



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02909/2017

THE IMMIGRATION ACTS

Heard at: Manchester
On 14th August 2018

Decision & Reasons Promulgated
On 5th September 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NT
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Moksud, International Immigration Advisory Service
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan born in 1984. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Somal), who on the 28th April 2017 dismissed his protection claim.
2. The basis of the Appellant's claim was that he had been targeted by the Taliban because he had been an officer in the Afghan National Army. They had attacked his

¹ Permission granted on the 25th May 2017 by First-tier Tribunal Judge Cruthers

family and kidnapped his brother. They regard him as a traitor and an infidel because he enlisted. The Appellant left the army to come home and assist his parents; now he faced charges of desertion. The Appellant left Afghanistan because the Taliban have threatened to kill him. His family have now fled and are living in an unknown location in Pakistan. The Appellant's journey to the UK was long and dangerous. The stress of this, and the uncertainty over his future, has precipitated a serious skin condition, diagnosed in the UK as stress-induced psoriasis.

3. The Respondent accepted that the Appellant had been a member of the Afghan Army. The remainder of the account was challenged on credibility grounds. In its assessment of the evidence the First-tier Tribunal also accepted that the Appellant had been in the army. The Tribunal rejected the Appellant's evidence that he had lost contact with his family: it noted that his cousins have been able to contact him by telephone and found his claim that this has not been possible for his parents not to be plausible. A 'night-letter' said to have been sent to the Appellant by the Taliban in 2015 was rejected on the grounds that he had not mentioned it before, and had not given a satisfactory explanation as to how he came to have it now. The fact that the Appellant had failed to claim asylum *en route* to the UK weighed against him in the balancing exercise. As to the question of risk the Tribunal had regard to country background material which indicated that whilst high-ranking members of the Afghan army can face a risk of harm throughout the country, low ranking soldiers can escape the attention of insurgents in their home area by moving away. The Tribunal identified further background evidence to support its finding that the Appellant would face no penalty or other problems for having deserted the army. The appeal was therefore dismissed on the grounds that no risk pertained; in the alternative, if it did, the Appellant could avoid it by internally relocating to Kabul.

Error of Law

4. In his appeal to this Tribunal the Appellant contended that in reaching its findings the Tribunal failed to make clear findings, failed to give reasons, and failed to properly consider the issue of internal flight. His representatives placed particular emphasis on the documentary evidence relating to the Appellant's military service, which highlighted his rank and significant role within the army.
5. The Appellant relied upon three tranches of evidence. First, he produced a good number of photographs of himself in uniform in the company of other soldiers. Second, he had produced a number of documents relating to his claim. These documents comprised: a letter sent by the Appellant to the police chief in Kabul requesting protection because he had been personally threatened by the Taliban; an acknowledgement of that letter sent by from police headquarters; a letter from the Appellant, styled 'Captain [N], Deputy Head of Platoon' sent to the Commander of the Third Battalion, the subject being the handover of weapons and ammunition in the platoon's possession; an inventory of said weapons; and a 'night letter' said to have been delivered to the family home. The third item of evidence was the Appellant's own very detailed asylum interview, in which he explained matters

such as where he was from, why he enlisted, where he served, what weapons he was trained in and the ranks of the army.

6. Three important elements of the Appellant's account emerged from that evidence.
7. The first is that he was in the Afghan army.
8. The second is that for two years he served in Helmand province, where he was regularly engaged in fighting insurgents.
9. The third is that he himself is from Kabul. In both screening and asylum interviews he stated that his family home is in Paghman, Kabul province. That is where his parents were attacked, and brother kidnapped. It is the same location that he provided when he wrote to the chief of police in Kabul asking for protection as an officer of the Ministry of Defence.
10. In its determination the First-tier Tribunal plainly accepted the first proposition, as had the Respondent: in the face of the evidence it would have been perverse not to. As to the second it is silent, but given the concession on the fact that he was in the army, it can be assumed that this too was accepted. The findings on the third element of the claim are less easy to make sense of.
11. The Tribunal clearly rejects the evidence that the Appellant has lost contact with his parents, and his claim that they have fled Afghanistan. It does not appear, however, to reject the core elements of the claim that the Appellant's family were attacked and his brother kidnapped. Indeed, in the opening sentence of paragraph 25 the Tribunal notes that the Appellant has been consistent in his evidence about these matters. The conclusion, albeit not one that is clearly expressed, is that these events may have occurred, but the family are now living in their home unhindered. Whilst that leaves the rather troubling omission of what happened to the Appellant's brother, it raises more significant questions about the Tribunal's assessment of risk. That is because the determination contains no recognition of the fact that these events are said to have occurred in Kabul province. Indeed paragraph 31 indicates that the First-tier Tribunal entirely missed that point: "the appellant would be returning to live with his family in Afghanistan but in any event internal relocation to Kabul is available to him and he has no profile such that he would be of adverse interest to anybody". That reasoning fails to consider whether the Appellant returning to the family home would reignite the interest of the Taliban, fails to recognise that on the accepted facts the Appellant did have a profile of sufficient significance to attract an attack on his family in the first place, and makes the contradictory suggestion that he can internally relocate to the place that he is already from. I am satisfied that in failing to make clear findings on these matters the First-tier Tribunal has materially erred in law.

