



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06070/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 5th June 2018

Decision & Reasons Promulgated
On 20th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

S J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel of Counsel, instructed by Parker Rhodes Hickmotts
Solicitors

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge James made following a hearing at Bradford on 10th November 2016.

Background

2. The appellant claims that he arrived in the UK in 2010 and that he is a citizen of Afghanistan. He sought asylum on 7th December 2015 on the grounds that he would be at risk on return from the Taliban. He said that he was born in Jalalabad but moved

to Pakistan when he was about 5 or 6 years old following the death of his father. He lived in Peshawar until 2010 when he left for Iran and then travelled through Europe until he reached London. He supported himself in the UK by helping people and they gave him money, food, cigarettes and clothing. He was homeless and lived on the streets for five years.

3. Judge James dismissed the appellant's claim on all grounds. He did not accept that there was any truth at all in the appellant's claim to fear the Taliban. He did, however, accept, on balance, that he was an Afghan national.
4. The appellant then sought to challenge that decision, and was granted permission to do so on the 27th February 2017.
5. On 2nd May 2017 this matter came before me. I was satisfied that the judge did not properly engage with the evidence before him in considering whether the appellant could reasonably be returned to Kabul, since no findings of fact had been made in relation to his claim that he has not lived there since the age of 5 and has no family there. This was particularly important in the appellant's case since it is clear that he suffers from significant medical issues which limit his ability to find work. However, there was no merit in the appellant's challenge to the judge's findings on the core of his asylum claim. A copy of my decision made on 11th May 2017 is appended to this. I reserved the matter to myself and fixed a new hearing date for 10th July 2017. For reasons which are unclear, that direction was not followed.
6. Unfortunately there was then a procedural error in the listing of this case in that it was erroneously listed before First-tier Tribunal Judge Moxon on 6th November 2017. Judge Moxon's decision was set aside by Upper Tribunal Judge Dawson on 26th February 2018 since First-tier Tribunal Judge Moxon had no jurisdiction to hear the appeal sitting as a Judge of the First-tier Tribunal. It then came before me on 5th June 2018

The Resumed Hearing

7. At the commencement of the hearing all parties agreed that, the findings of fact in relation to the appellant's asylum claim having been preserved, the issues to be determined in this hearing are whether the appellant is entitled to humanitarian protection as a consequence of the security and humanitarian situation in Afghanistan and/or whether the UK would be in breach of its obligations in relation to Article 3/8 of the ECHR by returning him to Kabul.
8. The appellant's representatives produced a bundle of documents including an up-to-date witness statement, an expert report prepared by Dr Antonio Giustozzi dated 31st March 2018 and a report from the appellant's GP dated 24th October 2017 together with a large bundle of background evidence. Mr Mills gave me a copy of the country guidance case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118.

The Evidence

9. The appellant adopted his witness statement. He says that he suffers from severe back problems, which inhibits his standing and walking, and depression. He takes sixteen tablets a day to manage his back pain and has made a number of visits to A&E since 2016. He presently lives in a house which is adapted for people who are disabled.
10. The appellant claims that he has no relatives in Afghanistan aside from two maternal uncles but he does not know where they live.
11. He worked as a farmer whilst in Pakistan but could not say how long for. Mr Mills asked him how he supported himself between 2010 and 2015. He said that he cleaned people's houses until he became unwell. Although he had always had difficulties they had increased as time went by, and he could not remember when his back pain started.
12. He has a wife in Pakistan but says that he is not in contact with her. He managed to make a call connect five or six months ago but was unable to have a proper conversation, and cannot write because he had no address for her.

Submissions

13. Mr Mills submitted that the appellant's evidence was not credible. In his view it was likely that he did have family in Afghanistan. He accepted that the appellant clearly suffered from back problems but submitted that the medical evidence was not strong and on the appellant's own evidence he had worked in the UK and supported himself for five years. He relied on the latest country guidance case of AS, which held that there was no Article 15(c) risk in Kabul. It was likely that the appellant would be able to undertake non-manual employment and that he would be able to get assistance from family members there. He asked me to dismiss the appeal with respect to the Qualification Directive, Article 3 and Article 8 with respect to paragraph 276ADE(vi).
14. Ms Patel submitted that the appellant had given credible evidence about his family and said that he would have no support network in Kabul. She relied upon the medical report from the GP, which discloses that the appellant has a degenerative condition and osteoarthritis which made it impossible for him to work. He was illiterate and therefore unable to do anything other than unskilled labour.
15. She reiterated that he was in a different position from the appellant in AS, who was a healthy young man, and, without access to employment, housing or medical treatment, his return would result in his suffering inhumane or degrading treatment. Alternatively, his appeal ought to be allowed under the Immigration Rules, which, she said, imposed a less high threshold.

