



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07007/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10 July 2018

Decision & Reasons Promulgated
On 16 July 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

JS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A De Ruano of Counsel instructed by Fadiga & Co Solicitors
For the Respondent: Miss Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on 1 January 1991. He arrived in this country in a lorry on 23 June 2016 and applied for asylum. His case was that he was targeted by the Taliban because of his work for the Ministry of Defence (MoD). The Secretary of State accepted that the appellant had been employed as a labourer in the Labour Support Unit (LSU) in Camp Bastion from the records held by the MoD but that his account had been inconsistent with those records. He would no longer be at risk from the Taliban on his return. Relocation to Kabul or Jalalabad would be

reasonably available. There were no very significant obstacles to his reintegration. The appellant appealed and his appeal came before a First-tier judge on 5 February 2018. The appellant gave oral evidence. Reference was made to the then prevailing country guidance **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**.

2. The judge found the MoD documents to be internally inconsistent and contradictory and in paragraph 54 of her decision stated that she could attach little weight to the MoD evidence and that its inherent contradictions very significantly damaged its credibility. The decision continues:

“55. Despite the serious issues with the MOD evidence, I find that the appellant did work as a labourer in Camp Bastion in 2013-2014, as he states. The reasons for this are the photographs provided by the appellant of his work and workmates, his account of how he obtained the employment (via a cousin), the fact that he provided full details of his employment in his interviews together with labour numbers and identity documents prior to any check being carried out with the MOD. Further, although the MOD evidence is significantly compromised, the MOD confirmed on two occasions that a JS with his claimed date of birth worked as a labourer for the LSU.

56. I go on to consider his account of specific threats from the Taliban. I find that the appellant’s account of the Taliban’s raid on his family house is probably true. His account is consistent in his interviews, his statements and his oral evidence to the tribunal. It is plausible that the Taliban would seek a person who was a former worker for the UK forces once he was no longer under any such protection and might be easily found at his family home. The objective country guidance evidence is consistent as to a family being threatened and the involvement of the village elders.”

3. The judge considered corroboration provided by letters from the appellant’s family and concluded that his account of his flight to Kabul and his refuge with members of the family there was probably true and that it was plausible that his family members would not want him to stay once they heard that the Taliban were seeking him.

4. However there was an aspect of the appellant’s account that the judge did not accept. The appellant had claimed that he had received a telephone call in September 2015 purporting to be from the UK Embassy. The appellant had contacted the UK Embassy who had said that no such call had been made and the appellant attributed the call to the Taliban. The judge dealt with this aspect of the case as follows:

“61. I now consider the telephone call. I note that, on the appellant’s case, there is no direct evidence of any connection between the Taliban and the call. The appellant’s account of the phone call in his substantive interview was somewhat unsatisfactory as to recollection of dates. He told the interviewer

that he was told to come to the UK Embassy 'on the 14th' yet was unable to say how long he had been in Kabul but it 'was a few months'.

62. In his witness statement he says that the call came on 13.9.15. (The chronology on which he relies states that the phone call came on 13.9.15. However, I attach little weight to this as it appears to be erroneous as it states that he fled his village in February 2015 after the Taliban raid in January 2014). The appellant's account is broadly consistent that he fled the country soon after receipt of the call. Accordingly, on his case, he was in Kabul without any harassment or threat not for 'a few months' but for a year and seven months. This is corroborated by his saying in the substantive interview (on 23.6.16) that he had fled about 9 and a half months previously. I do not find this to be a minor discrepancy. The impact of such a call might be expected to be greater if it occurred a few months after a Taliban raid, rather than over four times as long later. The appellant does not comment upon this discrepancy in either of the two letters concerning issues arising out of his two interviews by his lawyers, nor in his witness statements nor in oral evidence.
63. I do not find that the account of the telephone call is inherently credible. He gives no explanation as to how the Taliban could have obtained his telephone number. This is in contrast to the way the Taliban could have traced him to his family home; according to all the country evidence Afghan society is highly tribal and family based.
64. There is no reference in the country evidence of the Taliban using such oblique methods of intimidation. It is true that the British authorities took the appellant's reports seriously (by giving him \$1300). However, this does not in itself indicate that the British treated any such account of the telephone call as plausible. On his own case he had not previously approached the British about the raid on his family home which – as a more serious allegation – would be more likely to have prompted them to take steps to assist him. Further, on the appellant's case, this oblique approach was in sharp contrast to the Taliban's very direct threats when they came to his family home.
65. Taking this evidence in the round I do not find that the account of the appellant's phone call to be true. I accept that a person fleeing persecution may not remember the exact sequence of events, particularly where they have been through traumatic experiences. I am also mindful of the fact that a person genuinely fleeing persecution may exaggerate an account or lie in order to bolster an account out of fear of return. However, even having regard to all of these considerations, I am not satisfied that the appellant has given a credible account of the telephone call. It is the cumulative effect of these matters which has brought me to that conclusion."

