him vulnerable in Afghanistan for numerous reasons set out (a) to (m) inclusive.
3. Ground 2 is that the Tribunal erred in concluding that the Appellant could not succeed under the relevant provisions of the Immigration Rules. He fell within paragraph 276ADE(vi) of those Rules in that there were "very significant obstacles" to his integration into the country. In relation to Article 8 the Tribunal erred in that it failed to consider in a holistic manner all relevant factors as set out in the grounds at (a) to (q). Furthermore the Tribunal erred in its weight it gave to the consideration of 117B of the 2002 Act as set out at (a) to (e). There was also the question as to the application or weight of paragraph 117B to be given to those Appellants who arrived here as unaccompanied asylum seeking children.
4. Ground 3 is that the Tribunal failed to consider paragraph 353B of the Rules. The factors set out to Article 8 were also relevant to consideration of paragraph 353B though the two are not synonymous.
5. Permission was refused by First-tier Judge J M Holmes. He noted that the Appellant sought in his appeal to reargue the same account of events in Afghanistan that had previously been rejected as untrue and the grounds make no complaint about the judge's decision to reject it as untrue once again. In terms of the first ground, namely the decision to dismiss it on humanitarian protection grounds, the Appellant had not told the truth about his circumstances and he was by the date of hearing an adult male of 20 in good health, capable of returning to Kabul and living there in safety with the support available to those returning voluntarily. Judge Holmes said there was no material arguable error of law in that decision. The first ground was in reality no more than an attempt to reargue this Ground of Appeal and it was unfortunate or unhelpful for the grounds to seek to present the Appellant as a truthful witness about his circumstances in Afghanistan when he was not.
6. Judge Holmes also held that the second Ground of Appeal was no more than a disagreement with the judge's finding on that issue. He did not meet the requirements of paragraph 276ADE and did not engage with the provisions of Section 117B.

7. Grounds of application were renewed to the Upper Tribunal. It was said that refusal of permission to appeal by Judge Holmes failed to answer the Appellant's central concern that the Tribunal did not consider the current country conditions in Afghanistan at all. It was not asserted that the Appellant had been a truthful witness and Judge Archer had found that the Appellant would be returned to Afghanistan with no family support. Given the increasing levels of violence in Afghanistan, it was said that Judge Holmes had given manifestly inadequate reasons as to his conclusion on proportionality.

8. Upper Tribunal Judge Plimmer allowed permission to appeal in the following terms:-

"It is arguable that the First-tier Tribunal failed to make adequate findings relevant to 276ADE and Article 8 of the ECHR on the Appellant's likely plight upon return to Afghanistan in light of the matters that have been accepted and the current country conditions for those without any family members to return to (see in particular the submissions in the Grounds of Appeal to the First-tier Tribunal at paragraphs 2 and 4).

The grounds do not challenge the asylum findings and permission is granted in relation to 276ADE and Article 8 only".

9. A Rule 24 notice was lodged by the Secretary of State submitting that the judge made clear findings on the private life of the Appellant having accepted that the circumstances would be harsher for the Appellant in Afghanistan but finding that he had the personality, capacity and intelligence to manage independently there. There was nothing irrational about this finding. Although this finding related to Article 3 it was clear that the implication was that it also fell under the Article 8 banner and it dealt with the proportionality issue considering relevant case law and legislation.

10. Thus the matter came before me on the above date.

The Hearing

11. Ms Jaber, Counsel for the Appellant, was good enough to present me with a fresh bundle of case law jurisprudence for which I am grateful. She moved to amend her Grounds of Appeal to include the proposition that it would be a breach of Article 15(c) humanitarian protection if the Appellant was removed to Afghanistan. I noted that this had not been included in the first grounds of application considered by Judge Holmes and nor in the second application considered by Judge Plimmer. I was given no explanation as to why it was proposed to try to amend the grounds at the last moment or what had prompted a change of view on those acting for the Appellant. In all the circumstances I refused to allow the grounds to be amended.

