



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09498/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House
On 30 November 2018

**Decision & Reasons
Promulgated
On 12 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**SHAHZAD [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Murkherjee (counsel) instructed by Davjunel Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Row promulgated on 04/09/2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 03/02/1999 and is a national of Afghanistan. On 20/07/2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Row ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 04/10/2018 Tribunal Judge Lambert gave permission to appeal stating inter alia

"3. The grounds argue that the Judge wrongly dismissed the claim solely on the basis of the appellant's means of financing his travel, his failure to claim asylum en-route, and an implausible account of loss of contact with his family, without consideration whether he was moved exclusively by economic considerations. The decision reveals no specific adverse credibility findings as to the facts on which his asylum claim was based, therefore this ground is arguable.

4. It is further argued that there is a material inconsistency between the finding at paragraph 28 that his failure to claim asylum en-route did not damage his credibility under section 8 and a finding that it "does however go to plausibility" is enlarged upon at paragraph 29. This point is also arguable.

5. There is therefore an arguable error of law disclosed by the application."

The Hearing

5. (a) For the appellant, Mr Mukherjee moved the grounds of appeal. He told me that between [12] and [13] the Judge rejects many of the respondent's criticisms of the appellant's account set out in the reasons for refusal letter. At [23] the Judge finds that the respondent's position in the reasons for refusal letter does not affect the appellant's credibility, but from [24] to [29] the Judge finds that there are other matters which undermine the appellant's credibility. In essence, Mr Mukherjee said that the Judge's finding in the second sentence of [31] (that the appellant has not been threatened by the Taliban in Afghanistan) is not supported by adequate reasoning.

(b) Mr Mukherjee told me that the Judge made findings on peripheral matters and did not make adverse credibility findings which went to the core of the appellant's claim. He told me that at [28] and [29] the Judge places too much emphasis on section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004. He told me that the Judge's findings are contradictory. He told me that, overall, the Judge's credibility

assessment is fundamentally flawed. He urged me to set the decision aside and remit this case to the First-tier Tribunal to be determined afresh.

6. For the respondent, Mr Bramble simply referred me to the rule 24 response dated 22 November 2018.

Analysis

7. Between [12] and [22] the Judge sets out factors which do not damage the appellant's credibility. The Judge considers paragraph 399 of the immigration rules and considers the respondent's reasons for refusal, then concludes at [23]

"I do not find that any of the above matters affect the appellant's credibility or is implausible."

8. Between [24] and [29] the Judge finds that (i) the manner in which the appellant's trip to the UK was funded; (ii) the Judge's rejection of the appellant's account of loss of contact with family in Afghanistan, and (iii) the appellant's failure to claim asylum in continental European countries, are the three factors which undermine the appellant's claim.

9. The Judge's conclusions start at [30]. The first two sentences of [31] are

"His personal circumstances, the circumstances of his journey to the United Kingdom, indicate that he did not come here to seek safety but did so as an economic migrant. I do not find that the appellant was threatened by the Taliban in Afghanistan."

10. The second sentence of [31] goes to the core of the appellant's claim but is inadequately reasoned. Between [19] and [21] the Judge rejects the respondent's reasons for disbelieving the appellant's claim to have been of interest to the Taliban. No other consideration of the appellant's account to have come to the attention of the Taliban can be found in the Judge's decision.

11. The error the Judge makes is that his findings at [31] are contradicted by his findings between [12] and [16]. The material error of law is that he deals with core elements of the appellant's claim in one sentence which is not supported by either reasons or findings of fact. The second sentence of [31] dismisses the appellant's account of what happened to him in Afghanistan. The Judge does not give reasons for dismissing the appellant's account. The Judge has not adequately analysed the evidence before concluding that the appellant has not been threatened by the Taliban.

12. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight

whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

13. The decision is tainted by material errors of law. I set it aside. I am not able to substitute my own decision because a new fact-finding exercise is necessary. None of the Judge's findings can stand.

Remittal to First-Tier Tribunal

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

16. I remit the matter to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Judge other than Judge Row.

Decision



The decision of the First-tier Tribunal is tainted by material errors of law.

I set aside the Judge's decision promulgated on 4 September 2018. The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed
December 2018

Date 7

Deputy Upper Tribunal Judge Doyle