Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05941/2016

THE IMMIGRATION ACTS

Heard at Liverpool Employment Tribunals	**Decision & Reasons Promulgated**
On 7th February 2018	**On 2nd March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MOHAMMED [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Schwenk (Counsel)
For the Respondent: Mr C Harrison (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Ransley, promulgated on 31st May 2017, following a hearing at Manchester on 20th April 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, who was born on [ ] 1983. He appealed against the decision of the Respondent dated 21st May 2016, refusing his application for a protection claim under the Refugee Convention and a claim for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the appellant's claim which is accepted by the Respondent Secretary of State, is that he worked as an armoured vehicle driver for two companies in the international community in Afghanistan, and the Tribunal below properly took this into account (paragraph 46). What was not accepted by the Respondent, and not accepted on the evidence by the Tribunal below was that he had received death threats from the Taliban as a result of his employment with these two companies (paragraph 46).

The Judge's Findings

4. The judge properly set out the full detail of the appellant's claim. It was noted that the Taliban in 2009 sent a letter to the Appellant asking him to assist them, and this was followed by more letters thereafter. He resigned in 2010 from his job with Edinburgh International Security Management Company and relocated within Kabul. He joined the Japanese International Cooperation Agency (JICA) as an armoured vehicle driver. While working with the latter on 5th April 2013 he received a first threatening letter from the Taliban. On 23rd June 2014 he received another letter stating that the Taliban Islamic Movement had issued orders for the Appellant's execution. There was a final letter on 18th May 2015. Thereafter on 22nd May 2015 the Taliban approached the Appellant whilst he was in the mosque and showed him a video of his wife, intimating to him that they knew her whereabouts and that she would be targeted by them. On 24th May 2015 the Appellant received a telephone call from the Taliban. The Taliban even went to his house on 25th June 2015. The Appellant thereafter made arrangements to leave Afghanistan and enter the UK illegally on 13th July 2015.

5. The judge did not find the Appellant to be credible in his claim that he was threatened by the Taliban. One example given was that the Taliban in their letters had addressed him as "[A] Khan" which was not his name. The Appellant explained that the reference to "Khan" was honorific employed to give respect to the Appellant, which is why the Taliban wanted to recruit him to work for them, but the judge rejected this explanation (paragraph 24). Another example given was that the Appellant did not leave Afghanistan at the earliest opportunity, even though he was targeted since 2009, but chose to live only in 2015. His explanation was that he loved his country and did not wish to leave even though others who had worked for international companies had availed themselves of the US Green Visa and had been able to take their entire families away to settle in the United States. The judge did not accept the explanation given by the Appellant (paragraph 26). The judge furthermore

did not accept the letter of 23rd June 2014 from the Taliban as being the final letter, and nor was it even a final warning, because the Appellant continued to live in Afghanistan, not informing either his employers or the police of these threats (paragraph 28). The letters being sent by the Taliban also did not make proper sense (paragraph 29).

6. Amongst the explanations given by the judge, was also the rejection of the expert report by Dr Giustozzi, who had expressed the opinion that the Taliban considered themselves the rightful rulers rather than insurgents in Afghanistan. Dr Giustozzi had said, as the judge pointed out, "that it is common for the Taliban to offer extension to individuals who might be useful to them ...". The judge went on to say nevertheless that, "the expert country report is of little help to the Appellant because Dr Giustozzi's assessment of risk on return was made on the basis that the Appellant's account regarding the threats from the Taliban is credible. I find that the account regarding the threats was not credible for the reasons I have given" (paragraph 36).

