



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08518/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 14th June 2018

Decision & Reasons Promulgated
On 21st June 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

AG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T. Hussain, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan.

Rule 14: 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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 2nd October 2017, dismissed his claim for protection.
3. The Appellant's immigration history and the factual basis of his claim is set out within the determination and in the papers before the Tribunal, namely, that the Appellant had been working as a teacher at a local school after the official school day time. Approximately 4½ - 5 years ago, he was approached by the Taleban who had accused him of teaching the children propaganda and accused him of receiving money from the Americans. He was taken to the mountains along with another teacher, where he stayed for 12 to 13 days with the Taleban. They had asked him to join them and had threatened him with harm if he refused. The Appellant claimed that he was able to escape from the village but that his friend was "martyred". He claimed that shots were fired and there was an explosion and the next thing he remembered was waking up in hospital. It was further claimed that the Taleban had found out his whereabouts and he went to Kabul in hiding. However the Taleban became aware of where he was over time and threatened his uncle. The Appellant left Afghanistan after travelling overland and arrived in the United Kingdom on 2 October 2015 when he claimed asylum on the same day.
4. In a decision letter of 18 August 2017, the Respondent refused his protection claim. The Appellant appealed that decision before the first-tier Tribunal. In a decision promulgated on 17th October 2017 his appeal was dismissed the judge having rejected the account having made adverse credibility findings (see findings and conclusions at paragraphs 27-39).
5. The Appellant sought permission to appeal that decision which was refused initially but granted by the Upper Tribunal on 26 February 2018 in the following terms:

"The grounds in support of the application permission to appeal to the Tribunal assert that the judge erred materially in law: (1) in failing to take into consideration the expert report and (2) in failing to make any finding on the reasonableness of the internal flight alternative and failed to take account of the fact that the Appellant only left Kabul having spent three years in hiding after the Taleban discovered his whereabouts.

Following the refusal of permission to appeal to the upper Tribunal by FTTJ in a decision dated 30/11/17, renewed grounds of appeal was submitted, in time, which set out the specific paragraphs of the expert report relied upon.

The grounds of appeal disclose arguable errors of law in the decision of the First-tier Tribunal. Whilst the judge recorded the submissions on the part of the Appellant including reference to the expert report at [23] – 25] of his decision, at no stage in the decision does he make any findings on the expert evidence in his assessment of the Appellants claim cf. Mibanga [2005] EWCA Civ 367. I do not consider that the passing reference to the expert evidence at [38] constitutes finding on that evidence. Whilst the judge rejected the Appellant’s claim to have a well-founded fear of persecution in Kabul, if his findings are found to be flawed by material error that the issue of internal relocation outside Kabul will need to be determined. It is of the Appellant to show the expert evidence would make a material difference to the outcome of the appeal.

Permission to appeal was granted.”

6. Thus the appeal came before the Upper Tribunal. Mr Hussain, of Counsel, who appeared before the First-tier Tribunal appeared on behalf of the Appellant, relied upon the grounds that he had drafted and in addition supplemented them with oral submissions. Mr Diwwnycz, Senior Presenting Officer appeared on behalf of the Respondent. There was no rule 24 response from the Respondent. However he made short oral submissions. I have taken into account the submissions of the parties when reaching a decision on whether or not the decision discloses the making of an error on a point of law.
7. The thrust of the submissions made by Mr Hussain relate to the judges’ failure to engage with the expert report written by Dr Giustozzi. The report was not a generalised report dealing with conditions in Afghanistan but one that was prepared by reference to the Appellant’s particular circumstances. The report considered the Appellants profile in the context of having been a teacher and the relevant country materials dealing with attacks on schools, the position of the Taleban in relation to the Appellant and the risk of harm to him in the home area, sufficiency of protection and the ability of the Appellant to return to Kabul in the light of his disability and his personal circumstances.
8. The judge did have the report before him as he refers to it in the introductory notes relating to the evidence at [6] and when he was summarising the Appellant submissions at [23]. However, as Mr Hussain submits, the judge did not engage with the report in reaching his overall findings of fact on credibility which underpinned the risk assessment and any return to his home area, Kabul or elsewhere in Afghanistan.
9. The Appellant’s case is based on him having worked as a teacher. Whilst it was open the judge to find on the Appellant’s own evidence that he was, in essence, an unofficial teacher, in reaching the findings of fact there was no reference to the objective material set out in the report dealing with the general profile of teachers or the Taleban’s attitude to them or any attempts to distinguish the Appellant’s position from the objective material and the expert report set out at paragraph 7 and 9.

10. Furthermore and of more materiality, there was no engagement with the report in the context of the Appellants risk in the home area and the position in Kabul and any return to either his home area or Kabul or any other place of relocation in the light of his disability.
11. The judge did make a reference to the expert report at paragraph 37 stating that he did not find it credible that the Taliban would not be able to discover his whereabouts, the only other reference was in passing at [38].
12. Mr Diwnycz on behalf of the Respondent submitted that the judge could have gone into greater detail when reaching findings of fact. He also fairly conceded that it was difficult to see what in the expert report he took into account and if he rejected the report why he rejected it.
13. There is also a factual error made as identified in the grounds and relied upon by Mr Hussain. The Appellant's case was that he left his home area and went to Kabul where he remained in hiding until the Taleban had ascertained his whereabouts. It was not the Appellant's case that he was in hiding at his uncle's home (see asylum interview: Q72 and 86). The Appellant stated that his uncle had travelled to Kabul (see asylum interview: Q115) but it was not his case that he had lived with him. In the adverse credibility findings, the judge appears to proceed on the basis of the Appellant living with his uncle and therefore his account of living in Kabul without being identified was not credible (see paragraphs 15 and 38).
14. I also accept the submission made by Mr Hussain that the judge did not engage with the Appellant's evidence as to why he had left Kabul which was because the Taliban had discovered his whereabouts.
15. There is no dispute concerning the Appellant's disability; the judge summarised the medical evidence at paragraphs 41 - 45. However what is material to the outcome is that the judge did not consider the contents of the expert report when considering the reasonableness or otherwise of any internal relocation alternative and made no findings of fact in relation to who he had lived with in Kabul, whether they remained there and circumstances upon return.
16. In the light of the submissions from both advocates I am satisfied that the omissions that are set out above are material as they undermine the adverse credibility findings. Those findings should be set aside and therefore it will be necessary for the Tribunal to make fresh factual findings taking into account all of the evidence, including the expert report and making a risk assessment based on the findings of fact and to consider the conditions on return to Afghanistan and Kabul in the light of the particular circumstances of the Appellant and applying the CG case *AS (Safety in Kabul) [2018] UKUT118*.
17. I am satisfied that the concession was correctly made concerning the expert evidence and that the FTT's decision is vitiated by an error of law and therefore the decision shall be set aside. As to the remaking of the decision, both advocates were in agreement that the matter should be remitted to the First-tier Tribunal to be reheard.

I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. Accordingly, and in the interests of a fair and just disposal of the Appellant's claim, I am satisfied that it is appropriate to remit the appeal to the First-tier Tribunal for re-hearing.

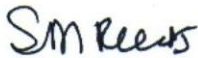
Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the appeal is remitted to the First-tier Tribunal.

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

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Signed



Date: 18th June 2018

Upper Tribunal Judge Reeds