



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07016/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On July 11, 2018

Decision & Reasons Promulgated
On July 16, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

HASHMATULLAH [Z]
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer, Counsel, instructed by Broudie Jackson and Canter Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity direction is made.
2. The appellant is a national of Afghanistan. The appellant entered the United Kingdom on July 11, 2016 and claimed asylum the same day. The appellant attended a substantive interview on December 15, 2016. The respondent refused the appellant's application on July 10, 2017 under paragraph 336 HC 395.

3. The appellant lodged grounds of appeal on July 26, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Holmes (hereinafter called “the Judge”) on January 9, 2018 and in a decision promulgated on February 15, 2018 the Judge dismissed the appellant’s appeal on protection and human rights grounds.
4. The appellant appealed this decision on February 20, 2018. The appellant’s grounds included that the Judge had erred:
 - (a) By requiring the appellant to produce corroborative evidence. During the hearing the absence of such evidence was not put to the appellant and to count the absence of such evidence against the appellant is improper and arguably an error in law.
 - (b) By failing to have full regard to the report of Tim Foxley MBE which supported his claim that someone of the appellant’s background could be associated as being in league with the Americans even though the appellant worked with the United Nations.
 - (c) By failing to have regard to answers given both in interview and cross examination concerning the amount of times he was contacted by the Taliban by telephone.
 - (d) By failing to have regard to the objective evidence that demonstrated a person with the appellant’s profile would be at risk.
 - (e) By failing to depart from AK (Afghanistan) CG [2012] UKUT 163 (IAC).
5. Permission to appeal was granted by Judge of the First-tier Tribunal Bird on March 9, 2018 who found it arguable that the Judge had erred by requiring corroboration and failing to have regard to the guidance given by the Court of Appeal in TK (Burundi) [2009] EWCA Civ 40. An adverse finding under section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 was made when no reliance had been placed on this by the respondent.
6. The respondent lodged a Rule 24 letter dated March 28, 2018 in which he opposed the grounds of appeal. The respondent argued that the Judge was not seeking corroboration but noted that he had been unable to produce documents from Afghanistan but had been able to produce other important documents. However, no adverse finding had been made on the missing documents. Whilst an adverse finding was made under section 8 this was not material in light of the other credibility findings raised.
7. Prior to taking submissions Mr Greer conceded that his final ground (see paragraph 4(e) above) had no merit in light of the recent country guidance of AS (Safety of Kabul) CG [2018] UKUT 118 and he would not be pursuing the section 8 point highlighted by the Judge who granted permission.

SUBMISSIONS

8. Mr Greer submitted there had been a number of errors in law. In paragraph 15 of his decision the Judge appeared to conclude that the appellant's credibility was damaged by a failure to adduce corroborative evidence. He reminded the Tribunal that in protection claims corroboration was not required and adverse findings should only be drawn if such evidence was readily available and no excuse had been provided for not providing such evidence. Mr Greer submitted that not only did the Judge appear to hold against the appellant his failure to provide corroborative material, but he failed to give the appellant the opportunity to respond to his concern.
9. Mr Greer further submitted that the Judge had wrongly placed no weight on the "night letter" from the Taliban and failed to give weight to the expert report of Mr Foxley MBE. Although he noted the report he failed to apply the findings.
10. The third ground of appeal centred around a finding in paragraph 19 that the appellant had been inconsistent about calls received. He submitted the Judge had erred in finding there was a major inconsistency as he argued the evidence in his interview and other evidence was that he had received 10 or more calls. Such an inconsistency, if it existed was minor and was insufficient undermine the plausibility of his account.
11. The final ground centred around the Judge's finding in paragraph 20 there was no evidence of attacks against "small fry". He referred to the appellant's bundle (page 214) and paragraph 3.21 which set out attacks on areas similar to those worked by the appellant.
12. Mr McVeety adopted the Rule 24 letter and submitted the Judge had not required corroboration but had commented that the appellant had been able bring with him evidence but had since obtained evidence from the United Nations that not only had he worked for them that he was a good worker. It was telling therefore that there was no evidence produced that he personally had received any threats. The Judge was entitled to draw that finding and it was not an error to have to raise that point with the appellant.
13. Turning to the issue of targeting he accepted that certain people were targeted but the evidence adduced before the Judge did not convince the Judge that he had been targeted or would be targeted. He no longer worked for them and there was no evidence adduced that he had been threatened apart from the oral evidence of the appellant. The objective evidence was therefore a document that could be considered but was not a deciding factor as to whether this appellant had been targeted or would be targeted.
14. Mr McVeety accepted that the distinction on the "night letter" was a minor point and not something he personally would have taken but the appeal had not been dismissed for this reason alone. At paragraph 19 the Judge made numerous findings that were adverse to the appellant and concluded that he would not be persecuted or face serious harm.

