



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

Appeal Number: PA/03570/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2018**

**Decision & Reasons
Promulgated
On 7 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MN (AFGHANISTAN)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Karen Reid, Counsel instructed by Lupins Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Wilson sitting at Hatton Cross on 24 October 2017) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee on account of him being the target of a blood feud arising from his paternal uncle being forced to work as an interpreter for the Taliban in the locality of the family's home village in Parwan Province in about 1999. The appellant's claim was that local villagers opposed to the Taliban had killed his father in revenge for his paternal uncle's perceived treachery, and that he was now at risk himself, as he had reached adulthood.

The Reasons for the Grant of Permission to Appeal

2. On 8 December 2017 Judge Juliet Grant-Hutchison granted permission to appeal for the following reasons:

It is arguable that the Judge has erred in law and misdirected himself as follows:- (a) by failing to properly apply the burden of the standard of proof in circumstances where the appellant was a minor at the date of his asylum application and interview and that the facts which establishes his claim occurred when he was a minor; (b) by failing to give adequate reasons why the explanation of appellant's uncle concerning a contradiction in his evidence undermined the appellant's credibility; (c) the fact that the appellant's father was killed is a central element in the appellant's claim but the Judge failed to give adequate reasons why he rejects the appellant's evidence in this regard; (d) by failing to consider the risk the appellant faces by those who killed his father on return in addition to being westernised; (e) by failing to give adequate reasons why he does not want to accept that the appellant's maternal uncle had disappeared i.e. that he has fled for his own safety or how the appellant owing to his lack of age, lack of support and clan structure would make it difficult for him to return to certain areas including Kabul and (f) in terms of Article 8 by failing to consider whether, given the appellant's uncle took on the role of father figure in his life when he was still a minor, that he had a family life such that Article 8 is engaged, and that interference with the appellant's rights to private life, which he accepts, is proportionate.

Relevant Background

3. The appellant's age is a matter of dispute. The appellant says that he was born in Afghanistan on 2 March 2000. But the initial Merton-compliant age assessment conducted by Kent Social Services decided that his true date of birth was 2 March 1997. A second Merton-compliant age assessment conducted by Kent Services on 18 February 2015 produced a revised date of birth of 2 March 1998.
4. The appellant's claim is that he originates from Bayani Aughal village in Parwan Province. The Taliban came to his village when he was young, and forced his paternal uncle to show them around because the local villagers spoke Farsi and not Dari. Later, the villagers came looking for his uncle, but when they could not find him, they killed his father instead. He could not remember exactly when his father died and he did not know how old he was at the time. But he understood that the villagers had killed his father in revenge for the killings which the Taliban had carried out locally. His paternal uncle fled Afghanistan and came to the UK. (His paternal uncle is recorded as having arrived in the UK in January 2000).
5. He and his mother went to live with her brother, "MU", in Jalalabad. He was married with two children, and he supplied local shops with goods. The appellant was brought up in Jalalabad, and attended the Kabul international school. This was a private school, and his maternal uncle paid the school fees. His mother died on 29 February 2012 due to ill-

health. His maternal uncle decided that, as he was older, he was now more of a target for his father's enemies. So he arranged for an agent to bring him from Afghanistan to the UK. The maternal uncle gave him his paternal uncle's telephone number so that he could contact his paternal uncle on arrival.

6. On 25 March 2017, the respondent gave her reasons for refusing to recognise the appellant as a refugee. The account which he gave of the circumstances of his father's death was not consistent with that given by his paternal uncle. In addition, by his own evidence, his father did not visit the neighbouring village with his uncle and the Taliban; and his uncle was taken by the Taliban against his will. It was therefore not understood how people from another village would be able to identify his father as a Taliban collaborator, or why they would target and kill him in place of his brother.
7. So it was not accepted that his father was killed by local villagers in revenge for his uncle assisting the Taliban.
8. On the issue of risk on return, he had never been threatened or contacted by the local villagers whilst living in Jalalabad, where he had been able to live a normal life, including attending school.
9. On the issue of internal relocation, he said that he was too young to return to Afghanistan, as he would be unsupported, without work, and therefore he would be vulnerable and would become destitute. However, he would be returned to Kabul as an adult. He had not provided a reasonable explanation as to why he would be unable to relocate within Kabul.

The Hearing Before, and the Decision of, the First-tier Tribunal

10. Both parties were legally represented before Judge Wilson. The Judge received oral evidence from the appellant and from his paternal uncle, who had been granted refugee status and who was now a British citizen.
11. In his subsequent decision, the Judge held at paragraph [13] that the evidence of the paternal uncle was unconvincing. This was firstly due to the vagueness of how he knew that the appellant's father was at risk, and also because of the "*clear contradiction*" of where he had learned of the father's alleged fate.
12. At paragraph [15], the Judge held that the assertion that the appellant was now at risk in Jalalabad was further diminished by the absence of any evidence from the maternal uncle. He did not accept that his maternal uncle had suddenly vanished and could not be contacted.
13. The Judge went on to find that he was not satisfied, to the lower standard of proof, that the appellant's father was killed in the circumstances claimed by the appellant and his paternal uncle. However, he accepted that the appellant's father was dead; and that, since a very young age, the appellant had been brought up in Jalalabad. Accordingly, he held that any

assessment of risk on return should be on the basis that Jalalabad was the appellant's home area, not the village in Parwan Province.

