



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

Appeal Number: AA/03378/2015
AA/03410/2015
AA/10991/2014

**Heard at Birmingham
Tribunal
on 1 September 2017**

**Employment Determination
Promulgated
on 23 November 2017**

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

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(Anonymity order made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Samra of Harbans Singh & Co Solicitors
For the Respondent: Mr Singh - Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Gurung-Thapa promulgated on 30 May 2017 in which the Judge dismissed the appellant's appeals on protection and human rights grounds.

Background

2. The first appellant's date of birth is 2 November 1987, the second appellant 6 May 1968 and the third appellant 18 June 1994. They are all citizens of Afghanistan with the second appellant being the mother of the first and third appellants. The Judge notes the appellants arrived in the UK on 14 March 2013 and claimed asylum the same day. The second appellant's other four children are her named dependants. The first and second appellants applications were refused on 11 February 2015 and the third appellant's application on 28 November 2014.
3. The Judge notes the first appellant is the main appellant. The core of the appellants claim is set out together with the position of the respondent and evidence made available to the Judge. Findings of fact are set out from [42] of the decision under challenge, the core findings of which can be summarised in the following terms:
 - a. The focus shall be upon the first appellant as he is the main appellant. Having had the benefit of seeing and listening carefully as he gave his evidence and having compared that with his written accounts given in statements interview form, it is found the appellant's claim is not credible as it contains material inconsistencies and contradictions the cumulative effect of which affects the reliability the appellants evidence and the veracity of his case [44].
 - b. There is a material inconsistency as to the number of companies the appellant worked for in Afghanistan the reasons set out at [45].
 - c. If the appellants claim to have worked for a company called No Lemon, which was an American company which trained Afghan police, is to be believed the Judge found it reasonable to conclude that the appellant would have mentioned this fact at least the time of his substantive asylum interview but he did not. The Judge finds he has fabricated this element of the claim in order to bolster his claim for asylum [47].
 - d. A material discrepancy was found in relation to when the appellant started and finished his job with NCL. The period of employment with the company in a written statement was contradicted by the appellant in his oral evidence. The Judge found it reasonable to conclude that the appellant would have been consistent as to the start and end dates when he was with NCL [48].

- e. The appellant's oral evidence in relation to his work with NCL contradicts the information given by James Moore the Deputy Country Manager for "United States Training Centre" who confirmed the appellant worked as an IT support team member for DOD Counter Narcoterrorism 25 November 2009 to 26 January 2011, the same period the appellant claimed to have worked for NCL [49].
- f. The evidence from Mr Moore made no reference to the appellant working for NCL and no reference to the appellant's claim to have worked as an interpreter for the company. This is found material as NCL was a logistics company working with the Counter Narcotic Admin team providing interpreters, drivers and guards. The Judge finds that if the appellant's account was to be believed there was no reason why his role as an interpreter would not have been mentioned by Mr Moore [50].
- g. The appellant fails to address the respondent's concerns in the Refusal letter that he did not submit the original letter from the "US Training Centre" meaning they have not been able to very verify the letter and that there are no contact details on the copy letter provided [51].
- h. The Judge found there was no reason why the appellant could not have submitted documentary evidence of an appointment with Delta Group, which he did not. The Judge records submissions in relation to this aspect of the evidence from [52 - 56] leading to the conclusion that even taking the evidence at its highest and it being believed the appellant worked for the Delta Group, it is not his claim that he was personally targeted by the Taliban. The appellant claims his father was kidnapped for the reasons given which was rejected by the Judge for the reasons at [58 - 62] of the decision under challenge which can themselves be summarised in the following terms:
 - i. There are material discrepancies in the accounts concerning his father's kidnapping for which adequate reasons are given [58].
 - ii. The appellant was inconsistent as to the number of telephone calls received from the Taliban [59].
 - iii. A discrepancy related to when the appellant reported his father's kidnap to the authorities [60].
 - iv. The Judge did not accept that material discrepancies can be explained due to the passage of time when taking into consideration this was a core aspect of the appellants claim [61].
 - v. The Judge found video evidence purportedly showing the appellant's father asking the appellant to sell the family home, factory and the market as his life was in danger, should attract little weight given the overall consideration of the evidence. The Judge accepted the submission of the Presenting Officer that it was a staged video [64].

