



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01588/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunals
On 31st August 2018

Decision & Reasons Promulgated
On 27th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR I A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed (Counsel)
For the Respondent: Mr H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Obhi, promulgated on 15th September 2017, following a hearing at Birmingham Sheldon Court on 1st September 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and was born on 1st March 1998. He came to the UK as an unaccompanied minor claiming asylum on 9th April 2015.

The Appellant's Claim

3. The essence of the Appellant's claim is that he comes from the Nangarhar Province in Afghanistan, which is a contested area, and where his father was visited by a member of the Taliban by the name of QW, who persuaded him to join the Taliban. Subsequently the Appellant's father was killed by men dressed in military uniform. The Appellant believes that the authorities had come to the conclusion that his father was involved with the Taliban and is afraid that he is wanted both by the Taliban and by the authorities if he returns to Afghanistan. He fears he will be killed. He is wanted by the Taliban, he claims, because they will forcibly recruit him into the Taliban. He is wanted by the authorities because they believe that his father was a member of the Taliban.

The Judge's Findings

4. In what is a comprehensive and detailed determination, Judge Obhi held that she could not accept the Appellant's account. It was fabricated and exaggerated. She concluded that the Appellant must have heard others talk about the situation in Afghanistan and had embellished his account to fit in with that. She gives reasons for coming to this conclusion. She also adds that, "the account though plausible on one level is undermined by the complete lack of any objective evidence to support what the Appellant states" (paragraph 30). The judge went on to say that "the Appellant claims that he is at risk from the Taliban who will want to recruit him to be a suicide bomber. There is no evidence to support this claim" and the judge rejected the claim that the Taliban were attempting to recruit him to avenge the death of his father. She went on to say that, "I do not accept that his partner has been killed in the way described. It is possible for that his father may still be alive and have been instrumental in sending him to the UK" (paragraph 31). The judge went on to refer to the expert evidence of Dr Schuster, who had stated that it will be difficult for a young Afghan person to relocate and culturally individuals rely on the family network to build their lives (paragraph 35). The judge held that "the report is compelling" (paragraph 36). Consideration was also given to legal decisions (paragraph 37). However, the Appellant was now an adult, and the judge concluded that the Appellant was not "at any more risk than any other young man of either suffering harm through indiscriminate violence or of being recruited by the Taliban. Therefore I dismiss his claim" (paragraph 38). The judge also went on to dismiss the Appellant's Article 8 claim (paragraphs 39 to 40).

Grounds of Application

5. First, it was contended that the judge, in assessing what caused the Appellant to leave Afghanistan as an unaccompanied child, had to take into account the UNHCR's Afghan Eligibility Guidelines of either 2013 or 2016. If this was not done, then the judge had to look at the evidence of Dr Schuster given in December 2015, where she had reported on Nangarhar, and described it as a contested province at the relevant time when the Appellant's father was attacked and killed by international forces. The judge did not factor this in. Although the judge refers to Dr Schuster's report and legal decisions (at paragraph 37) there is no reference to the UNHCR Guidelines. This

means that the judge has failed to assess whether the Appellant would be at risk of forced recruitment in a contested province as a man or a boy of fighting age, or even whether he would have sufficiency of protection against such risk in Nangarhar. This was a crucial issue that the judge had to determine.

6. Second, it was stated that the failure to take account of the objective country information was previously identified as a material error by the Court of Appeal decision in **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123**. The grounds state that the Appellant's account was capable of being treated as credible, if regard had been given to the Practice Direction and the Joint Presidential Guidance relating to minors, as well as taking into account the Appellant's lack of education and vulnerability as a child. Instead, what the judge did was to determine the issue of credibility according to her own belief. This is clear from the judge's statement (at paragraph 30) that, "the account though plausible on one level is undermined by the complete lack of any objective evidence to support what the Appellant states" (paragraph 30). Third, and in this regard, the reference to "the complete lack of" any other evidence suggests that the judge required corroboration, which is not the case in an asylum application.
7. On 16th November 2017, permission to appeal was granted. In so doing, attention was drawn to "the careful decision by the judge". Even so, it was said that there were two material points. First, that no regard was paid to the UNHCR's Eligibility Guidelines which are material as the case law makes clear. Second, the judge appears to have placed weight on the absence of corroboration (at paragraph 30).