5. While the judge accepted that the appellant had been threatened by the Taliban in January 2014, she did not accept that he had suffered any treatment capable of amounting to persecution after this. She was not satisfied there was any real likelihood that he would be subject to persecution if returned to Afghanistan, primarily because after his relocation he had suffered no further harassment or threats.

6. She referred to H and B v UK [2013] ECHR 298 and concluded her decision as follows:

“70. I remind myself that following H and B v UK, as the appellant falls within a risk category (former worker for the UK forces), a particularly careful examination of the risk on return is required. However, as in AK Afghanistan not every person with a link to the international community is automatically at risk. I must consider the individual circumstances of the case.

71. I also consider the more recent country evidence to which I have been taken. I do not accept the appellant’s submission that this shows that the situation as to the Taliban being more able to track down targeted individuals has changed materially since H and B. The country evidence states that whilst the Taliban can gather information in urban areas, it is more difficult. The objective evidence shows that the security situation may well have deteriorated, and the Taliban are able to carry out attacks in Kabul. However, there is little evidence to show that they are materially more able to track people in Kabul. I consider the Dr Giustozzi report of 23.8.17 that the Taliban intelligence does seek to intimidate ‘collaborators’ of the Kabul government. However, the efforts are focussed on individuals effectively opposed to the Taliban, which on his case does not include the appellant. The report states that the Taliban intelligence have a very wide coverage although quality of intelligence is problematic. I note that the Taliban claim 150 informers inside the security and government in Kabul. However, supposing this to be accurate, there were over 4.5 million people in Kabul in 2015 including many internally displaced persons.

72. The respondent’s Country Information states that low profile individuals are unlikely to be of continuing interest to AGEs [anti-government elements] once they have left the job and/or relocated. However, those like the appellant who worked for foreign forces might not be able to escape targeting by simply quitting their job. Low profile individuals who have worked for foreign forces may be targeted for instance if accused of spying. I have accepted that it is probably true that the appellant was targeted soon after leaving British employment and returning to his home village. However, he has not been targeted, I have found, after he relocated to Kabul. Nor was he accused of spying, on his case. I note that the elders and the appellant’s father stated in their letters that the Taliban still sometimes ask about the appellant’s whereabouts.