Findings and Conclusions

16. The appellant says, and I accept, that he suffers from debilitating back pain together with depression and he takes a significant number of painkillers, which may well inhibit his ability to give clear and coherent evidence.
17. That being said, I find him not to be a credible witness.
18. The appellant was born on 1st January 1975. He is therefore 43 years old. He said that he left school after levels 1 to 3 and therefore by definition must have been supporting himself for at least 20 years. He said that he had had a problem with pain in his right side from the beginning and whilst it was not so severe in Pakistan he could not remember when it had first begun and he had just done labouring work there for a few days to support himself. He would only admit to supporting himself for weeks rather than months.
19. I conclude that in fact the appellant worked for many years in Pakistan. He accepted that he worked in the UK between 2010 and 2015, although again, he sought to minimise it. I do not accept that the pain which he now suffers nor the medication which he takes to control it is a complete explanation for his inability to give any kind of accurate account about what he did in Pakistan or in the UK.
20. The appellant comes to this hearing with a finding that he did not tell the truth to the Home Office when he said that he was approached by the Taliban, who had tried to recruit him. He was evasive about his work history. It is against this background that I have to assess whether he does in fact have access to family support in Kabul. His evidence was discrepant. At first he said that he had no family in Afghanistan but then said that he had two maternal uncles there. When asked whether his wife's family were in Pakistan he said that they were all in Afghanistan.
21. I cannot make a positive finding that the appellant has the availability of a support network in Kabul other than to observe that he has been untruthful about every other aspect of his claim and therefore it is not unreasonable to conclude that he has not given credible evidence about this aspect either. There is simply no way of knowing what relatives, if any, he may have there.
22. Indeed, nothing that the appellant has said can be relied upon. The only matters upon which a safe conclusion can be reached are those which are objectively verifiable. The letter from the GP states that his medical condition is longstanding and degenerative. There is no basis to reject that evidence. I accept that his back pain is now worse than it has been in previous years, and very unlikely to improve.
23. The appellant therefore needs to be assessed on the basis that he is a middle aged man who has not been truthful with the authorities about the circumstances which he left behind in Afghanistan and Pakistan and since, but who does visibly suffer from a degenerative back condition for which he has been prescribed strong painkillers. He also takes medication for depression.
24. The recent country guidance decision in AS concluded that:

25. "Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not in general be unreasonable or unduly harsh for a single male adult in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.
26. However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health and their language, education and vocational skills when determining whether a person falls within the general position set out above.
27. A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.
28. Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh."
29. The appellant cannot succeed in relation to the Qualification Directive on account of the general security situation in Kabul, and Ms Patel did not seek to argue otherwise.
30. At paragraph 230 of AS the Tribunal concluded as follows:
31. "Our findings above show that it is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. However, we emphasise that a case by case consideration of whether internal relocation is reasonable for a particular person is required by Article 8 of the Qualification Directive and domestic authorities including Januzi and AH (Sudan). When doing so, we consider that there are a number of specific factors which may be relevant to bear in mind. These include, individually as well as cumulatively (including consideration that the strength of one factor may counteract and balance the weakness of another factor):
- (i) Age, including the age at which a person left Afghanistan.
 - (ii) Nature and quality of connections to Kabul and/or Afghanistan.
 - (iii) Physical and mental health.
 - (iv) Language, education and vocational skills."
32. The Tribunal considered the question of employment/socio-economic conditions from paragraphs 144 to 154 of AS. They noted that the latest unemployment figures from 2014 reported unemployment of 24% and a further 15.3% of people underemployed. Official figures in 2015 showed a national unemployment rate of 40% (with figures higher in the cities than in rural areas). The latest indicator from

the Asia Foundation survey in 2016 found only 45% of all respondents saying that they were involved in activity that generates money. The situation is therefore deteriorating. Whilst high-skilled jobs were available, access to employment could be hampered by lack of basic skills like literacy, numeracy and vocational skills. The job market was recorded as being very competitive, with positions being given to family members rather than being advertised. Day labouring work is available but extremely precarious, unlikely to be regular with poor pay for short periods.

33. Dr Giustozzi's report confirms the difficulty which the appellant would face in obtaining work. Indeed he said that he would be unable to find employment.
34. Some assistance is available on return and IOM has assisted over 15,000 voluntary returnees from Europe since 2003 and in 2016 alone 6,711 people voluntarily returned to Afghanistan from Europe through the Assisted Voluntary Return and Reintegration programme. Reintegration assistance is available with some receiving an additional package of between 800 and 2,500 euros to assist with their life plan for accommodation, employment or education.
35. In the absence of any authority being cited to me, I am not prepared to find that the conditions in Kabul reach the Article 3 threshold, even for an appellant such as S J, who has significant mobility issues. A man who has lied about every other aspect of his evidence may well have some support there, and he would potentially have access to the assistance programme.
36. Paragraph 276ADE(vi) sets out the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK. For leave to be granted the appellant must establish that there would be very significant obstacles to his integration into the country to which he would have to go if required to leave the UK.
37. The scope for allowing an appeal under paragraph 276ADE(vi) when it has been found that an appellant does not meet the required threshold under Article 3 is very limited. Nevertheless, Mr Mills conceded that it was conceivable that this appellant could fall within that category.
38. S J has visible and significant mobility problems. There is no reason at all to question the GP's assessment of his medical condition. Although I have found that it is very likely that in the past the appellant has been able to do manual work there is no doubt that in a situation where there is 45% unemployment he would now be most unlikely to be able to obtain work of any kind. He is illiterate. His ability to work would be hampered by the difficulty he would have in accessing his painkillers since according to the evidence presented in AS nearly half of Kabul residents cannot afford medical treatment as patients need to buy their own medicines and in any event pharmacies are poorly equipped.
39. The appellant's difficulties in accessing employment would necessarily impact heavily upon his ability to obtain housing, especially as, again according to the evidence presented to the Tribunal in AS, around 74% of people in Kabul live in

