



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08225/2016

THE IMMIGRATION ACTS

Heard at Field House
On 5 September 2017

Determination & Reasons Promulgated
On 14 September 2017

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

AHMAD ZAMIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Blundell, instructed by Malik & Malik Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Iran. He appealed to a panel of the First-tier Tribunal against the Secretary of State's decision of 28 July 2016 refusing to grant asylum. The appellant claimed to be at risk on return from the Taliban and from the Afghan authorities as the son of a Taliban member.

2. The panel of the First-tier Tribunal did not find the appellant's claim to be credible. He had been studying in the United Kingdom and went back to Afghanistan for a short visit in late 2015. He was told that his father had rejoined the Taliban, his brother had been stabbed and had then disappeared and that he himself was also in danger from his father. The Tribunal at paragraph 41 of its determination pointed to problems in the timeline provided by the appellant with regard to the events that he said had occurred. The panel noted further inconsistencies at paragraph 43 with regard to the medical records and what the appellant said had happened to his brother. Further inconsistencies were identified at paragraph 44 concerning, on the one hand an offer by the authorities to protect the family, and on the other hand their attempt to seek to arrest the appellant, and the apparent failure of the authorities to go to the appellant's friend Elias' house to find the appellant, rather writing to Elias to ask if the appellant was there. It was also not accepted that a letter to check whether the appellant was at a particular address would have been sent. The Tribunal considered that the appellant had embroidered his case as he went along and did not accept his credibility.
3. The Tribunal also remarked that the security situation in Kabul was such that the conditions there did not breach the Article 15(c) threshold. It had earlier noted reference in the course of the appellant's representative's submissions to risk to men of fighting age which was clear from the UNHCR Guidelines. The Tribunal considered that a failed asylum seeker was not at risk per se and that the appellant was a young healthy male who had shown an ability to obtain work in a foreign country and would be able to find accommodation and work on return. The appeal was accordingly dismissed.
4. The judge who granted permission to appeal on the appellant's grounds noted that there was no challenge to the findings relating to the credibility of the appellant's core account of events, but considered that there were arguable issues concerning the contention that the panel had failed to consider whether the appellant would be at risk of forced recruitment and potential risk as a "western" returnee. She made the point that it was not clear that these matters had even been argued before the First-tier Tribunal but it was nevertheless necessary to conduct a holistic assessment of risk on return. Although the panel was unarguably entitled to take into account the most recent country guidance the current situation had to be considered including what was said in the UNHCR Guidance.
5. In his submissions Mr Blundell accepted the reasoning with regard to credibility on the part of the panel. The matters of challenge related to what was said at paragraphs 51 to 54 in particular. There had been a failure to have regard to risk to the appellant from the Taliban as a young man of potential fighting age and also whether as part of that there was an extra risk on account of him being westernised and having lived in the United Kingdom for a while.
6. It was clear from paragraph 37 which summarised the submissions that the issue of risk to men of fighting age, as set out in the UNHCR Guidelines, had been put to the

judge. The point seemed not to have been considered at all. The focus was rather, for example at paragraph 53, on the actual account given by the appellant. There was therefore an error and the question was whether that was material.

7. In this regard there had been country guidance on forced recruitment in HK [2010] UKUT 378 (IAC) at paragraphs 29 to 39 in particular, as summarised at paragraph 2 of the headnote which said as follows:

“2. While forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility.”

It was unclear whether HK had been cited to the judge but it was relevant.

8. In addition to background material there was the report of Dr Giustozzi which in particular, at pages 11 and 12 at paragraphs 4 and 5, dealt with the issue, but concluded, as can be seen from the point at paragraph 4(d):

“Young boys and unmarried men are usually told by their fathers or by their elder male in the family what their political alignment should be; a household will usually make its own decision to contribute a young man to the army or to the insurgency.”

That was the risk which had been rejected by the judge in this case.