7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge erred in the consideration and rejection of the Appellant's credibility, of the threatening letters from the Taliban, expecting them to be logical, or to have a proper bureaucracy behind them, given that the Taliban is a fanatical terrorist organisation. Second, that the judge rejected the report of Dr Giustozzi on the basis that the Appellant's account had not been believed when he had said that he had received threatening letters, thus making the report irrelevant, whereas in fact the report should have been considered as part and parcel of the evidence as a whole, and had it been so viewed it would have corroborated aspects of the Appellant's case, such as threats to those seen as collaborators with the coalition forces. Thirdly, the grounds stated that the judge failed to look at all the evidence, including that of a [QN] and [SS], who had themselves worked for international companies, and had availed themselves of a US Green Card Visa to relocate with their families to the United States. Whereas the judge does make reference to these two individuals, there is no reference at all to supporting evidence from a [RD], who was the Appellant's former employer, and he had made it quite clear that the Appellant would be at risk if he were to remain, or to be returned to Afghanistan. Finally, the judge had stated that the Appellant was inconsistent in the description of the weapons the Taliban used when they fired at him, whereas the Appellant had always been entirely consistent in saying that they had used small arms, but without being able to specify these arms.

9. On 19th September 2017, permission to appeal was granted by the Upper Tribunal.

10. On 4th October 2017, a Rule 24 response was entered by the Respondent Secretary of State.

The Hearing

11. At the hearing before me on 7th February 2018, the Appellant was represented by Mr M Schwenk of Counsel and the Respondent was represented by Mr C Harrison, a Senior Home Office Presenting Officer. In his submissions, Mr Schwenk emphasised two particular points.

12. First, that the evidence of [RD], the Appellant's former employer, had not been mentioned at all, even though it was set out in great detail at pages 201 to 203. None of the witnesses, who had put forward witness statements on behalf of the Appellant, had actually attended in person to give evidence. Whereas the evidence of [QN] and [SS] was expressly mentioned, that of [RD] was conspicuous by its absence in the determination. Yet, it was the most significant because it emphatically stated that the Appellant would be executed by the Taliban were he to return to that country. Mr Schwenk submitted that no question had ever been raised about the *bona fides* of [RD] as the employer of the Appellant. Indeed, the Appellant had his wage slips and bank statements demonstrating that he had been employed by the former employer, Mr [RD], and this was accepted both by the Secretary of State and by the judge below.

13. Second, he laid emphasis on the fact that the expert report of Dr Giustozzi was considered separately from the rest of the evidence. Indeed, the view taken by the judge was that because the Appellant's oral evidence was unreliable, and he was lacking in credibility, for that reason the report of Dr Giustozzi would be of no value at all to the Tribunal. This was the wrong way to look at an expert report, and the judge had fallen into error in this regard. Mr Schwenk also dealt with other matters, such as the name of the Appellant being referred to as "[A] Khan" by the Taliban. He stated that the Appellant had given a perfectly adequate explanation for this, namely, that since the Taliban were setting out to recruit him, as a person with particular skills which would be of value to them, they were referring to him with the honorific "Khan". Furthermore, there was no necessary rhyme or reason in the way that the Taliban operated. This meant that if they wrote letters, and the letters were not logical in the way that they flowed, that did not mean to say that the Taliban did not pose a threat to someone who had been accepted as working for the coalition forces in a military security capacity.

14. For his part, Mr Harrison submitted that he would rely upon the Rule 24 response. If the judge rejected the report of Dr Giustozzi (at paragraphs 36 and 37) the reasons had been given. If the judge found the Appellant to be inconsistent about the weapons used by the Taliban to attack him, the judge had provided reasons for why that inconsistency was damaging to the Appellant (paragraph 31). Nevertheless, Mr Harrison submitted that Dr Giustozzi's report "has not been read in the general mix" and that "there are concerns therefore that credibility has been wrongly assessed". The Secretary of State had accepted that the Appellant had worked for two foreign companies, and this was why the approach of the judge may have mattered. In any event, however, there was no material error of law.

Error of Law

15. I am satisfied that the making of the decision by the judge involved 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 and remake the decision. My reasons are as follows. First, the failure to refer to the statement of [RD] means that the most important evidence, namely that of his former employer, was strongly hinted at fatal consequences for the Appellant were it to return to Afghanistan, had been overlooked. There was no mention of [RD] in the determination. Second, the approach to the expert report of a person of some considerable experience in Afghanistan cases, namely Dr Antonio Giustozzi, meant that it was sidelined and rendered unimportant, quite simply because the judge had first made a finding that the Appellant's evidence was not reliable and to be trusted, whereas the proper approach was to treat the evidence as a composite whole together with the Appellant's evidence.

Re-Making the Decision

16. I have remade the decision on the basis of the findings of the Immigration Judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal for the following reasons.

17. First, this is a case where the Respondent Secretary of State "has accepted that the Appellant had worked as an armoured vehicle driver for two companies in the international community in Afghanistan" (paragraph 46).

18. Second, those who had worked in such a capacity, namely, people such as [SS] and [QN], had availed themselves of the Special Immigration Visa Scheme, and were granted Green Cards to move to the US, because of the severity of threats that was felt by such people from the Taliban, as they were working for foreigners who had come to Afghanistan. The judge's rejection of the Appellant's explanation that he had himself not chosen to do so because he loved his country and wanted as much as possible to remain there, on the basis that when he was twice asked this question, "on each occasion the Appellant failed to provide an explanation as to why he failed to apply for a special immigration visa under the US Scheme like his former colleague [QN]" (paragraph 41) is difficult to follow. The Appellant had provided an explanation, namely, that he wanted to remain in Afghanistan as much as possible. There is no reason why such an explanation should have been rejected. It was altogether easier for the Appellant to simply take the perfectly easy and lawful route of applying for a special immigration visa as others were doing, them to have to set out to claim asylum in the UK, unless he had to. The Appellant's account is that he had to do so once the threatening letters started arriving and he became fearful of his life.

19. Third, the expert report of Dr Giustozzi is relevant in this respect because as the judge rightfully recognises he had "expressed the opinion that the Taliban considers themselves the rightful rulers rather than insurgents in Afghanistan", and it was his view that "it is common to the Taliban to offer

extension to individuals who might be useful to them" (paragraph 36). That would have given considerable credence as to why the Appellant behaved in the manner that he did. It has to be remembered, after all, that the protection claim has to be assessed at the lower standard. Accordingly, it does not follow that "The Appellant's failure to apply for such a visa and his failure to explain why he did not apply for such a visa after receiving repeated threats from the Taliban – in particular the death threat dated 23rd June 2014 – has damaged the core of his claim" (paragraph 42), simply does not follow.

20. Finally, and most importantly, there is a statement by "[RD]" (at pages 201 to 203). He is a British citizen, born and raised in Scotland. He served eleven years in the Royal Marines Commando Force from 1977 to 1988. He states that he had "then served worldwide as a security advisor to numerous countries, governments, and heads of state". He goes on to explain that, "[A] was recommended to me personally". The statement that he gives is nuanced and sensitive. It states (at paragraph 202) that, "my personal opinion was that we were complicit in creating a situation where those who would do us harm were given the information on the young men and women who are indeed only wishing to work and gain employment." With respect to the risk specifically to the Appellant, he goes on to say that, "I believe he was threatened and given night letters as was the practice of the Taliban ...".

21. But perhaps most strikingly, [RD] is clear that, "I assure you I as a security subject matter expert have absolutely no doubt that he will be executed if he is forced to return to Afghanistan and it will endanger his family also".

22. I find that this evidence, being the evidence of the Appellant's former employer, who had taken on the Appellant for employment when the Appellant was personally recommended to him, is credible and there exists no reason why it should not be taken at face value. The evidence of [QN] and [SS] was similarly accepted.

23. When the evidence of the Appellant, together with that of these three witnesses, is read with that of the expert, Dr Giustozzi, it is clear that, on the lower standard, the Appellant succeeds in making out his claim. He has a well-founded fear of persecution for a Convention reason and is entitled to international surrogate protection.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 26th February 2018