The Re-Made Decision

12. The parties before me agreed that I could proceed to remake the decision in the appeal on the basis of the following facts:

- The Appellant was a member of the Afghan army between 2011 and 2013
 - He was born in Kabul and lived there prior to leaving Afghanistan. His family home remains in Kabul
 - Sometime towards the end of 2013 the Taliban came to the Appellant's home in Kabul. His parents were beaten and his brother E was abducted
 - When the Appellant received news of the attack he spoke with his commander, and then the commander of the whole battalion. He was given leave to return to Kabul to see his parents in hospital. It was during this period of leave that the Appellant absconded and later left the country
 - The Appellant believes that members of his extended family had informed the Taliban that he had joined the army
 - The Appellant continues to have relatives in Kabul (although the Appellant continues to assert that his parents moved to Peshawar, Pakistan sometime after he left Afghanistan, he states at his asylum interview that he has a number of relatives still in the city)
13. There was a lack of clarity as to the rank attained by the Appellant. In his screening interview [at 1.14] he states that he was a lieutenant, and that he served as an assistant to a group of officers [at 5.2]. In his asylum interview he describes himself as the assistant to the commander of the 'company' [Q59-65]; there were 6-7 companies in the whole battalion, comprising 600-700 soldiers. When his commander was on leave he was in charge of the company [Q66]. The Respondent, having reviewed this evidence, was prepared to accept [at page 4 of the RFRL] that the Appellant was a lieutenant in the ANA. In the Appellant's witness statement of the 17th April 2017 he described himself as an "officer" in the ANA.
14. Against that factual matrix I must assess whether there is today a reasonable likelihood that the Appellant will face persecution in Kabul for reasons of his imputed political opinion (that being the agreed 'Convention reason'). In making my assessment I am assisted to some extent by the recent Upper Tribunal decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC). I say to some extent because that decision is concerned with the safety and reasonableness of relocation to Kabul for persons from outside the capital (see paragraph 1: 'the country guidance question'). The Tribunal find that persons who have moved to Kabul in order to flee insurgent activity elsewhere in the country are, in general, unlikely to face a real risk of being located and targeted by the Taliban in the city. It rejects the suggestion that the Taliban have an operational blacklist, or that they have the means to identify persons of interest at, for instance, checkpoints. None of these considerations apply in the Appellant's case, since he does not claim to be on a blacklist or the like. His concern is that he was previously identified by insurgent elements in Kabul as being a 'traitor' for enlisting in the ANA, and that this was brought to their attention by members of his own extended family. Since it is accepted that the Appellant's family remain in the city, and that if he returned his

presence would be known to them, the question arises whether, some five years after the initial act of persecution, the Appellant would today be at risk.

15. AS (Safety of Kabul) confirms that the Taliban continue to have a presence in the city. In his evidence to the Tribunal Dr Giustozzi estimated that countrywide the Taliban have approximately 200,000 full time members, with “a few hundred thousand sympathisers and unpaid supporters” [at 68]. They operate under a decentralised structure. It is estimated that they raise revenues of \$1.5-\$2 billion per year in order to fund what they see as their legitimate governance of Afghanistan. In Kabul they operate two separate structures. One is used to undertake complex attacks (ie assaults of ‘western’ hotels, government buildings etc). The role of the other network is to target individuals. Of this latter group the determination reads:

“71. Dr Giustozzi’s oral evidence was that these dedicated units each establish their own targets based on priorities and available intelligence, albeit his written report referred to evidence from Judge Safi (a Taliban Judge interviewed by one of Dr Giustozzi’s researchers on 23 June 2016) that priorities were set by the military leader of each province. His evidence was however consistent on the highest priority being those who posed the greatest threat to the Taliban - senior serving government officials, the security services and spies. At a lower priority level Dr Giustozzi referred to deserters and collaborators although not necessarily in that order, depending on how you defined both. There are two types of deserters, those who simply left or quit the Taliban (such as for personal reasons like a sick family member) and those who defected to the government, who would be seen as a collaborator. The latter being more serious but there was a need to discourage anyone leaving and a concern that someone may become an informant when they left. Collaborators could include all those who defy Taliban rules or are seen to be in-line with the government. Collaborators would include all security forces, government authorities, foreign embassies, the UN, NGOs and anyone passing information to the government about the Taliban. These collaborators could number several hundred thousand people and Dr Giustozzi accepted that the Taliban do not have the resources to possibly individually follow up on all of them.

