



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13383/2017

THE IMMIGRATION ACTS

Heard at Field House
On 20 November 2018

Decision & Reasons Promulgated
On 7 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

ULLAH [E]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Skinner (counsel instructed by ATM Law Solicitors)

For the Respondent: Ms K Everett (Specialist Appeals Unit)

DECISION AND REASONS

1. This is the appeal of Ullah [E], a citizen of Afghanistan born 1 January 1983, against the decision of the First-tier Tribunal to dismiss his appeal on 9 May 2018, itself brought against the refusal of his asylum claim on 3 December 2017.
2. The Appellant's asylum claim was essentially that he was from Baghlan, and begun working for a security agency, the Afghanistan Nawin Security

Organisation (ANSO) in 2011. His role had involved escorting American supply convoys around Kabul and Kandahar. If there was some cause to fear attack he would focus on how to deal with it. In 2013 the Taliban became aware of his activities through one of their members, a distant family member, [MN]. Following threats made via his father by telephone and letter, the family's house on a farm was burned down, and the farmer was beaten. The Appellant's brother was shot shortly thereafter.

3. The Appellant fled Afghanistan for the UK, travelling via Iran (where he spent 18 months), Turkey, Greece, Macedonia, Serbia, Hungary, Austria, Germany and France (spending 10 months in the Calais "jungle" camp), entering the country on 28 August 2016 clandestinely by lorry, and claiming asylum on 8 September 2016. His wife and children had left Afghanistan for Pakistan.
4. The claim was supported by an identity card and an undated letter from one [LQ], the head of the ANSO, stating the Appellant was a Commander there from 1 July 2011 until 31 December 2013. The Appellant explained that he had not carried these documents to the UK, although he had requested them from ANSO before departing Afghanistan; he had requested that his cousin in Kabul send them onto him.
5. The Secretary of State refused the Appellant's claim on the basis that it contained inconsistencies and implausibilities; additionally he had failed to claim asylum in a safe third country.
6. The First-tier Tribunal considered the Appellant's asylum claim. It found his account of ANSO activities to be vague and lacking in detail; he had said at the screening interview he had no title or rank, yet later described himself as "Commander"; it was not credible that a person with that level of responsibility could give no particulars of the work involved in convoy escort. At one point in his interview he had stated there was no training for jobs in the security industry, but also referred to having received training, explaining this on the basis he had understood himself to be being asked about military training specifically: however his answer at the substantive interview was clear.
7. The Judge concluded that there *was* an organisation called the Afghanistan Navin Security Company, run by its CEO [LQ], but that the letter provided by the Appellant to corroborate his claim to have worked for such a firm was amateurish and of poor quality, its author had a differently spelt name and the letter came from the ANSO rather than the ANSC; furthermore, it was not credible that the Appellant's cousin would have obtained and retained documents of this nature for a very significant period, which would have been essential were it true that he had been able to provide them recently at the Appellant's request. Thus it was to be assumed that both documents were fabrications designed to bolster a false asylum claim. Furthermore, the Appellant had failed to claim asylum in many safe EU countries including France where he had spent 10 months.

8. The First-tier Tribunal noted that *AS Afghanistan* required that it have regard to the particular circumstances of an individual applicant in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. The Appellant would return as a lone adult male, with at least a cousin in Kabul by way of support network. He spoke Pashto, and had some employment skills having worked in a bakery in Iran. There was no credible evidence of significant mental or physical health problems.
9. Thus the First-tier Tribunal concluded that the Appellant faced no real risk of persecution or serious harm in Afghanistan, and in any event life in Kabul would be reasonable for him.
10. As to his claim on human rights grounds, he did not face very significant obstacles to integration in Afghanistan, having only been in the UK since August 2016 and having spent his formative years in Afghanistan until relatively recently; he spoke the language and was very familiar with the customs and culture there. Any westernisation was likely to be minimal given the limited time he had spent in Europe.
11. Grounds of appeal argued that the First-tier Tribunal erred in law by
 - (a) Making an unfair finding regarding the ANSC and its CEO, a matter regarding which no evidence had been adduced by either party; additionally this approach effectively went behind the *de facto* concession in the refusal letter which had stated that the ANSO *did* exist albeit that their address was Sare Kotake Khair Khana District, whereas the Appellant had given it as Sarak E Naw, Maidan Shar;
 - (b) Rejecting the corroborative evidence, by way of the identity card and letter, only via reasoning that addressed the unsatisfactory nature of the latter, but without addressing the identity card whatsoever, so failing in the minimal duty to give reasons;
 - (c) Finding it implausible that the Appellant would have received no material training for his security role without fully engaging with the Appellant's answer at interview, which was a material error given that it was a critical part of the reasoning that led to the rejection of every aspect of his account.
12. Although the First-tier Tribunal refused permission to appeal on 28 March 2018, the Upper Tribunal granted permission on all grounds on 8 October 2018, though expressing less enthusiasm for the latter two.
13. Mr Skinner briefly developed the grounds, emphasising that the refusal letter had conceded the *existence* of the ANSO albeit in the context of rejecting the Appellant's claim to have worked for it on other grounds; he emphasised that that