- vi. The appellant's claim he made no attempt to pay the kidnappers was found not to sit easily with the appellants claim his father was a wealthy person who had a circle of friends who are rich and connected with members of the government. It is not found plausible the appellant would not have had a conversation with his mother about how much money she could have raised [65].
 - vii. The claim in the appellant's oral evidence that he received a warning from the Taliban was not mentioned in his asylum interview or witness statement which the Judge found she would have expected the appellant to have mentioned [66].
- i. At [67 - 68] the Judge sets out findings in the following terms:
- 67. Taking into consideration all the evidence in the round, I reject the appellants claim and find that he has fabricated his father's kidnapping and the threats made by the Taliban on account of his various roles for the foreign companies. As I have indicated at its highest while the appellant may have worked for the companies, I reject his claim that he came to the adverse attention of the Taliban after his father's kidnap and thereafter a ransom demand was made. In this regard, I have taken note of the case of **H & B** referred to by the respondent and in particular paragraph 100 is highlighted in the refusal letter. The court was not persuaded that the two applicants had established that everyone with connections to the UN or the US forces, even in Kabul, can be considered to be at real risk of treatment contrary to Article 3 regardless of their profile or whether or not they continue to work for the international community.
 - 68. After consideration of all the evidence in the round I find that the appellants have failed to demonstrate, even to the lower standard of proof, that they have a well-founded fear of persecution for any of the reasons recognised by the Refugee Convention. I find that there are no grounds which would justify a grant of humanitarian protection and I can find no reason to distinguish their claims under Articles 2 or 3 of the ECHR.
4. The appellant sought permission to appeal which is granted by another judge of the First-tier Tribunal, the operative part of which is in the following terms:
- “the second of the two effective grounds of appeal is that the learned judge, in making adverse findings as to the alleged kidnapping of the father of the first appellant (spouse of the second appellant and likewise father of the third appellant) failed to take into account witness statements, and indeed oral evidence, of the second and third appellants. It is true that there is no mention of the effect of the evidence of these two witnesses; no finding as to the weight to be attached to the same; and no reasons given for disregarding their evidence. The ground is accordingly fairly arguable and potentially material.

Error of law

5. Mr Samra confirmed at the outset that he accepted the terms of the grant of permission set out above. It was submitted, however, that as the only issue was the kidnapping point this rendered the findings in relation to all claims unsafe.
6. In response Mr Singh submitted it was clear that at [40 - 41] of the decision under challenge the Judge records having considered the evidence of all three appellants which is said to have been recorded by the Judge and referred to in preparing the decision.
7. My preliminary finding is that it has not been made out that the Judge failed to consider the evidence relied upon in relation to the appeal. The issue is whether that evidence was properly factored into the decision-making process.
8. This is an appeal in relation to which the evidence before the Judge came from family members.
9. On the one hand, it is arguable that the reasons given by the Judge for finding the first appellant to lack credibility are not all related to issues over which the second and third appellants will be able to provide an explanation. The discrepancies noted by the Judge in relation to the appellant's claimed periods of employment and employers were found to lack credibility.
10. On the other hand, Mr Samra's submission at [58] that there is no reference to the evidence from the second or third appellants is factually correct. The grounds seeking permission to appeal assert the Judge has effectively ignored the evidence of the other family members and simply relied only on the evidence of the first appellant. If this is the case the Judge has clearly erred in law in failing to consider all material provided.
11. It is noted that at [44] the Judge stated that her focus will be on the first appellant as the main appellant. This is arguably suggestive that the Judge proceeded to examine matters by reference to that appellants evidence only.
12. It is accepted that at [68] the Judge finds that "the appellants (my emphasis) failed to demonstrate, even to the lower standard of proof, that they have a well-founded fear of persecution any of the reasons recognised by the Refugee Convention". It is not a mere typographical error to refer to the appellants in the plural. Had all the evidence being considered with the required degree of anxious scrutiny and adequate reasons given for findings made which clearly demonstrated that all the evidence had been considered and factored into the decision-making process, the weight to be given to the evidence of the parties would be a matter for the Judge. It is clear the Judge did not attach sufficient weight to that evidence to allow for a finding that the burden of proof had been discharged, but to which evidence? It is not clear from reading the determination how the Judge arrives at this conclusion other than by reference to the evidence of the first appellant. As the Judge identified the first appellant as being the core

individual, yet concluded that appeal failed, have the appeals of the other appellants been dismissed in line without consideration of their evidence in the assessment process?

13. The lack of any reference in detail of the evidence of the remaining appellants in the decision under challenge or indication of how that evidence was incorporated into the assessment of the credibility of the claim, gives rise to the question whether artificial separation has been established in relation to the Judge only assessing the credibility of the appellants claim by reference to the first appellant's evidence rather than considering all the evidence as a whole.
14. This is a troubling matter for the Judge is very experienced in relation to appeals of this nature, many of which she has dealt with during the course of her judicial career. This is not a judge who is regularly successfully appealed as a result of failure to consider the evidence or to provide adequate reasons for conclusions reached. Notwithstanding this fact, it is important that in any judicial process justice must not only be done but must be seen to be done and there is insufficient material in the decision under challenge to support a finding that notwithstanding any reference to the evidence from the other appellants, it can be inferred that the Judge took the evidence into account and made specific findings in relation thereto. The absence of any reference or anything to support the Secretary of States assertions means it has not been made out that the appellants, as those who lost their appeal, are able to fully understand why all the evidence, properly considered, did not entitle them to proceed.
15. The matter will have to be remitted to the First-tier Tribunal to be heard afresh by a different judge nominated by the Resident Judge at Birmingham.

Decision

16. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remit the appeal to be reheard by the First-tier Tribunal sitting at Birmingham by a different judge nominated by the Resident Judge of that hearing Centre.**

Anonymity

17. The First-tier Tribunal ordered anonymity. I make such order pursuant to the Upper Tribunal Procedure Rules. No report of this decision shall in any way identify the appellants' or any member of their families. Failure to comply with this direction may amount to contempt of court.

Signed.....

Judge of the Upper Tribunal

Dated the 16 November 2017