14. At paragraph [21], he did not accept that the appellant would be without any support on return. He found that his maternal uncle was still living in Jalalabad. He did not accept that the appellant's family was at particular risk from the Afghan government, as his paternal uncle only claimed to have been an interpreter for the Taliban - "*not even a fighter*" - and that was some 17 years ago.
15. At paragraph [22], the Judge found that the appellant's age and the small period of time that he had spent in the UK meant that he would not be treated as westernised. There was no reason to depart from the second age assessment, which made the appellant 19 years of age. Accordingly, there would be no risk for him on return to Afghanistan, even if he chose to reside in Kabul.

The Hearing in the Upper Tribunal

16. At the hearing before me to determine whether an error of law was made out, Ms Reid developed the arguments advanced in the application for permission to appeal to the Upper Tribunal. On behalf of the respondent, Mr Walker adopted the line taken in a Rule 24 response settled by a colleague. In summary, the Judge of the First-tier Tribunal had directed himself appropriately. Throughout the determination, the Judge was fully aware that at the time of arrival the appellant was a minor. There was no challenge to the Judge accepting that the appellant was now 19 years old. The grounds were simply an expression of disagreement, arguing that more weight should have been given to the evidence of the appellant and his maternal uncle.

Discussion

17. There are four principal grounds of appeal, as identified by Ms Reid.

The Burden and Standard of Proof

18. The first ground is that the Judge failed properly to apply the burden of the standard of proof in circumstances where the appellant was a minor at the date of his asylum application and interview, and where the facts which established his claim occurred when he was a minor.
19. I find that this ground is not made out. As stated in the Rule 24 response, the Judge made frequent reference in the course of his decision to the fact that the appellant was a minor at the time of his arrival in the UK. The Judge noted that there was a discrepancy between the account given by the appellant in his screening interview and his subsequent version of events. In his screening interview, the appellant said that the Taliban had taken both his father and his uncle to a neighbouring village. In his witness statement of September 2014, he corrected this claim, saying that, since he had spoken to his uncle in the UK, he had learned that the

Taliban only took his uncle, and not his father. The Judge did not hold this discrepancy against the appellant in his assessment of credibility. The Judge held at paragraph [8] that any assessment of credibility, as well as looking at the background evidence, had to have primary regard to the uncle's evidence. Accordingly, as the Judge rightly recognised, the credibility of the core claim pivoted upon the uncle's evidence, not on the appellant's evidence.

20. At paragraph [12], the Judge correctly set out the lower standard of proof which he needed to apply. The Judge continued: *"Additionally of course on any assessment the appellant was a minor when he arrived and he is relying on what he was told, not on events he actually witnessed."* Ms Reid submits that this self-direction is flawed as the Judge did not make reference to the need for the liberal application of the benefit of the doubt. However, the Upper Tribunal in **KS (Benefit of the doubt) [2014] UKUT 00552 (IAC)**, at paragraph [99], declined to accept the submission that the liberal application of the benefit of the doubt was *"a cardinal principle"*.
21. The Judge was not required to direct himself that he should give more credence to the appellant's core claim simply because he was a minor when he presented his claim, or simply because he was too young – indeed, on his paternal uncle's account, he had not yet been born – to have had first-hand knowledge of the events which allegedly led to his father being killed.

Alleged Flaws in the Assessment of Credibility

22. Ground 2 is that the Judge's assessment of credibility was flawed in three respects.

The Judge's Approach to the Country Expert Evidence

23. At paragraph [5] of his decision, the Judge addressed the Country Expert report of Dr Giustozzi. He noted the expert's evidence that, during the course of the fighting in 2001, many former members of the Hizbi-i-Islami changed sides when it became clear that the Taliban were losing. He also noted that the expert set out his view that blood feuds frequently arose in Afghanistan; that they were of long duration; and that young male children were not at risk. Although he carefully noted this view, the Judge observed that on a general basis it seemed at variance with the shift of allegiance of clans and tribes amidst the continuing conflict in Afghanistan, *"and in any event the primary position of the respondent is that the asserted killing of the appellant's father did not occur as suggested."* The Judge held that the expert's report could not of course assist on that *"basis of dispute"*.
24. Ms Reid submits that the Judge has adopted an incorrect approach, as the expert's report could assist in establishing whether the appellant's account was consistent with the background evidence about the situation

that existed in Afghanistan.