informal settlements which have very limited sanitation, drainage or access to potable water.

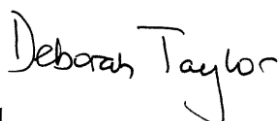
40. In summary, the reality is that the appellant if returned would in all likelihood be unable to find work in Kabul, be unable to access medication and consequently be unable to be adequately housed. In this light, whilst there is a possibility that he could be assisted by wider family members it is hard not to conclude that his particular situation would amount to significant obstacles to integration. The conditions for all Afghan nationals are very challenging but it is difficult to see how this visibly disabled man could reasonably expect to be able to participate in daily life in Kabul.
41. The respondent chose not to challenge the original judge's conclusion that the appellant was from Afghanistan, even though Judge James had otherwise disbelieved the appellant's claim in its entirety. That being the case, and the respondent's stated position is that the appellant would be returned to Kabul, I conclude that there are very significant obstacles to him doing so.

Decision

42. The original judge erred in law. His decision has been aside. It is remade as follows.
43. The appellant's appeal is dismissed on asylum grounds.
44. The appellant's appeal is dismissed on humanitarian protection grounds.
45. The appellant's appeal is allowed with respect to the Immigration Rules, paragraph 276ADE(vi), and Article 8 of the ECHR.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

46. 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 his 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 17 June 2018

Deputy Upper Tribunal Judge Taylor

APPENDIX



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06070/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 2nd May 2017

Decision & Reasons Promulgated
On 11th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

S J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Patel, instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr Diwncyz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge James made following a hearing at Bradford on 10th November 2016.

Background

2. The appellant is a citizen of Afghanistan born on 1st January 1975. He applied for asylum in the UK on 7th December 2015 having arrived here from Pakistan in 2010, claiming that he could not return to Afghanistan because he feared the Taliban.

3. The judge did not believe him. He said that the evidence lacked credibility and he did not accept that the appellant either had a genuine subjective fear of the Taliban or that they had sought to recruit him in Peshawar which is where he had lived before he came to the UK. He said that there was no significant medical evidence which established that the appellant, who suffers from problems with his mobility, would not be able to access healthcare either in Kabul or in Peshawar.
4. While the appellant may not have lived in Afghanistan since he was a boy he had been living in Pakistan which had a significant Afghan refugee population. He then wrote as follows:

“Finally I have considered whether the appellant is an Afghan national or a Pakistan national. On balance I am satisfied that he is a displaced Afghan national. However for the reasons provided above I would dismiss his appeal in either case.”

The Grounds of Application

5. The appellant sought permission to appeal on a number of grounds challenging the judge’s assessment of credibility in relation to Section 8 of the 2004 Act and arguing that the judge had failed to have regard to relevant evidence when considering whether the appellant could be returned to Kabul.
6. Permission to appeal was granted by Judge Grant on 23rd February 2017.
7. On 10th March 2017 the Respondent served a reply defending the determination.

Consideration of Whether there is an Error of Law

8. I am satisfied that the judge did not properly engage with the evidence before him in considering whether the appellant could reasonably be returned to Kabul. No findings of fact were made in relation to his claim that he has not lived there since the age of 5 and has no family there. This is particularly important in the appellant’s case since it is clear that he suffers from significant medical issues which limit his ability to find work.
9. There is no merit in the Section 8 challenge. The judge was plainly entitled to take as his starting point the appellant’s failure to claim asylum for five years after his arrival in the UK as damaging his credibility. The judge’s findings in respect of the appellant’s claimed fear of the Taliban will stand.
10. The sole issue at the resumed hearing will be whether the appellant faces conditions in Kabul such as to engage Article 15(c) of the Qualification Directive.
11. The appellant must serve a fresh bundle of all of the evidence upon which he intends to rely, including updated medical evidence, seven days before the hearing which is fixed for 10th July 2017. An Afghani Pushtu interpreter is required.

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.

Deborah Taylor

Signed

Date 11 May 2017

Deputy Upper Tribunal Judge Taylor