



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02689/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 18 September 2017

Decision & Reasons Promulgated  
On 24 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ZK  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mahmood (counsel) instructed by Sohaib Fatimi Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity direction deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hall promulgated on 29/03/2018, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 4/4/1987 and is a national of Afghanistan. The appellant arrived in the UK with her husband and two sons on 23/04/2014. (The appellant and her husband now have a third child, born in the UK). The appellant's husband claimed asylum on 23/04/2014, the appellant was dependent on his claim. That application was refused. The appellant's husband appealed, and his appeal was dismissed in August 2014.

4. The appellant made her own protection claim on 11/09/2017. On 09/02/2018 the Secretary of State refused the Appellant's application.

## The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hall ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 17/07/2018 Upper Tribunal Judge Lindsley gave permission to appeal stating, inter alia

3. The grounds contend, in summary, that firstly the First-tier Tribunal erred in law by failing to deal with the issue of risk arising from the appellant's husband having been an interpreter for the US military. It is argued that the First-tier Tribunal failed to consider that this matter would inevitably arise when the appellant and her husband attempted to obtain a job or a place to live; that it was wrong to rely upon the dismissal of the appellant's husband's appeal in 2014, particularly as this Tribunal had accepted the appellant's husband's employment and matters had moved on since that time, and also wrong to fail to give weight to the policy guidance of the respondent about risk of those perceived to be westernised. Secondly it is argued that the First-tier Tribunal erred in applying the wrong test for internal relocation. At paragraph 68 a test of "unjustly harsh" is applied rather than one of undue harshness or reasonableness. There was also the failure to consider the appellant's medical issues in this connection. Thirdly there was a failure by the First-tier Tribunal to properly consider the evidence of the witness, SS. Fourthly, it is contended that it was erroneous to find at paragraph 66 that the appellant does not have family in Kabul. Fifthly it is argued that the First-tier Tribunal failed to consider the expert evidence in the round when assessing credibility. Sixthly there was a failure to consider the qualification directive claim separately.

4. The grounds are all arguable.

## The Hearing

6. (a) For the appellant, Mr Mahmood moved the grounds of appeal. He told me that the undisputed facts in this case are that the appellant's husband had worked as an interpreter for US and allied forces in Afghanistan; that the appellant's family were granted protection in the USA, but left the USA because the appellant was distressed by racial and religious discrimination; that the appellant's husband unsuccessfully claimed asylum in the UK in 2014.

(b) Mr Mahmood told me that the Judge's finding that the appellant and her family can move to Kabul and find employment there is not safe because they would inevitably be asked by landlords and prospective employers about their background, and they would soon be viewed as US collaborators. Mr Mahmud told me that at [63] the Judge avoids carrying out his own assessment of internal relocation.

(c) Mr Mahmood told me that the Judge applied the wrong test at [68] when considering internal relocation. There, the Judge finds that internal relocation will not be "unjustly harsh". The question the Judge should have asked is whether or not internal relocation is unduly harsh.

(d) At [60] the Judge considers the evidence of the appellant's witness. Mr Mahmood told me that the Judge appears to be searching for unnecessary corroboration and makes no clear finding about the evidence of the appellant's witness.

(e) Mr Mahmood took me to 2.3.1 of the respondent's policy guidance dated January 2018 and told me that those perceived to be supporting the government and the international community in Afghanistan are at risk. I asked Mr Mahmood about the convention reason which had been pled for the appellant before the First-tier Tribunal, and he confirmed that the convention reason there was membership of a particular social group, but drew my attention to the skeleton argument and told me that the appellant's imputed political opinion was a live issue for the Judge to determine, and was an issue which is relevant to consideration of humanitarian protection and article 3 ECHR grounds of appeal.

(f) Mr Mahmood urged me to set the decision aside.

7 (a) For the respondent, Ms Everett told me that the decision does not contain an error. She told me that the Judge found that the core of the appellant's claim is not credible. She drew my attention to the Judge's detailed reasoning between [45] and [68]. She told me that there is nothing wrong with the Judge's findings at [60], where he deals with the appellant's witness. Ms Everett said that the Judge is not looking for corroboration. Instead the Judge bemoans the lack of reliable evidence.

(b) Ms Everett agreed that it is accepted that the appellant's husband was an interpreter for US and allied forces, and that the appellant and her family were granted protection in the USA. She told me that those are facts of which the Judge was mindful and that the Judge's assessment of risk on return is flawless. She reminded me that the Judge found that there is no reason why the appellant cannot return to Kabul. She told me that the Judge's finding is entirely in line with the caselaw

(c) Ms Everett asked me to dismiss the appeal and allow the decision to stand.

## Analysis

8. The first ground of appeal relates to the risk on return to Kabul because of the appellant's husband's work as an interpreter for US and allied forces. At [11] the Judge says that the appeal proceeded on the basis of membership of a particular social group. At [31] the Judge sought clarification (From Mr Mahmood who appeared before the First-tier also) of the convention reason pled, and was told that the case proceeded on the basis that the appellant is a member of a particular social group. The witness statements produced were quite clearly prepared on the basis of membership of a particular social group and not on the basis of political opinion.

9. Between [10] and [19] the Judge summarises the appellant's claim. At [32] the Judge notes that the appellant's husband still says that he fears the Taliban because of his work as an interpreter with the Americans. Throughout the decision the Judge considers return to either Jalalabad or Kabul, where the appellant has previously lived. At [63] the Judge finds that neither the appellant nor any of her family would be at risk if returned to Afghanistan as a result of employment as an interpreter, particularly if they relocated to Kabul.

10. In H and B v United Kingdom (Application no. 70073/10 and 44539/11) ECtHR (Fourth Section) it was held that there was insufficient evidence to suggest that the Taliban had the motivation or the ability to pursue low level collaborators in Kabul or other areas outside their control. There was also little evidence that the Taliban were targeting those who had, as requested by them, already stopped working for the international community and who had moved to other areas. Individuals who were perceived as supportive of the international community might be able to demonstrate a real and personal risk to them from the Taliban in Kabul depending on the individual circumstances of their case, the nature of their connections to the international community and their profile. Not everyone with connections to the UN or US forces, even in Kabul, could be considered to be at real risk regardless of their profile or whether or not they continued to work for the international community (paras 92 - 101).

11. In H and B v United Kingdom (Application no. 70073/10 and 44539/11) ECtHR (Fourth Section) it was held that there was no evidence one of the US interpreters who had worked as an interpreter in Kunar province where he had no particular profile would be identified in Kabul, an area outside of the control of the Taliban, or that he would come to the adverse attention of the Taliban there.

12. In MS(Afghanistan) v SSHD 2013 EWCA Civ 7 it was held that a Pashtun secret intelligence officer in Afghanistan from 2003 to 2006 who was in the American security forces for 3 months and whose brother had been killed would not be at risk on return to Kabul.

13. In DT (Afghanistan) v SSHD 2014 EWCA Civ 259 it was held that the tribunal was entitled to find on the evidence that a low level collaborator would not be at risk in

Kabul and that the Taliban would not be interested in devoting part of its limited resources to tracking him down in Kabul in order to assassinate him.

14. The Judge considers whether a risk is created by the appellant's husband's work for US forces and reaches a decision which is entirely in line with the established caselaw. The Judge correctly considers and carefully assesses risk on return. There is no merit in the first ground of appeal.

15. The second ground of appeal relates to the test for internal relocation. At the end of [68] the Judge says that relocation would not be

Unjustly harsh.

16. Unduly is defined as "to an unwarranted degree; inordinately". The dictionary definition of unjust is "in a manner that is not in accordance with what is morally right and fair."

17. The Judge uses the wrong word. The Judge's findings between [65] and [68] are findings made in the alternative. The Judge finds at [64] that the appellant did not receive threats from her in-laws, and so her asylum claim fails. His alternative findings between [65] and [68] are consideration of the viability of internal relocation. The Judge takes correct guidance in law in the final sentence of [67]. A fair reading of [65] to [68] shows that although the Judge uses one wrong word, he applies the correct test. The Judge is clearly mindful that the test is whether or not relocation is unduly harsh. He uses the correct terminology to conclude [67]. He manifestly applies the correct test in law.

18. The third ground of appeal suggest that the Judge did not make findings about the evidence of the witness SS, and that the Judge looked for corroboration, applying the wrong standard of proof.

19. At [6] the Judge sets out the correct standard of proof. A fair reading of the decision as a whole demonstrates that the Judge applied the correct standard of proof. At [60] the Judge confirms that he has taken account of the evidence of the witness SS. A fair reading of [60] demonstrates that he finds the evidence of SS to be no more than neutral. It is quite clear that he finds the evidence of SS contributes nothing to the appellant's claim. Between [45] and [69] the Judge sets out a carefully reasoned decision considering each strand of evidence.

20. I have read the witness statement of SS dated 11 January 2018. In the first sentence of [60] the Judge succinctly summarises what is contained in that witness statement. The Judge's conclusion that the evidence of SS is neutral is well within the range of reasonable conclusions

21. The fourth ground of appeal says that the Judge has made incorrect findings and draws a comparison between [19] and [66]. At [19] the Judge summarises the appellant's claim. At [66] the Judge makes a finding drawn from the evidence placed

before him. There is no conflict between [19] and [66]. At [66] the Judge finds that the appellant does not prove that her in-laws have any power or influence or family members in Kabul.

22. The final ground of appeal suggest that the Judge gives inadequate consideration to an expert report. The Judge considers the expert report at [67]. There, he explains why he places limited reliance on the expert report. The grounds of appeal complain that there is inadequate consideration of the qualification directive and inadequate analysis of background evidence of the expert report.

23. Between [45] and [68] the Judge sets out a carefully reasoned decision. It is clear that the Judge has considered each strand of evidence. He makes his findings of fact from a holistic approach to the totality of evidence. At [69] he draws on his findings of fact to conclude that the appellant's appeal on asylum, humanitarian protection and article 3ECHR grounds fails. Each of those grounds of appeal turns on exactly the same facts and circumstances. There is no need for separate, repetitive, consideration.

24. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

25. In MD (Turkey) v SSHD [2017] EWCA Civ 1958 it was said that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.

26. A fair reading of the decision demonstrates that the Judge took account of each strand of evidence. The Judge considered the background materials as part of a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

**27. The decision does not contain a material error of law. The Judge's decision stands.**

**DECISION**

**28. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 29 March 2018, stands.**

A handwritten signature in black ink, appearing to read "Paul Doyle". The signature is written in a cursive, slightly slanted style.

Signed

Date 20 September 2018

Deputy Upper Tribunal Judge Doyle