



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

Appeal Number: PA/00431/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 April 2016**

**Decision & Reasons
Promulgated
On 19 May 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**HR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, Counsel instructed by Lawrence Lupin Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on [] 1990. He arrived in this country on 7 May 2015 and applied for asylum on 13 May 2015. The application was refused on 26 June 2015. The appellant appealed and his appeal came before the First-tier Tribunal on 29 July 2015. The judge

records that the respondent's representative took no issue with the appellant's employment and work history and makes the following findings:

- “13. The appellant is a civil engineer. This is a subject he studied at University and undertook practical work experience with Nabil Faisal (a small/medium sized company building schools etc.) before working with Road and Roof Construction Company in Afghanistan as a trainee civil engineer, having been recommended by his university because he was excelling in his studies. The appellant along with many former university students had undertaken work with this company. They had a massive contract in building the Gamberi Camp and this is how he originally got his assignment. His ultimate ambition was to obtain a job within the government working as a civil engineer but to do this he had to obtain the necessary experience. In due course he left Road and Roof Construction Company and worked in the Finance Ministry of the Afghan government based in Kabul but was required to travel extensively throughout Afghanistan in relation to his duties.
14. The Gamberi project involved a building of massive military base and camp for NATO and American forces. Obviously this was against the wishes of the Taliban as there were significant consequences for them and their activities by reason of the construction of this camp. This cannot therefore be described as any ordinary or normal type of project. He undertook this work from within a restricted camp secured by barbed wire and there was high security including a large balloon in the sky with cameras to check the region for up to 15 kilometres. Many people were threatened with death by reason of their involvement in this project; including the appellant. As a result many, again including the appellant, left the job. The appellant was particularly vulnerable as he was not housed on the site and he made efforts to help locals get employment on the project, thus drawing attention to himself.
15. It was known to the Taliban that the appellant was a supporter of the government, Americans and NATO forces in Afghanistan. By working in Laghman Province the appellant was taking a personal risk because the area is dominated by the insurgents Taliban and other extremists. He wanted to work and serve his people wanted his province one day to become safer and prosperous he would encourage local people to stand up and fight against violence take part in rebuilding the country. He knew the risks and risked his own life as long as he called and by reason of his efforts in people to come and work at the Camp.

16. The Taliban were aware of his employment at Gamberi and he was sent a warning letter on 30 January 2013 ordering him to cease working or face the consequences. A colleague of the appellant who had been trained by him was killed by the Taliban and this further encouraged the appellant to leave. He was able to get employment thereafter at the Ministry of Finance based in Kabul.
17. His duties with the Ministry meant he has to travel extensively supervising many projects most of which were financed by NGOs or directly by NATO or the Americans and this further attracted the attention of the Taliban who sent a further warning letter on 8 April 2014 ordering him to sever his relationship with the Afghan government or face the consequences.
18. The appellant's circumstances whilst working for the Ministry were further aggravated by what he describes as "the Mafia". These comprised of former warlords who have become part of and worked with the Afghani government but who were corrupt in the extreme. The appellant was appointed to a commission dealing with the implementation of a decree made by the president of Afghanistan which required all unregistered land belonging to ministries to be registered and brought under the control of the government. He was required to travel to particular areas to find out on the size of the land in question and in doing so he discovered that some of the land had been annexed by these Mafia people and sold on to others; it was corruption which he disapproved of however he was warned, in no uncertain terms, that there would be severe consequences for him if he involved himself in this and that he should forget about it altogether as it was something that was well above him. These people operated in Kabul with impunity under General Jurat and are very powerful.
19. On 2 February 2015, the appellant was sent a further letter by the Taliban. The note stated that he had not desisted from working for the government, despite earlier warnings and his participation in the construction work of border and customs facilities, funded by the Americans and English was of great help to them. The notice concluded "*This is our last notice to you. Select your own destiny.*" Notwithstanding this further threat, the appellant continued with his employment at the Ministry.
20. On 22 February 2015, whilst driving home from work, a Toyota vehicle attempted to intercept the appellant. The appellant noticed it was being driven by a man, accompanied by a passenger, both of whom were clearly Taliban; this could be seen by their attire and full beards. The appellant attempted to get away but they opened fire on his vehicle causing him to crash

into a ditch. Fortunately he was able to get away. Where his mother learned this attack upon him by the Taliban, she succumbed to a heart attack and died.

