



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09921/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27 June 2018

Decision and Reasons Promulgated
On 05 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

QS (AFGHANISTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:
For the Respondent:

Ms S. Iengar, Counsel instructed by Times PBS
Mr S. Walker, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Wylie sitting at Hatton Cross on 11 December 2017) dismissing his protection and human rights appeal against the decision of the Secretary of State dated 13 September 2017 to refuse to his fresh asylum claim, his initial asylum claim having been refused on procedural grounds in 2015.

The Reasons for the Grant of Permission to Appeal

2. Permission to appeal was refused by First-tier Tribunal Farrelly because, in her view, no error of law was demonstrated: *"The decision demonstrates an awareness of the different aspects of the claim and this is cross-referenced with the country expert report."* However, on

12 January 2018 Deputy Upper Tribunal Judge Chamberlain granted permission to appeal for the following reasons:

“It is arguable that the Judge has failed fully to consider the Appellant’s claim, in particular the risk posed as a result of the Appellant’s brother’s political activities, and his brother’s grant of asylum. It is arguable that he has erred in failing to consider paragraph 339K given that he appears to find that the Appellant has been kidnapped before.”

The Hearing in the Upper Tribunal

3. At the hearing before me to determine whether an error of law was made out, Mr Walker conceded that the decision was erroneous and unsafe, and agreed with Ms Iengar that the appeal should be remitted to the First-tier Tribunal for a de novo hearing.

Discussion

4. The stance taken by Mr Walker is not determinative of the question whether an error of law is made out. My own provisional view was that there was considerable merit in the stance taken by Judge Farrelly, and this view was reinforced by Ms Iengar’s acknowledgement that the Judge had adequately engaged with the country expert report of Dr Guistozzi. Accordingly, I reserved my decision, as I needed to reflect on whether Mr Walker’s concession was justified.
5. Having reflected on the grounds of appeal advanced by Ms Iengar, I am persuaded that the Judge failed to make a clear finding on a crucial issue, which is whether the appellant was kidnapped in his home area in Paghman district, Kabul province, on 7 March 2011 by M, a local strongman, who is the nephew of UR, *“a Pashtun warlord...and the new Head of Council for Protection and Stability in Afghanistan”*, according to an external source cited at paragraph [12] of the refusal decision.
6. According to the appellant, the motive for the kidnapping – or at least the main one – was to resolve a land dispute: he says he was released back to his family after they had signed over to M the deeds to the disputed land, and after they had also signed a fictitious sale agreement conveying the false message that M had purchased the land for valuable consideration, when in reality he had obtained it for free by holding the appellant to ransom.
7. At [47] Judge Wylie held that it was plausible that the appellant had been kidnapped in view of his older brother’s successful claim for political asylum in Italy, one aspect of which was that his political activities had caused UR to become a political enemy of his. However, in paragraphs [48] to [50] Judge Wylie identified reasons for disbelieving the kidnap claim, including the fact that the appellant had not mentioned it in his screening interview in 2015.
8. At paragraph [56] Judge Wylie concluded that the appellant was not at serious risk from M or his men on return to Afghanistan. But at no point in his analysis did the Judge make a finding on whether M had in fact kidnapped the appellant in 2011; and, if so, the reason for the kidnapping. Was it to get at the appellant’s brother because of his political activities or to resolve a land dispute? Earlier in his analysis the Judge had

highlighted the fact that the older brother had not alleged in his asylum claim that he or his family had faced problems due to a land dispute, and he had not mentioned M as one of the family's oppressors.

9. As past persecution is a potential indicator of future risk, the Judge's failure to make a clear finding on the kidnapping claim means that the decision is unsafe and it must be set aside.

Notice of Decision

10. The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside.

Directions for Future Disposal

11. **The appeal is remitted to the First-tier Tribunal at Hatton Cross for a de novo hearing (Judge Wylie not compatible).**
12. **None of the findings of fact made by Judge Wylie shall be preserved.**

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.

Signed

Date: 3 July 2018

Judge Monson

Deputy Upper Tribunal Judge