12. Ms Jaber elaborated on the Appellant's grounds of application. The findings of the judge were generally inadequate and in particular having regard to paragraph 38 where he made a very slender reference to paragraph 276ADE. He had not mentioned that paragraph 276(vi) had a test of very significant obstacles. There had been no analysis of that. The findings were generally plainly inadequate. The judge had found that he would be returned as a young adult with no family support. Furthermore the judge had not carried out a proper proportionality analysis under Article 8 ECHR. Nowhere did he take account of the indiscriminate violence that took place in Afghanistan and the pressures on him as a young adult. The standard of Article 8 was lower and different to that of Article 3 ECHR. There was also the impact of delay upon the Appellant. The decision should be quashed with further evidence being given and with the case remaining in the Upper Tribunal.
13. For the Home Office it was said that the judge had made clear findings in his decision. He had considered the Appellant's age and health and the fact that he lived independently. He was not a child or a vulnerable individual (paragraph 36). The judge had accepted that he would face harsher conditions in Afghanistan (paragraph 37). He had followed the country guidance case. He had considered all relevant factors. He had considered Section 117B of the 2002 Act and acknowledged that the Appellant had developed good English language skills. However all other relevant factors counted against him (paragraph 42). He had considered the delay in dealing with the Appellant's claim but noted, correctly, that this was not determinative of the Appellant's claim.
14. It was submitted that there was no error in law and that the decision should remain.
15. I reserved my decision.

Conclusions

16. Permission to appeal was granted in relation to 276ADE and Article 8 only. Plainly there is an interlink between the two grounds with Ms Jaber relying on the "very serious obstacles" in respect of paragraph 276ADE which obstacles are also a part of the Appellant's Article 8 case, namely that it would not be proportionate in all the circumstances for him to be returned to Afghanistan.
17. A key finding by Judge Archer was that the Appellant was a "wholly unreliable witness because of his continued reliance on a fabricated account" (paragraph 30) and his findings that the Appellant was not at risk from the Afghanistan government or the family of the dead burglar (paragraph 32). There was no challenge to these findings. Accordingly the core of the Appellant's case falls away at the first hurdle. Given my refusal to extend the Grounds of Appeal, the grounds are confined to what is set out above.

18. The judge made important findings in paragraph 36. The judge said that the Appellant appeared to be a physically robust and healthy adult male. He lived a largely independent life in a shared house with occasional regular contact with his social worker and key workers. He was well on the road to full independence. He was a confident and personable adult with good social skills. He was not a vulnerable individual. At paragraph 37 the judge accepted that the Appellant lacks support in Afghanistan and would face harsher conditions in that country. However he had the personality, capacity and intelligence to manage independently in Afghanistan. The judge noted that there was nothing in **AK (Article 15(c) Afghanistan CG [2012] UKUT 00163** to suggest that a young adult could qualify for humanitarian protection. He rejected the submission that accelerating violence in Afghanistan and the Appellant's particular circumstances meant that he could qualify. He was from Kabul province and could live independently in Kabul. He went on to consider Article 8 with reference to well-known case law. He considered Section 117B of the 2002 Act, noting that most relevant factors counted against him. He considered the significant delay in dealing with the Appellant's current application and found the delay did not amount to such conspicuous unfairness as to constitute an abuse of power. He noted correctly, that the delay was not in itself determinative of the Appellant's claim. In fairness to Ms Jaber, she did not point to delay as being a material factor in the Appellant's case. The judge finally noted that the Appellant was capable of living independently within his own culture and society.
19. From this it can be seen that the judge considered the Appellant's circumstances in considerable detail. He recognised that there might be accelerating violence in Afghanistan (paragraph 37). He accepted the Appellant would face harsher conditions in that country (also paragraph 37). The final complaint made by Ms Jaber is that the judge could – and should – have said much more about the future that awaited the Appellant if he was returned to Afghanistan.
20. No doubt, as if often the case, the judge could have said more than he did say – as set out in the grounds – but that does not mean that he did not give proper consideration to the Appellant's claim under 276ADE and Article 8 ECHR. Of particular importance is that he referred to the country guidance case of **AK** which makes it clear in its head note (B)(ii) that the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person. Under (iii) it is said that nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may now be taken to include Ghazni but not to include Kabul) at such a level. The judge had made clear and succinct findings about the Appellant's personality and ability to cope in Kabul which in my view crosses over into how his findings under Article 8 should be read. Referring to **AK** the judge was indicating he was clearly aware of what conditions in Kabul would be like for the Appellant and he noted that he was from Kabul province and could live independently there.

21. In terms the judge was saying that there were no very significant obstacles to his integration into the country of which he was a national. He recognised that Article 8 was a qualified right and he noted that there was no great depth or breadth to the Appellant's life here (paragraph 39).
22. In my view there is nothing perverse or irrational in the judge's findings. He considered the totality of the evidence before him and dealt with all the salient points of the Appellant's case. He was entitled to conclude as he did and for the reasons he gave. There is no error of law. Neither party addressed me on whether an anonymity order was necessary but I shall continue it.

Decision

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._

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald