



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09371/2016

THE IMMIGRATION ACTS

Heard at Field House
On 07 August 2018

Decision & Reasons Promulgated
On 22 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

A Z
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel, instructed by Malik and Malik solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties. Failure to comply with this order could lead to contempt of court proceedings.

Appellant and Appeal Proceedings

2. The appellant appeals with permission granted in the Upper Tribunal, a decision of the First-tier Tribunal (Judge Cameron/FT TJ) promulgated on 17 November 2017, in which the FTTJ dismissed the appellant's appeal against the refusal of his claim for international protection. The case had been remitted to the First-Tier Tribunal to be heard again without the preservation of any factual findings following an earlier decision failing to make a clear finding as to whether or not the appellant's father was a chief prosecutor in Ghazni province. FT TJ
3. Permission had been granted at the Upper Tribunal on the basis that the FT TJ had arguably failed to make a finding as to whether or not the Taliban had made a direct threat to the applicant immediately after the death of his father and to the potential impact of any such specific Taliban interest in him on his ability to relocate to Kabul.
4. I checked what documentary evidence was before the FT TJ. It transpired that the appellant relied on the 3 bundles that he had submitted before the First-Tier Tribunal in November 2016, including his witness statement of October 2016, and had added 2 further bundles including one consisting of the correspondence concerning his father's role of prosecutor going back to 2002, so that there were 5 bundles.
5. There was no application for me to hear any additional evidence either in the context of the error of law hearing or in the event of remaking the decision in the U.T. both representatives were agreed that I should hear submissions such that I'd been a position to remake the decision in the event of my finding an error of law, following the hearing.

Discussion

6. Whilst Mr Muquit clearly considers the Ft TJ's decision to be a moving target susceptible to arguments brought forward on the hoof, ignoring formalities of grounds, in fairness and without objection from Mr Jarvis I allowed him to advance arguments far outside of the grounds, in the event none of his criticisms hit their mark. What follows is set out in an order reflecting the shifting submissions I heard.
7. Mr Muquit asked me to start by concentrating on the positive factual findings including at [148] that the appellant's father had been murdered in his role as senior prosecutor. The FT TJ had made that finding to the balance of probabilities so that was a very robust finding, and it had not been challenged. Further the FT TJ accepted that the appellant's IOM employment at [148] and [105]. Further at [109] and again at [150] that the appellant would be at risk in the family's home area, village Mangor in Ghazni province. He suggested that when the FT TJ was considering between [135 - 140] the evidence as to whether the appellant's employment had given rise to any threat before the father was murdered, that could only be of interest if he was going to reject the appellant's IOM activities which he said had begun in 2013.
8. Further at [130 - 131]'s and 133 the FT TJ sets out that he attaches no particular weight to the Taliban night letter, in his reasoning he explains that one of the reasons he does not accept that the letter is reliable is that if the Taliban wanted to make threat in a village where 99% of the villages are Taliban, they could have been expected to know

that he was living in Kabul and to send it to him there. It follows that the FT TJ accepts the Taliban knew where the appellant is, and accordingly even if his reasoning for rejecting the letter is cogent, his reasoning allows for the fact that the Taliban would know where the appellant is now i.e. in the United Kingdom, which would explain why, and Mr Muquit recognised that this was contrary to the appellant's own evidence,, as the Ft TJ had found in fact there had been no subsequent threats. Mr Muquit said that the force of his submission was that it followed the FT TJ's rejection at [139] of the appellant being "actively" sought currently by the Taliban was simply a reflection of the point that he was not being sought because the Taliban knew that he was in the United Kingdom.

9. I asked Mr Muquit to clarify what other evidence there was before the FT TJ of the subsequent threats as plainly the FT TJ refers not only to the night letter but to the appellant having received threats just prior to the hearing in November 2017. Mr Muquit said that as the appellant had not made any fresh witness statement the evidence apparently came out at the hearing in the context of either supplemental questions or questions of cross examination.
10. Mr Muquit submitted that looking at [150] the FT TJ clearly finds that the appellant cannot be returned to his home area because of his father's previous role. What the Ft TJ misses out of that matrix is what he makes of the evidence as to whether or not the appellant was threatened directly at the point of his father's murder, so that there is a discreet piece of evidence upon which the FT TJ had failed to make a finding. Whilst it is possible to infer a finding from the surrounding findings about the past and current threat the respondent's rule 24 reply appears to accept that there was an absence of a finding and to concentrate on the question of materiality. It was an important matter because it is relevant to dealing with the risk in Kabul currently and the failure to make a finding distorts the subsequent conclusion at [150 - 151].
11. In another additional point departing from the grounds of the application for permission, or the grant, Mr Muquit argued that because the FTTJ at [148] made the finding about the murder of the father to the standard of the balance of probabilities he made opaque what standard of proof he was applying to the question of the assessment of risk on return. Simply by having two standards of proof in mind there was the potential that he had contaminated the overall assessment of risk.
12. Mr Muquit said that whilst he was not relying on the ground put forward by Mr Blundell who had drafted the grounds to the point that the decision sat uneasily in the context of the country information because it was at least arguable that the appellant's profile: as the son of a former prosecutor who had been murdered, was sufficient to put him at risk on return, he was not going to withdraw it. In the event he elaborated on that to say that he maintains the argument that it was a perverse finding but despite my invitation did not take me to anything to show that.
13. I noted Mr Muquit's point that on its face the FTTJ's decision allowed for an inferred finding, and that the respondent's rule 24 response is ambiguous as to whether or not an express or implicit finding, for or against, the appellant had been made. I asked Mr Jarvis to clarify the respondent's position.

14. Mr Jarvis submitted that on a fair reading of what was a thorough judgement the FT TJ had found a threat had been made. The FT TJ had fully understood the appellant's claim to have received such a threat as shown by his setting it out at [52] and [60]. The FT TJ was plainly following up that claim at paragraph [137] and again at [149] when stating that the appellant did not appear to have received any direct threats until his father was killed and then proceeds on the basis that the appellant has received a threat related to the incident of the murder of his father. The FT TJ then takes his findings about that into the assessment of the position of the appellant. In that context, contrary to Mr Muquit's submission, the FT TJ has considered the appellant's role in the IOM project and found that it was not clearly described [100] and [105], and that it did not give him a higher profile of interest to the Taliban. The FT TJ's decision plainly refers at [136] to [140] to whether or not there is currently a threat following on from that history.
15. The appellant had claimed that he was at risk now because threats had been continuing, as evidenced by a night-time letter and a visit to his mother. The FT TJ finds that the appellant has not told the truth about these later threats, and that the night-time letter he has produced is not reliable evidence. Taking account that the appellant and his family had never received any threats against them before his father had been killed whilst he had been working in Ghazni, he had continued to live in Kabul following the receipt of the threat over the telephone at the time of his father's death without difficulty, and neither he nor his family had received any threats since, and his family continued to live in Kabul, the FT TJ found at [150] that the appellant, although he could not return to his home area, could safely relocate to Kabul.
16. The FT TJ's conclusion was not perverse because there is nothing in the country information to conclude that family members are at risk, and nothing to require the finding that the appellant would be at risk. I had not been taken to anything in the country information by Mr Muquit which established that.
17. Mr Jarvis submitted that I should start with the finding that the appellant had received a phone call at the time of his father's death. The issue is whether or not he would be at risk of return to Kabul now in light of his finding that the appellant had failed to establish any ongoing adverse interest because of the connection to his father. Mr Muquit's point that no adverse interest was being shown now because he's not in Kabul was a red herring. The appellant's claim had never been that although he was of no interest now he would be on return. His claim had always been that he was of continuing interest and the credibility of that position had been cogently determined against him. When looking at the position now the FT TJ had taken account that the appellant had not been of any interest to the Taliban either in connection with his father or in connection with his own position prior to the father's death, that following the threat he had lived in Kabul for another 2 months before leaving, his family who continue to live in Kabul and no one else had had a problem. There was no background or country evidence upon which to find that the appellant was of any ongoing adverse interest in the Taliban. The case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) goes even further as it looks at whether the Taliban have capacity to carry out serious harm to people who are potential targets and concludes at [174 - 184] the capacity only relates to senior government officials, because of the sheer numbers of

people living in Kabul, somewhere between 3 ½ to 7 million. The Upper Tribunal expressly reject the evidence of there being any “blacklist”. In AS the Upper Tribunal also point out that not only is there lack of capacity to communicate such a list but also to enforce it. Low-level targets are described as being other collaborators, and even if the appellant were to resume employment at IOM it would be the lowest level of ranking, and AS guides that there is no real risk of any serious harm in that context. It had never been argued that it would be unduly harsh for the appellant to relocate to Kabul given his history of living there.

18. Mr Muquit submitted that when the FT TJ found at [139] that the Taliban were not actively seeking the appellant that is not a finding that he would be of no interest to them. The position is that he was targeted previously, nothing had changed, he would be returning now to Kabul and to the same position when he left i.e. that he was the son of a high-ranking individual who had been murdered and he had received a threat identifying him as the next target. In addition, there was still his profile in the context of employment at IOM. Even whilst Mr Muquit accepted that the FT TJ had found that he would not be at risk on the basis of that employment he sought to re-argue the point on the basis that the person who had made the threat had made it clear to the appellant that he knew of the appellant’s employment. In an HJ Iran context his fear of becoming targeted as a result of that employment meant that he might not seek re-employment with IOM in order to avoid it.
19. I find no merit in the points raised by the appellant. Rather I find that the submissions of Mr Jarvis carry the day. It is quite clear that the appellant’s case has always been that he received a threat against his own life in the context of the murder of his father for his father’s role as a prosecutor. Mr Jarvis has conceded that the FT TJ accepted that the threat was made. The decision can reasonably be read in that way. The argument that there has been an error of omission falls way.
20. The FT TJ has cogently reasoned why the appellant’s work in IOM, which on the account given by the appellant was known by the Taliban, did not add to his profile because it was long established employment that had not given rise to any threat before, and there had been no subsequent threats to those issues at the time of informing the appellant of his father’s execution. Plainly when the FT TJ moves on to consider in the very next paragraphs whether there is any real risk on return and makes the findings at [150 – 151] that the appellant is not currently of any interest to the Taliban, the findings must be read back to the earlier findings and read in context.
21. Contrary to Mr Muquit’s submission the decision makes plain that the adverse credibility findings are what drives the conclusion that the appellant is not of any interest to the Taliban now. The reasoning is cogent because he finds that the appellant is not telling the truth either in terms of the claimed receipt of a night-time letter or in terms of the addition to the evidence made at the hearing that his family had received a recent visit from the Taliban in Kabul and had threatened him.
22. There is simply no basis to support Mr Muquit’s submission that the FT TJ was finding that the appellant’s presence in the United Kingdom protected him from threats from the Taliban he would otherwise receive. The case was not advanced on that basis. Whilst the fact of that earlier threat was relied upon, the force of the appellant’s case

was put in the context of the ensuing and continuing adverse interest as per the night letter and visit to the family home.

23. Although the grounds identify as arguable that the country information could be read in a way which would give force to an alternative argument based purely on the initial threat at the time of the appellant's father's death, an alternative line of argument does not provide a good enough basis to argue perversity. Permission was granted on a different ground. Whilst the FT TJ's reasoning could have been more explicit it is quite clear that he is responding to the case as it was argued before him. As Mr Jarvis pointed out although Mr Muquit stopped short of resiling from the ground he did not take me to any country information requiring such a finding, and in the context of the FT TJ finding that none of the appellant's family remaining in Afghanistan have been subjected to such threats there was no evidence requiring such a finding.
24. In the event of my finding an error of law both representatives were in agreement that I should take into account the latest country guidance case of AS. Mr Muquit's point was that even if the Taliban had changed who might now be targeted the point in this case is that the appellant had already been targeted. It is quite clear that the facts of this case, including the fact of a threat having been made against the appellant at the time when his father was murdered, is not amenable to the semantic distinction suggested, and the guidance does not reveal any risk in the context of the appellant's being the son of the murdered Ghazni prosecutor or because of his past employment. In terms of his future should he return to IOM, and the position is speculative because there is no evidence he would want to, then as Mr Jarvis submits the guidance shows only a very low profile. Further the employment is not a fundamental protected right as per the matrix of HJ Iran. As is clear from my discussion above if I am wrong on the error of law and so should consider whether to set the decision aside and remake it, because the appellant would lose his appeal following the guidance in AS in any event, I would not exercise discretion to set aside.

Decision

25. The decision of the First-tier Tribunal dismissing the appeal reveals no error of law and stands.
26. Signed: Deputy Upper Tribunal Judge Davidge



Date 07 August 2018