25. I do not consider that the Judge erred in law in his approach to the expert evidence. The Judge acknowledged that the expert supported the appellant's account of future risk, as his account was congruent with the prevalence of blood feuds of long duration in Afghanistan, and the fact that male members of the families affected by the blood feud only become a potential target when they approach adulthood. However, it was open to the Judge to pick up on another strand in the expert evidence. This was that, in 2001, in order to avoid retribution from advancing troops of Jamiat-i-Islami and other allied factions, a number of people (including Pashtuns) switched sides as soon as it became obvious that the Taliban were going to lose. Some commanders of Hizbi-i-Islami who supported the Taliban had begun switching over to the opposition even before 9/11, as their relationship with the Taliban was getting sour. Local and national leaders of Hizbi-i-Islami started drifting towards President Karzai in 2003 and 2004.
26. The significance of this aspect of the background evidence is that a significant number of people who had visibly supported the Taliban in a high profile way were successfully able to switch allegiance to the enemies of the Taliban in order to avoid retribution. Accordingly, to that extent, the appellant's claim that he faced retribution from anti-Taliban villagers in Parwan Province, just because his uncle had collaborated with the Taliban in 1999, ran counter to the background evidence pointing up the relative ease with which people could switch sides, without their past allegiance to the losing side condemning themselves and their male descendants to being permanently associated with the losing side and a constant target for retribution.
27. Dr Giustozzi assumes that the appellant's uncle and father were perceived to be "*key supporters*" of the Taliban. Dr Giustozzi does not in terms offer an opinion on the credibility of the specific account given by the paternal uncle of the circumstances in which the appellant's father was alleged to have been killed. So it was open to the Judge to hold that his report did not assist on this issue.

The Judge's Approach to the Evidence of the Paternal Uncle

28. Ms Reid submits that the adverse credibility finding made against the uncle is flawed, because the Judge made no reference to the uncle's explanation for the perceived inconsistency about when he learned of his brother's death. However, it is clear from paragraph [10] of his decision that the Judge was of the view that the uncle had changed his evidence in the course of cross-examination. The Judge records the uncle as correcting his initial statement, and the Presenting Officer then putting to the uncle that he was lying. The Judge had the benefit of hearing oral evidence from the uncle, and he made a detailed note of the cross-examination in his manuscript record of proceedings. Ms Reid has not provided her own account of how the cross-examination proceeded, and the Judge has not been asked to produce a typed record of his notes of the

cross-examination.

29. Accordingly, it is not shown that the Judge was unfair to characterise the uncle as being vague in his evidence of how he knew the appellant's father was at risk; or that he was unfair to find there was a clear contradiction in the uncle's evidence of the circumstances in which he allegedly learnt of his brother's fate.

The Judge's finding on the cause of the Father's death

30. Thirdly, Ms Reid submits that it was not open to the Judge not to be satisfied that the appellant's father was killed in the circumstances alleged by the uncle, but at the same time not to make a finding as to how or why the father was killed.
31. I consider that Ms Reid has set up a false dichotomy. The Judge accepted at [18] that the appellant's father was dead, and that the appellant had been brought up by his maternal uncle in Jalalabad. It was not perverse of the Judge to accept that the appellant's father was long since dead, while at the same time not accepting that he had been killed by the Northern Alliance by way of retribution for the assistance which his brother had rendered to the Taliban.

Assessment of Risk on Return

32. The third ground of appeal relates to the Judge's findings on risk on return. Ms Reid submits that the Judge's findings on this issue are insufficiently reasoned - in particular the finding that the maternal uncle is still in Jalalabad.
33. Given that the maternal uncle had resided for many years in Jalalabad without any problems, and he had not left Jalalabad at the same time as arranging for the appellant to leave the country, it was open to the Judge to find not credible the claim of the uncle and the appellant that contact with him had been lost; and that his current whereabouts were unknown.
34. The appellant offered an explanation for being unable to contact his maternal uncle, which was that he had fled for his own safety. However, no background or expert evidence was brought forward to support the proposition that Jalalabad was no longer safe for the appellant's maternal uncle and his immediate family. So the Judge did not err in law in not attaching weight to the appellant's suggestion.
35. I consider that the Judge gave adequate reasons for finding that the appellant would not be at risk on return to either Jalalabad or Kabul, and that Ms Reid's submissions to the contrary are on analysis no more than an expression of disagreement with the findings that were reasonably open to the Judge on the evidence before him.

Assessment of the Article 8 Claim

36. The fourth ground of appeal relates to the Judge's assessment of the claim under Article 8 ECHR. With regard to the appellant's family life claim, the Judge noted at paragraph [11] that the appellant's paternal uncle had been out of the UK for nearly a year, for the purposes of visiting his sisters in Pakistan. It was open to the Judge to find that the family life which the appellant currently enjoyed with his paternal uncle and his cousin (his paternal uncle's son) did not meet the **Kugathas** criteria, such that he did not have family life in the UK for the purposes of Article 8 ECHR.
37. With regard to private life, in the light of the Judge's findings of fact on the protection claim, it was clearly open to the Judge to find that there were not very significant obstacles to the appellant's reintegration into life and society in Afghanistan so as to bring himself within the scope of Rule 276ADE.
38. The Judge accepted that the appellant had established private life in the UK, but found that the interference was proportionate, having regard to section 117B of the 2002 Act. In the light of well-known authorities such as **MG (Assessing interference with private life) Serbia and Montenegro [2005] UKAIT 00113**, I do not consider that any further reasoning on proportionality was required.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity

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 26 February 2018

Judge Monson
Deputy Upper Tribunal Judge