Submissions

8. At the hearing before me on 31st August 2018, Mr Ahmed, appearing on behalf of the Appellant, as his Counsel submitted that the error by Judge Obhi, was precisely the error that had earlier been identified in a fulsome decision given by DUTJ Symes, as long ago as 27th February 2017, when he had found there to be an error of law in an earlier decision of the First-tier Tribunal, where it had also been alleged that the judge on that occasion had erred in failing to take account of the evidence of the UNHCR from 2013 to 2016, as well as the expert opinion of Dr Schuster, with respect to the deteriorating security situation since the last country guidance decision. It had been made clear that the judge's failure to take account of the UNHCR evidence that men and boys of fighting age were at risk of forced recruitment in contested areas had led to material error of law (see paragraph 10 of Judge Symes' decision).
9. Judge Symes had gone on to say that the country evidence before the First-tier Tribunal "which demanded attention in the course of that enquiry", was that Dr Schuster had made it clear in her expert report that

"Young persons returning to Kabul having spent a significant period in the UK would be likely to speak and bare themselves in a manner untypical of Kabul's native residents, leading to adverse attention as being contaminated by western culture and suspicion as a non-believer and a concomitant withdrawal of the metrical support that would otherwise be available ..." (paragraph 21).

10. There had apparently been a previous Danish Fact-Finding Mission, which had concluded that the Taliban only recruited clear supporters to their cause. This was contradicted by the UNHCR which suggested that those who resist forced recruitment may face serious harm. This means that the possibility of recruitment potentially focuses on a broader class of individuals than outright enthusiasts for the Taliban cause (see paragraph 17). This submitted Mr Ahmed, had been decided as far back as February 2017 by Judge Symes, on the basis of what the UNHCR Eligibility Guidelines stipulated, and yet the same errors had been shown to have occurred again in the latest determination.
11. For her part, Ms Aboni submitted that there was no error of law. The fact was that the Appellant had not given a credible account. Judge Obhi even held that in all probability the Appellant's father was not even dead and had actually paid for the Appellant's exit from Afghanistan to come to the UK. In these circumstances, the father would be there to provide support. Even if there was an error in terms of internal relocation to Kabul, the latest country guidance case of **AS (Afghanistan)** meant that there could be realistic relocation to Kabul.
12. In reply, Mr Ahmed submitted that **AS (Afghanistan)** was not determinative of the factual issues. The judge had to look at the particular circumstances of this Appellant, his background, and his province of origin. The UNHCR Guidelines were material in assessing whether the Appellant's account was capable of belief, and his factual narrative could not be separated from the overall context of the guidelines.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion, notwithstanding Mr Ahmed's attempts to persuade me otherwise. This is because unlike the decision previously by the First-tier Tribunal, which had been heard on appeal by DUTJ Symes in February 2017, the present appeal is one where the judge does refer to the report of Dr Schuster. The judge makes it clear that "Dr Schuster further considers that it would be difficult for a young Afghan person to relocate and culturally individuals rely on the family network to build their lives" (paragraph 35). It is true that the UNHCR Guidelines are not expressly referred to. However, this was a case where the judge comprehensively disbelieved the Appellant, observing that his account was "fabricated and exaggerated, based on what he may have heard others talk about, in relation to raids on compounds and western soldiers targeting and killing Taliban fighters" (paragraph 30). Moreover, it is not the case that the judge is expressly seeking corroboration of the Appellant's account.
14. What the judge is stating is that the Appellant's claim was that of his father and QW being killed by international soldiers in an attack on the compound. The judge observes that,

"I am surprised that there is no independent evidence. Had this been a government raid as the Appellant believes it to have been, then I would have

expected it to be possible to obtain some independent evidence from the Afghan authorities or indeed the internet” (paragraph 26).

15. It is this to which the judge then refers again when observing that, “the account though plausible on one level is undermined by the complete lack of any objective evidence to support what the Appellant states” (paragraph 30). The judge goes on to further suggest that, “in the present case the Appellant claims not only that he may be a target of forced recruitment by the Taliban but that he will be a target of the security services who believe that he is already involved with the Taliban. As I have already stated throughout this decision, the incident that he claims is one that could be corroborated through enquiries being made with the security services and there is little evidence that any such attempts have been made” (paragraph 37). That was a conclusion that the judge was entitled to come to. There is no error of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. The determination shall stand.

An anonymity order is made.

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

Deputy Upper Tribunal Judge Juss

22nd September 2018