15. Having heard the respective submissions, I reserved my decision.

FINDINGS

16. The appellant had applied for protection on the grounds that through his former employment in Afghanistan he would face a real risk of persecution from the Taliban if he was returned.
17. In considering the appellant's claim, the Judge had regard to his oral and written evidence and at paragraph 15 of his decision the Judge made the point that he had to consider the account "without the benefit of any corroborative evidence from other factual witnesses".
18. This was not a requirement that the appellant should have produced corroborative evidence but simply a statement of fact that there was no such evidence despite the fact that he had reported incidents not only to his employer but also to the police. The Court of Appeal gave guidance in TK (Burundi) about how evidence should be approached and both Mr Greer and Mr McVeety acknowledged that where evidence was potentially readily available then the absence of such evidence was a factor the Tribunal could have regard to.
19. The Judge noted that he had brought with him numerous documents from his employer and had remained in constant contact with relatives. Mr Greer submitted the Judge erred by drawing an adverse finding without challenging the appellant over this.
20. The Judge's role is to assess all the evidence and in doing so, in this case, the Judge concluded that other evidence could have been obtained and that no steps had been taken to obtain that evidence. The Judge did not reject the appellant's account because he failed to obtain those documents but he did express concern that such evidence, which in his view would have been readily available, had not been obtained.
21. Mr McVeety took up this point in his submissions and whilst I take on board Mr Greer's submission I do not accept a Judge errs by not putting one of his findings to the appellant. It had of course been open to the appellant or his representative to anticipate what the Judge may think about his failure to provide letters from the appellant's employer in circumstances where he had demonstrated an ability to obtain evidence both before he left the country and after.
22. Both Mr McVeety and Mr Greer agreed that the distinction between "Americans" and "UN personnel" was minor and Mr McVeety accepted there was merit to this ground of appeal but he submitted that it was not a material error because the Judge rejected the appeal on other grounds.
23. In paragraph 19 of his decision the Judge made adverse findings (a) about the Taliban letter; (b) about telephone calls which appears to be an erroneous finding of fact and (c) the timing of the sending the letter was inconsistent with his claim that the Taliban

knew where he was working because he had already left and ceased work at the compound.

24. Mr McVeety submitted that any error over the Taliban letter was not material because the appeal had been rejected for numerous reasons but ultimately those reasons, contained in paragraph 19, contained two inaccurate findings. This was a case based on credibility and if at least two important findings are erroneous then this is likely to affect the weight the Judge attached to the remaining evidence.
25. In order to assess the risk of persecution it is imperative that the assessment on credibility is carried out on the correct facts and whilst the Judge's reasons for rejecting the appeal are well reasoned the fact remains those reasons are based on at least two inaccurate findings and in those circumstances I find there is an error in law and the error does go to the materiality of the decision.
26. As this case is based on findings and credibility it is not a matter I felt able to retain in the Upper Tribunal as oral evidence will once again be necessary. It seems that the core issue is whether the appellant's account of what happened to him is credible. His employment seems accepted and it therefore will be a credibility assessment and a risk on return assessment.
27. I believe it is a matter for the Judge hearing the appeal to decide for him/herself what is accepted or rejected and the case should be remitted back to the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007 for a de novo hearing.

DECISION

28. There is an error in law and the original decision is set aside.
29. I direct that a Dari interpreter be booked and that any further evidence be lodged in accordance with the 2014 Procedure Rules.

Signed

Date 11/07/2018



Deputy Upper Tribunal Judge Alis