



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

Appeal Number: AA062512015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 May 2016**

**Decision & Reasons
Promulgated
On 9 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MK (AFGHANISTAN)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Lagunju, Counsel instructed by Howe & Co Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Haria sitting at Hatton Cross on 23 September 2015) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee as being eligible for humanitarian protection under paragraph 339C of the Immigration Rules.

The Reasons for the Initial Refusal of Permission

2. On 26 February 2016 Judge Pooler gave his reasons for refusing the appellant permission to appeal to the Upper Tribunal.
 - “2. The application for permission was made in time and submits that the judge erred in law by failing to make findings as to the credibility [sic] of documents on which the appellant relied or as to the weight which she attached to them; and by failing to give reasons for adverse credibility findings.
 3. Having found that the appellant had given a plausible explanation for how he had obtained documents relating to his father’s involvement in Hizb-i-Islami, the judge appears to have given her overall conclusion at [52] and to have followed that by her reasons. She later found that the appellant had not proved that there was no sufficiency of protection or that internal relocation was not an option open to him. In these circumstances there is no reasonable prospect that any error of law alleged in the grounds of appeal could have made a difference to the outcome.”

The Reasons for the Eventual Grant of Permission to Appeal

3. On 12 April 2016 Upper Tribunal Judge Nadine Finch granted the appellant permission to appeal on a renewed application for permission to the Upper Tribunal for the following reasons:
 - “2. In paragraph 52 of her decision, First-tier Tribunal Judge Haria said that, for the reasons given, she found that the Appellant had not substantiated his claim that his father is an active commander of the Hizb-e-Islami Gulbadeen Hikmatyaar Group and that he wanted the Appellant to join the group. However, in earlier paragraphs the Judge appeared to accept that the Appellant had provided evidence to show that his father had been a commander in Hizb-e-Islami in the past and in paragraph 46 she went no further than saying that a witness statement from the Appellant’s mother about how the documents came into his possession would have added weight to the reliability of the documents.
 3. She then noted that the Appellant had not produced any documentary evidence to substantiate the photographs, which he also relied upon, and that, when applying for his student visa, he had said that his father was a cloth merchant. However, nowhere did she consider the evidence provided by the Appellant in the round and give due weight to all the different pieces of evidence which he relied upon.
 4. Her failure to do so meant that there was no lawful basis upon which she could proceed to consider future risk, internal flight or sufficiency of protection.
 5. As a consequence, I find that First-tier Tribunal Judge Haria did make arguable errors of law in her decision.”

Relevant Background

4. The appellant was born [] 1992. In 2012 he made a successful application from Pakistan for entry clearance as a student. He arrived in the United

Kingdom on 29 November 2012 on a valid student visa. On 1 August 2013 he was arrested on suspicion of working in breach of the conditions of his student visa, and he claimed asylum on 9 October 2013. He was part of a large family that had moved to Pakistan from Afghanistan when he was aged 3 or 4. He had relatives in Afghanistan, but he had never met them. He had travelled to the UK because he had problems in Afghanistan. His father was an active commander and a fighter for the Hizb-e-Islami Gulbadeen Hikmatyaar Group. He had last seen his father three or four years ago. His father wanted him to join him and become a fighter. He travelled to the UK to pursue further studies and because he did not want to join his father and become a fighter for the Hizb-e-Islami Gulbadeen Hikmatyaar Group. If he was returned to Afghanistan, he feared that the authorities in Afghanistan would kill him because of his father's activities.

5. On 19 March 2015 the Secretary of State gave her reasons for refusing the appellant's asylum claim. His nationality and identity were accepted, but it was not accepted that his father was an active commander of the Hizb-e-Islami Gulbadeen Hikmatyaar, and it was also not accepted the authorities, civilians and other militant groups in Afghanistan would seek revenge on his father by killing him (the appellant). Reliance was also placed on paragraph 339O of the Immigration Rules, which provided that a grant of asylum would not be made if in a part of the country of origin, a person would not have a well-founded fear of being persecuted, and the person could reasonably be expected to stay in that part of the country. During his interview, he stated he could not be expected to live in Afghanistan because he did not know a lot about the country as he had lived in Pakistan from the age of 3; that he was scared to go there; and because his father did not want him and his family going to Afghanistan. He had not substantiated any threat from any individual or state entity in Afghanistan, and it was considered that Kabul city was a viable internal relocation alternative, following **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**.