9. Mr Blundell therefore accepted that that did not support a freestanding risk to the appellant of forced recruitment independent of his claim to be at risk from his father.
10. Also before the judge however had been the UNHCR Guidelines, the relevant sections being at page 41 and pages 44 to 47 of the document. In essence therefore, because of a lack of assistance from the expert, the ground of challenge was on the basis that the panel had failed to consider those two sections of the UNCHR Guidelines.
11. In his submissions Mr Clarke argued that there was no error of law in the decision. Mr Blundell had based his case on risk to the appellant on account of being a man of fighting age, but it was clear that the case advanced by the appellant had been on the basis of risk from his father and that was clear from the papers and the panel’s decision. For example this could be seen from paragraph 12 onwards with regard to the claim about the letter received telling the appellant and his brother to join their father which had led to the brother being stabbed and also at paragraph 16 when men were sent by his father to get the appellant and reference again at paragraph 18 to risk from his father. On a proper construction of the skeleton argument, with regard to the UNHCR Guidelines, this was in support of risk from a family member and that was the basis of the expert’s instruction. The case was therefore not based

on risk per se of recruitment but in any event could not succeed. It was clear from HK that the appellant had to show a real risk. The judge had found the appellant could return to Kabul. The UNCHR Guidelines did not go beyond what had been decided in HK. There could be a risk but there was no reference to evidence of risk per se just on the basis of being in Kabul. The panel had made a finding of fact at paragraph 18 that there were no other problems in Afghanistan for the appellant so it was hard to see how the decision could depart from HK.

12. Mr Blundell had no points to make by way of reply.
13. I reserved my determination.
14. I am grateful to both representatives for their helpful submissions and in particular to Mr Blundell for clarifying the ambit of the grounds especially in light of the limited relevance on the particular point of Dr Giustozzi's report and the fact that risk on that account was ruled out by the panel. As a consequence, as Mr Blundell says, the matter comes down to whether there was a material error of law by the panel in failing to address the relevant sections of the UNHCR Guidelines for 2016.
15. The first reference is at page 41 of that report. There it is said that AGEs reportedly target individuals who are perceived to have adopted values and/or appearances associated with western countries, due to their imputed support for the government and the international community. There are reports of individuals who return from western countries having been tortured or killed by AGEs on the grounds that they had become "foreigners" or that they were spies for a western country. Individuals falling under other profiles might similarly be accused by AGEs of having adopted values and/or appearances associated with western countries and may be targeted for that reason.
16. With regard to men of fighting age and children in the context of underage and forced recruitment, it is relevant to bear in mind that the appellant was born in August 1993 and was therefore aged 23 at the date of the hearing. The focus would therefore be on the issue of men of fighting age rather than children. With regard to the former it is said in the UNHCR Guidelines that in areas where AGEs exercise effective control over territory in the population they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies. People who resist recruitment and their family members are reportedly at risk of being killed or punished. It is also said that pro-government armed groups have also been reported to force locals to send young men to join the fight against the Taliban and other AGEs.
17. Also to be factored into the issue of the materiality of the failure to mention the UNCHR Guidelines is what was said in HK which I have quoted above with regard to forcible recruitment. That again though has to be seen in the context of the age of the appellant who is not a child and was not a child in 2015 when the events in question occurred.

18. Bringing these matters together I do not consider it has been shown that the panel erred in law in any material way in failing to refer to the UNCHR Guidelines. As Mr Clarke argued, the essential focus of the appeal was risk from the appellant's father rather than from the Taliban per se as people who might have an interest in him as a potential victim of forced recruitment. It is clear from HK, at least in the context of risk with regard to a child, that evidence is required to show that forcible recruitment is a real risk for the particular child concerned and not a mere possibility, and that must in my view equally apply for an adult who is said to be at risk of forced recruitment. I do not consider it was shown to the panel that the appellant was a person who faced a real risk of forced recruitment by the Taliban. It is clear that forced recruitment occurs, but it does not follow from that that there is a real risk to a particular individual. In light of the appellant's history and the way in which the appeal was argued, I consider it has not been shown that there was a material error of law in failing to address the reference in the UNCHR Guidelines to forced recruitment and accordingly the decision of the panel dismissing this appeal is maintained.

No anonymity direction is made.



Signed

Date

Upper Tribunal Judge Allen

8 September 2017