72. Although successful targeting by the Taliban of high-profile targets is their highest priority because of the impact of such attacks, it is more difficult to achieve this given that they are the best protected and it involves larger teams of people, many of whom would be killed in the effort. Dr Giustozzi explained that as the Taliban believe they are the legitimate government, they need to demonstrate to the public that they are the legitimate authority whose goals and regulations are to be respected. It is therefore considered necessary to also take action against a person of low-level interest when the opportunity arises rather than named individuals because of the Taliban’s need to show that they are serious about sentencing people, enforcing their regulations and because it helps to scare people leading to the collapse of the government. In these cases, who is killed is less important than the numbers killed, with any assassinations still making the headlines”.

16. Dr Giustozzi states that according to Taliban policy an individual targeted in this way would normally have been subject to a ‘warning and sentencing’ procedure;

the Tribunal note the evidence from EASO that there are also cases where the targeting arises from personal or local disputes [at 73].

17. Of this evidence the Tribunal concludes, in giving country guidance:

“174. The risk of a specific individual being successfully targeted depends upon their identification as a target (for example, due to past or present actions/circumstances) and the ability of the Taliban to locate and then carry out an attack on that person, as well as their will or priorities in doing so. The evidence was broadly in agreement as to the order of importance of targets for the Taliban in Afghanistan being (i) senior serving government officials and the security services, (ii) spies, and at the lower level, (iii) other collaborators (including the wider security forces, government authorities, foreign embassies, the UN, NGOs and anyone passing information to the government about the Taliban) and deserters.

18. Having had regard to this country guidance I draw the following conclusions. First, that the Taliban continue to operate within Kabul. Second, that their numbers include units of fighters specifically tasked with conducting assassinations, which can be opportunistic as well as targeted. Third, that such units are backed by unpaid supporters and sympathisers.

19. I apply those findings to the facts in the Appellant’s case. The Appellant’s immediate family members – that is to say his brother and parents – were subjected to persecution because of his decision to enlist in the ANA. Although his parents, on the finding of the First-tier Tribunal, continue to live in Kabul, his brother has never been found. I accept that this serious persecution of close family members amounts to persecution of the Appellant himself. The starting point for my risk assessment is therefore that set out at paragraph 399K of the Immigration Rules:

399K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

20. Are there good reasons to consider that such targeting by Taliban like elements in Kabul would not be repeated? The extended family members who informed on the Appellant continue to live in Kabul and I am satisfied that his presence in the city would come to their attention. Those same family members may or may not be aware that in his absence he has been in the United Kingdom. Assuming that their political sympathies lay with the Taliban (there being no suggestion of any personal reasons why they might want to cause trouble for the Appellant and his family), I assume that those sympathies have remained unchanged. I further assume that that fact that the Appellant has been in the United Kingdom is not something likely to assuage any anger they feel towards him for enlisting in the ANA. It is clear from AS that the Taliban continue to operate in Kabul, and that ‘collaborators’ continue to be on their list of targets: those seen as ‘collaborators’ include Afghans who elect

to join the security services of the country. Even having regard to the fact that a person in the Appellant's position would ordinarily be quite far down the list of targets, in the particular circumstances of his case, and applying the lower standard of proof I cannot be satisfied that the risk has diminished to the extent that the harm he fears will not be repeated. He is not someone whose case depends upon him appearing on a blacklist, or being identified at a checkpoint. His case is that he is known in his home area as someone who joined the Afghan army and has suffered persecution as a result. The people who caused that harm continue to operate there, as do the people who identified him. There remains a real risk of serious harm.

21. Before me the Respondent did not submit that there was any internal relocation alternative for the Appellant. In those circumstances the appeal must be allowed.

Decisions

22. The decision of the First-tier Tribunal contains a material error of law and it is set aside.
23. The decision in the appeal is re-made as follows: "the appeal is allowed on protection grounds".
24. There is an order for anonymity.

Upper Tribunal Judge Bruce
24th August 2018