The Hearing Before, and the Decision of, the First-tier Tribunal

6. Both parties were legally represented before Judge Haria. In her subsequent decision, the structure of the judge's reasons mirrored the structure that had been adopted in the refusal letter, save that the judge began her discussion with a citation from the headnote in **AK** and her observation of how the appellant had performed in his oral evidence. On the whole, he had given a consistent account. Although she considered him to be a generally honest person, she had some concerns as to the credibility of his account.
7. The first specific topic which she addressed was the documents which the appellant had submitted in support of his asylum claim, which included an original copy of a letter from Hizb-e-Islami, an original copy of a membership card for MA, son of MO, and nine photographs of the appellant's (claimed) father amongst other men.

8. The judge reminded herself that, in accordance with **Tanveer Ahmed**, the decision maker should consider whether a document was one on which reliance should properly be placed after looking at all the evidence in the round.
9. The judge discussed the documents at paragraphs [41] to [51], and made the following statement at paragraph [52]:

“For the reasons given, I find that the appellant has not substantiated his claim to the lower standard of proof that his father is an active commander of the Hizb-e-Islami Gulbadeen Hikmatyaar Group and that he wants to take the appellant to Afghanistan to join them as a fighter”
10. The judge then went on to address the topic of revenge killings. At paragraph [54], the judge said that whilst living in Pakistan, the appellant had attended school up to year 10 and thereafter he attended college for two years before completing his studies in 2011. He had not given an account of any incidents or attacks suffered by him which amounted to persecution. He had not stated his father had tried to take him to Afghanistan but had said when he last saw his father some three to four years ago, his father stated that the next time he would take him. Since the appellant last saw his father in June/July 2012, and the appellant completed his studies in 2011, the fact that his father did not force the appellant to go with him to Afghanistan was inconsistent with his claim that his father was insistent on taking him to Afghanistan to fight with the Hizb-e-Islami. The appellant’s fear was based on speculation.
11. At paragraph [56], the judge said in response to a question as to how he would be associated with his father if he is returned to Afghanistan, the appellant stated that this would be known from his name on all his documents. But the name on all the appellant’s documents was stated in full, including his family name, whereas his father’s name was not stated in full on the letter from Hizb-e-Islami or the membership card. Earlier, at paragraph [49], the judge had drawn attention to the fact that the letter and membership card did not refer to the appellant’s father’s family, whereas the appellant’s passport and his certificates of education all quoted the family name of K.
12. Finally, the judge moved on to the third specific topic raised in the refusal letter, which was Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The judge found that the appellant’s delay in claiming asylum, together with the misleading information provided in his student visa application, damaged his credibility under Section 8. Earlier, at paragraph [51], the judge had commented on the information given by the appellant when he was interviewed for his student visa. According to the interview record, he had told the interviewing officer that his father was paying for his course of study in the UK, and when asked what his father did for a living, the appellant replied that he was a cloth merchant. The judge held at paragraph [51] that the fact that the appellant by his own admission was dishonest in his Visa Application Form damaged his credibility because he had intentionally misled the immigration authorities.

13. On the issue of risk on return, the judge made reference to **Horvath [2000] UKHL 37** and to **RQ (Afghan National Army, Hizb-i-Islami, risk)**. The judge found that the appellant was not “wanted” by the Hizb-e-Islami or the Taliban, and so it was both safe and reasonable for him to relocate to Kabul.

The Hearing in the Upper Tribunal

14. At the hearing before me to determine whether an error of law was made out, Ms Lagunju developed the arguments raised in the renewed application for permission to appeal to the Upper Tribunal. In reply, Mr Tufan took the same line as that taken by his colleague Mr Tony Melvin in a Rule 24 response dated 27 April 2016. If the determination was read as a whole, it was clear that the judge had considered all the evidence including the very old documents produced, the student visa application, the fact that the appellant had not been in Afghanistan since he was a small child and the lack of any witness statement as to how the documents arrived in the UK, and she had made findings on all these pieces of evidence.