21. The following day, the appellant went to the police seeking protection. His application was supported by the Ministry of Interior who wrote to the police asking them to give *“appropriate assistance and safety and security of the petitioner and his family.”* The police response is set out in the appellant’s bundle at page 136:

“In general safety and security of citizens is a fundamental duty of this office. With regard to the multiple security threats to the governmental and non-governmental establishments, key political and high-ranking officials, on one hand and the limitation of resources and equipment on the other hand, privation of police to you and your family on an individual and exceptional basis is not feasible under the current conditions.”

22. At this point the appellant decided it was simply too dangerous to remain in Afghanistan and, with funding and assistance from his father, an agent was found who was able to take him from Afghanistan using a passport in the name Hasib Khan. He was initially flown from Afghanistan to Turkey and thereafter left Turkey by ship to an unknown country. In due course he was taken from that country in the rear of a lorry, arriving clandestinely in the United Kingdom in the same vehicle.
23. The appellant is a professional man who intends to continue his profession as a civil engineer. In Afghanistan the only employers he could find relating to the work that he undertakes are either the Afghanistan government itself or foreign funded NGOS.”

2. Having resolved disputed factual issues the judge observed as follows:

“30. It is quite clear that the appellant has held high profile appointments both with Road and Roof Construction Company and the Afghani government itself. It is more than probable that the appellant would have come to the adverse attention of the Taliban in both of these roles. His employment intimately connected him with forces inimical to the Taliban who would doubtless regard him as cooperating with ‘the enemy’ and what they regard as a ‘puppet state’.

31. When I look at the evidence in the round, taking particular account of the overwhelming documentary evidence relating to the appellant’s former employment, the oral evidence of the appellant himself and his brother; both of whom I found to be

credible witnesses, and applying the appropriate standard of proof, I accept the account given by the appellant in relation to his reasons for leaving Afghanistan. For reasons given below, I find the appellant's credibility is unaffected by any statutory requirement."

The judge was referring to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004.

3. The judge went on to consider the representations of the parties on the risks on return as follows:

"33. The respondent's representative referred me to H and B v United Kingdom 70073/10 and 44539/11 and in particular paragraphs 97 and 98 and submitted that the appellant was not at risk as he would be regarded as a low level collaborator and that those who have stopped working for the international community as requested are not targeted.

34. At paragraph 55 of H and B, the attitude of parties to the conflict towards civilians is considered and the "Landinfo Report" is quoted:

'The Taliban also forbid any kind of collaboration with the government and particularly with foreign troops, including of an economic nature. Since contracting for ISAF or for western aid agencies is one of the main sources of employment in Afghanistan, the Bangladesh has a major impact on the ability of household to earn a livelihood. Unsurprisingly, most Afghans ignore it, at their risk and peril. Executions of contractors do occur. Usually the Taliban follow a procedure, which includes warning the collaborationists that they are going to be punished if they persist'.

35. Paragraph 99 of H and B quotes the UNHCR Guidelines which state that persons associated with, or perceived as supportive of, the Government and the international community and forces:

'...may, depending on the individual circumstances of the case, be at risk on account of their (imputed) political opinion, particularly in areas where armed anti-Government groups are operating or have control'.

36. The appellant's representative submitted that this was of particular application so far as this appellant is concerned. His job takes him out of Kabul and into areas where the Taliban are operating freely. As the appellant intends to resume his job as a civil engineer, he will be employed by the Afghani Government

and/or international NGOs and in either instance he would be perceived as a collaborator and indeed as a relatively high profile collaborator at that.

37. Looking at the evidence in the round, my conclusion is that the appellant, if he returned to Afghanistan would be faced with a stark choice. Either he does not resume his occupation as civil engineer employed by the Government or NGOs in which instance he would remain in the relative safety of Kabul not attracting the attention of the Taliban or he resumes his occupation and undertakes assignments the Taliban have expressly forbade him from undertaking and spending significant time in areas of Afghanistan recognised as unsafe and under the control of the insurgent forces facing a significantly heightened degree of risk.
 38. The appellant's representative referred me to the decision of the President in MSM v SSHD Appeal No. AA/00387/2014 and submitted that in the light of this decision and the expressed determination of the appellant to resume his occupation the appellant would be exposed to a real risk of persecution and that he should not be denied refugee status on the ground that it would be open to him to seek to engage in other employment.
 39. If I was to accept this argument then the appellant would be entitled to refugee status however I find myself unable to acquiesce to that submission.
 40. It is settled law that the Refugee Convention does not protect a right to pursue a profession of one's choice; acknowledged in MSM at paragraph 50. The issue in MSM was the nature of the appellant's profession as a journalist and it being an occupation intrinsically entwined with a fundamental right, namely; freedom of expression. In this instance, I am sorry to say, that there are no protected rights that would be violated by the appellant having to desist from his practising his profession.
 41. I find it is open to the appellant to return to Afghanistan and to continue living in Kabul with his family and that he would avoid coming to the further attention of the Taliban by desisting from practising his profession. Similarly, any adverse attention he has attracted from the mafia in the past would not occur if he no longer practises his profession."
4. The judge found that the appellant had not made out his case on asylum or humanitarian protection grounds and there were no submissions that removal would breach his rights under Article 8.