73. In light of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 I have considered the appellant's behaviour in relation to subsections 2, 3, 4, 5, 6 and 9. I note that the appellant travelled across a number of safe countries including spending 8 months in France before coming to the UK to claim asylum. I note that section 8 considerations are not determinative, but I find that they do go to the appellant's credibility as to his belief in his risk on return.
 74. I have concluded that the appellant's failure to claim asylum in a safe country being all those through which he travelled - especially France - en route to the United Kingdom when he had a reasonable opportunity so to do damages his credibility as to the genuineness of his belief in the risk on return.
 75. I have found that he was not threatened by the Taliban for over a year and a half before leaving Afghanistan, and this damages his credibility as to his reason for leaving Afghanistan when he did.
 76. These two last points are very far from determinative, but they do form part of my findings.
 77. Carefully considering the risk on return and applying anxious scrutiny to the issue, I find that the appellant has not established that there is a real risk of persecution on return."
7. No claim had been made in relation to human rights outside the Rules and no case was pursued on humanitarian protection grounds and the judge dismissed the appeal on all grounds.
 8. There was an application for permission to appeal. The First-tier Tribunal dismissed the application on the basis that the decision was careful and well-reasoned. The application was renewed. The Upper Tribunal Judge noted that evidence given by the Ministry of Defence was not necessarily inconsistent and it was for the respondent not the appellant to explain any inconsistencies and it was an error of law to find that the inconsistencies damaged the appellant's credibility when the evidence came from the respondent and not the appellant. The Upper Tribunal Judge referred to **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** - insufficient weight had been given to the appellant's previous occupation and past persecution and the payments made to him when considering his return to Kabul.
 9. In relation to this point it is worth noting that the First-tier Judge's decision was signed on 23 February 2018 and promulgated on 28 February 2018 and the decision in the country guidance case was signed on 19 March 2018 and promulgated on 23 March. It was agreed at the hearing before me that absent a material error of law being identified in the decision, the mere fact that subsequent to the decision there had been a country guidance case would not of itself give rise to a material error of law. Counsel relied

on the grounds and argued that some of the evidence had been accepted by the First-tier Judge and the risk of persecution would not be removed simply by the passage of time. Past persecution was indicative of future risk, and accordingly there was a material error of law.

10. Miss Isherwood submitted there was no material error of law. Despite the judge's finding that she could place little weight on the MoD evidence she accepted that the appellant had worked as a labourer in Camp Bastion as claimed and that his account was probably true. She had accepted the letters sent from the appellant's family. However, the judge had rejected the evidence concerning the telephone call and it was not the evidence from the MoD that had caused the judge to find as she had done.
11. In relation to the country guidance it was plain that the judge had had regard to the more recent evidence following **AK (Afghanistan)** and had considered the background material that had been put before her.
12. In response Counsel acknowledged that the judge had accepted much of the evidence and that the problems had arisen because of the telephone call and when it had taken place. Although the appellant on this analysis had been in Kabul without any harassment or threat for a much longer period, the lack of incidents did not mean that the danger had disappeared, and the judge's findings had been insufficient in the circumstances.
13. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the judge's conclusion if it was materially flawed in law.
14. Having carefully considered the material before me I am not satisfied that the judge erred in her consideration of the Ministry of Defence material. It is quite clear from a reading of paragraphs 51 to 54 that she could attach little weight to the MoD evidence because of its inherent contradictions – she was not attributing blame to the appellant. Her approach was entirely fair and as she says in paragraph 55 of her decision, despite the serious issues with the MoD evidence, she did find that the appellant had indeed worked in Camp Bastion as claimed between 2013 and 2014. His account was corroborated by other supporting material. She accepted the evidence that the appellant has worked as a labourer for the LSU which had been confirmed by the MoD evidence despite it being "significantly compromised". This was very far from turning the negative credibility assessment made in respect of the MoD evidence into an attack on the appellant's credibility.
15. The judge approached her task with great care. Counsel referred to the issue of past persecution and future risk but the judge clearly had the question of past persecution well in mind as appears from paragraphs 66 and 67 of the determination and she then turns in the following paragraph to consider *future* persecution. Because the appellant had been a former worker for the UK forces the judge reminded herself that a particularly careful examination of the risk on return was required. I detect no error in her approach. Although since her decision there has been fresh country guidance the

judge had regard to the background material since **AK (Afghanistan)**. Counsel had referred to a report by Dr Giustozzi of 23 August 2017, for example. The judge having carefully evaluated the country guidance and the background material did not materially err in law in concluding that the appellant did not face a real risk of persecution on return.

16. For the reasons I have given this appeal is dismissed. The decision of the First-tier Judge to dismiss the appeal on asylum, humanitarian protection and human rights grounds is confirmed.

Anonymity Direction

I find that in the particular circumstances of this case it is appropriate to make an anonymity order.

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 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.

TO THE RESPONDENT **FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date 13 July 2018

G Warr, Judge of the Upper Tribunal