Discussion

15. Ms Lagunju’s core submission is that the judge did not make a clear finding on an essential question, which was whether the appellant’s father was an active commander in the Hizb-e-Islami Gulbadeen Hikmatyaar Group. I consider the judge made a clear finding on this question at paragraph [52]. The issue is whether the finding is adequately reasoned.
16. The judge has made herself vulnerable to an error of law challenge by making two crucial findings of fact at paragraph [52] *before* she has overtly considered all the evidence bearing on them, in particular the evidence which she goes on to address in the context of a discussion about revenge killings and the application of Section 8 of the 2004 Act. However, since this further discussion elucidates further reasons for disbelieving the core claim, the ultimate outcome is that the findings at paragraph [52] are reinforced, rather than undermined.
17. Looking back at the reasoning which preceded the finding at paragraph [52], it is undoubtedly the case that some of the judge’s findings were supportive of the case that the documents were prima facie reliable, and thus supportive of the claim that the appellant’s father had been a member of the group in the province of Kapisa in 1982, (as evidenced by a membership card dated [] 1982) and that he had been promoted to the rank of major general on [] 1993 as a result of his honest and hard work during the struggle against the Russian and communist regime. The judge found that the appellant had given a plausible explanation as to why these documents were not in his father’s possession, because given the age of the documents, it was reasonable to infer that his father no longer needed them. The judge also gave no adverse weight to the discrepancy between

the date on the membership card (1982) and the date on the letter confirming the promotion (1993).

18. Nonetheless, it was open to the judge to find, for the reasons which she gave in paragraphs [46] to [51], that these documents, taken together with other documents, did not reliably establish, even to the lower standard of proof, that the appellant's father is (present tense) an active commander in the group who wants to take the appellant to Afghanistan to join the group as a fighter.
19. The first reason given is that a witness statement from the appellant's mother, her cousin, and the person who delivered the documents to the appellant, would have added weight to the reliability of the documents. The second reason is that the appellant had last seen his father about four years ago, and had not explained why he was not able to produce more up-to-date photographs showing him with his father (for example in or about 2008). The photographs which he had produced were old, and it was difficult to be certain that the boy in the photographs was the appellant or that the man in the photographs was the same man who appeared in other photographs. He had not produced any documentary evidence to substantiate his claim that the photograph of the person on the membership card was a photograph of his father.
20. Thirdly, the nine photographs which the appellant submitted showing various men in different unknown locations holding weapons did not show that his father was amongst them, or that he was a member of a militant group. The judge referred to background evidence and the Country of Origin Information Report for Afghanistan dated 15 January 2013 at paragraph 12.38. This stated that the massive inflow of weapons during nearly three decades of continuous conflict had left Afghanistan awash with small arms, and the estimates suggested that every adult male in rural areas possessed or had access to a weapon.
21. Fourthly, the judge noted the letter and membership card did not refer to the appellant's father's family, whereas the appellant's passport and his certificates of education all quoted the family name of K.
22. Fifthly, the appellant relied on a copy of the Daily (Shahadat) newspaper dated 13 September 2012, which had been downloaded from the internet, as containing a photograph of his father attending a funeral or memorial service at which various named people had given speeches in the grieving commemoration of the late Dr Hanif, the former chief of the military committee of the Hizb-e-Islami. It is not clear whether Dr Hanif was part of the breakaway Hikmatyaar faction, and the point made by the judge was that his father was not named in the caption accompanying the photographs and so it was difficult to be sure that the person indicated in the various photographs was the appellant's father as claimed by the appellant.

23. Finally, at paragraph [51] the judge referred to what the appellant had said in his interview when applying for a student visa.
24. I consider that cumulatively the judge gave adequate reasons for reaching the conclusions stated in paragraph [52], but insofar as she had not at that stage considered all the evidence provided by the appellant in the round, there was no prejudice to the appellant as the remaining pieces of evidence that she went on to consider after paragraph [52] only served to reinforce the findings made at paragraph [52]. So there was a lawful basis upon which the judge could proceed to consider future risk, internal flight and sufficiency of protection, and no error of law is made out.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 9th June 2016

Deputy Upper Tribunal Judge Monson