5. There was an application for permission to appeal from the judge's decision and permission to appeal was granted on 1 February 2016 by the First-tier Tribunal on the basis that it was arguable that the judge had erred in law in that he had misinterpreted and misapplied the principles in **MSM**.
6. Mr Chelvan relied on the grounds of appeal and pointed out that the judge had found the appellant to be an entirely credible witness. He referred to the appellant's statement submitted before the First-tier Tribunal dated 22 July 2015. In that statement the appellant had said among other things that he had opposing views to the Taliban and was in favour of helping the current government to re-establish the country. He wanted to support the country's growth and development and he wanted it to be successful. This was why he was working for the government to help them and he even helped during the elections for this purpose. He was against all forms of corruption and bribery and in favour of eradicating such practices. He stated, "for my political views and my employment and work I fear to return to Afghanistan." The appellant's case in a nutshell had been summarised by the First-tier Judge at paragraph 15 of the determination. The appellant was a businessman and his case could be distinguished from the circumstances in **MSM**.
7. Mr Bramble referred to paragraphs 30 and 31 of the decision and submitted that the question was clearly focused around the issue of political opinion. Mr Bramble acknowledged that the case was not one of imputed but actual political opinion. The judge had failed to deal with the matters he had set out in paragraph 15 of the decision.
8. As there was no dispute over the facts the determination could be re-made without the need for an adjournment.
9. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the judge's decision if it was materially flawed in law. This has helpfully been accepted by Mr Bramble. It is quite clear from what the judge himself summarised at paragraph 15 that it was the appellant's case that there was a political dimension to his work. Mr Chelvan referred me to further examples in his witness statement. This is a case not of imputed opinion but actual opinion. Indeed it was known, as the judge observes in paragraph 15, to the Taliban that the appellant was a supporter of the government, Americans and NATO forces in Afghanistan. Counsel in the grounds of appeal refers to paragraph 50 of **MSM**:

"We acknowledge at this point the Secretary of State's argument that the Refugee Convention does not protect a right to pursue a profession of one's choice. This is a case of risk arising out of imputed political opinion. We consider that the fact that the imputation of the political opinion arises in the context of the

appellant's chosen profession is immaterial and incidental. Thus we consider this argument to have no merit."

10. Mr Chelvan submits that the First-tier Tribunal misapplied this guidance in paragraph 40 of the decision and made the additional submission that this was not a case of imputed political opinion. This was a case of an actual political opinion held by the appellant and following the case of **MSM** and **HJ (Iran) [2010] UKSC 31** he could not be subject to "forced modification" of his activities.
11. Given that the central argument that the appellant had an actual political opinion and that the First-tier Judge had erred in the way that he had dealt with this important point I can set out my conclusions shortly.
12. This appellant's evidence was accepted in its entirety. There was a clear political basis to the appellant's approach to the work he undertook as is accepted by Mr Bramble. It will not be every appellant who can make out an asylum claim as a businessman. In this case it is clear that he had an actual political opinion and the judge was in error in finding that there were no protected rights that would be violated by the appellant having to desist from practising his profession.
13. I was referred to the Secretary of State's grounds of appeal to the Court of Appeal in the case of **MSM** where it was accepted in paragraph 5 of the grounds

"That an applicant cannot be required - as a means of avoiding persecution - to modify his behaviour in the case of actual political opinion, the same does not follow where the modification of behaviour is merely to avoid the imputation of a political opinion."

14. As is clear from what I have said and what has been accepted in this case the appellant entertains an actual political opinion.
15. For the reasons I have given the appeal is re-made as follows:
16. Appeal allowed on asylum grounds.
17. Appeal dismissed on humanitarian protection grounds.
18. Appeal allowed on human rights grounds (Article 3).

Anonymity Order

19. The First-tier Judge made an anonymity order in this matter. The anonymity order is confirmed and continues.

FEE AWARD

As I have allowed the appeal any fee paid by the appellant should be returned to him.

Signed

Date 13 April 2016

G Warr, Judge of the Upper Tribunal