adverse credibility finding was intertwined with the conclusions as a whole. The identity card was simply not addressed which compounded the unfairness and lack of adequate reasoning.

14. Ms Everett submitted that the decision, read as a whole, was defensible, in that the evidence regarding the security company had been rejected for multiple reasons; there were major discrepancies in the evidence. Overall the First-tier Tribunal was entitled to come to the findings that it made.

Findings and reasons – Error of law hearing

15. Lord Bridge in *Bugdaycay* [1986] UKHL 3: “The most fundamental of all human rights is the individual's right to life and when an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny”. Asylum appeals must be approached applying the appropriate anxious scrutiny, and as Carnwath LJ explained in *YH* [2010] EWCA Civ 116 that term “has by usage acquired special significance as underlining the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. Carnwath LJ went on to warn that “Anxious scrutiny may work both ways. The cause of genuine asylum seekers will not be helped by undue credulity towards those advancing stories which are manifestly contrived or riddled with inconsistencies.”
16. As most recently stated by Hamblen LJ in *IM (Pakistan)* [2018] EWCA Civ 626, judges do not look behind factual concessions by a party to an adversarial appeal absent exceptional circumstances, such as where the concession is partial or unclear, or where the evidence develops such that the concession requires revisiting. In such circumstances the representatives must be at once informed so that further evidence and submissions may be considered.
17. In the instant case, the Secretary of State stated in the refusal letter that “It was possible to find Afghanistan Nawin Security Organization” online, albeit not at the same address as that provided by the Appellant. However, the First-tier Tribunal found that “the ANSO is not a genuine security organisation”. So whilst the Secretary of State had not put the existence of ANSO in issue, and indeed had gone some way to recognising the *potential* viability of the Appellant’s claim based on ANSO associations, the First-tier Tribunal effectively went behind that position without notice in determining the appeal on the basis that it did. The fact that the organisation’s address was expressed differently by the Appellant from that given by an online source only goes so far; common experience indicates that organisations may have multiple places of business as well as a registered office, and there may be various ways of describing the same address. One simply does not know.

18. The other refusal reasons are relatively slight. Thus the identity card was rejected as genuine, essentially applying *Tanveer Ahmed* thinking, simply because the ANSO letter was found not credible; but once the latter finding is identified as unsafe, the basis of the former finding falls away. Findings predicated on immigration history such as failing to claim asylum in third countries can only ever be secondary in nature, as the judicial response must be evaluative, and very much depends on the strength of the rest of the claim. There are self-evident reasons why an individual might not claim asylum in other European Member States that are not necessarily incompatible with possessing a well-founded fear of persecution.
19. As stated by Neuberger LJ in *HK* [2006] EWCA Civ 1037 §45, once some findings have been identified as unlawful, a decision may only be upheld where the tribunal is "tolerably confident that the tribunal's decision would have been the same on the basis of the reasons which have survived its scrutiny." It is not possible to say that the First-tier Tribunal would have reached the same conclusion as it did had it not made the significant error identified above. It must accordingly be set aside.

Decision:

The decision of the First-tier Tribunal contained a material error of law and is set aside.

The appeal is remitted for hearing afresh.

Signed:

Date: 3 December 2018

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes