Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06838/2017

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 5th April 2019	**On 29th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR S M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Fraczyk (Counsel)
For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge J J Maxwell, promulgated on 22nd December 2017, following a hearing at Stoke-on-Trent on 5th December 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

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The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and was born on 2nd February 2002. He was at the date of the hearing, and remains today, a minor. He appealed against the decision of the Respondent dated 7th July 2017, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he comes from a well-known political family in Afghanistan, whereby his father was closely involved in the promotion of a strong candidate, namely Mr Daudzai, for the presidency of Afghanistan, which led to the family being targeted by rivals and others, including the Appellant being targeted for kidnapping himself. The present situation now is that his father has passed away, and his uncle, who was a prominent figure in the Armed Forces has also died. He is not therefore, in a position to seek, and to avail himself, of protection in Afghanistan, were he to be returned.

The Judge's Determination

4. The judge made it quite clear that, "in general terms, I am prepared to accept much of what the Appellant says about his experiences in Afghanistan". This involved the fact that he came from "a wealthy well connected and politically orientated family", and that the Appellant had himself been subject of kidnapping (paragraph 40). The judge also had regard to objective evidence, principally a report from Dr David Seddon, who confirmed that Mr Daudzai was "a well-known Afghan politician who is believed to be a strong candidate for the presidency of Afghanistan", and that having considered the Appellant's family circumstances, he was of the view that the Appellant's father, "is therefore undoubtedly from a wealthy and powerful family close connection to some of the most important politicians in the country; it is entirely plausible that he has been and remain close to Omar Daudzai" (paragraph 23).

5. However, the judge dismissed the appeal essentially for reasons that, given that the Appellant's family was so well connected in Afghanistan, they would be able to provide him with the necessary protection in Kabul, where the Appellant's elder brother was a commander in the Afghan Army in any event.

Grounds of Application

6. The grounds of application state that, given that the judge had accepted much of the Appellant's account (at paragraph 40), the conclusions reached by him were irrational for the following reasons. First, the judge failed to give due consideration to the level of protection previously available to the Appellant, when his father and uncle were alive, but now would no longer be conceivably available given that they had died.

Second, that the Appellant's brother is in the Afghan Army, but the judge wrongly assumed that he will be available and have the resources to protect the Appellant. Third, that the Appellant has a brother in the UK, who had gone to Afghanistan for a brief period, for the purposes of the funeral of his father, and the judge was wrong to have assumed that the brother would now be able to accompany the Appellant also to Afghanistan, in the event of the Appellant being removed. Finally, the judge did not accept (at paragraph 42) the threats from the Taliban specifically to the Appellant on the basis that the Appellant had failed to produce the threatening letters. However, this fails to have due regard to the Appellant's age and the fact that the letters were never addressed to the Appellant, but to his family members.

7. On 10th May 2018, permission to appeal was granted only on the specific basis that the changed circumstances and the death of the Appellant's uncle and father may well now mean a lack of protection, to the appropriate level, for the Appellant, although the absence of "night letters", which the judge had referred to, may also be argued by the Appellant on appeal.

Submissions

8. At the hearing before me on 5th April 2019, Mr Fraczyk, appearing on behalf of the Appellant, provided a very helpful skeleton argument, and proceeded to summarise the essential grounds of challenge. These were that, given that the judge had stated that "I am prepared to accept much of what the Appellant says about his experiences in Afghanistan" (paragraph 40), this must be taken to assume that the judge had accepted the fact that the Appellant's uncle had been murdered (paragraph 45); the fact that the Appellant himself had been kidnapped (paragraph 16), the fact that the Appellant's brother and the Appellant were shot at (paragraph 18), and the fact that a bomb had been placed on the brother's vehicle (paragraph 19). Indeed, the Appellant was almost successfully kidnapped from the national army base himself (see paragraph 19). All these facts, submitted Mr Fraczyk, must be taken to have been accepted by the judge when he stated that he was "prepared to accept much of what the Appellant says".

9. Second, the fact that the Appellant was targeted in two kidnapping attempts, putting him into jeopardy directly and specifically, was a matter that the judge glossed over, when he stated that the Appellant had not been specifically targeted, in a politically motivated manner (paragraph 40). Third, the judge wrongly assumed that the same level of protection would be available to the Appellant upon return now (paragraph 43), but this is an unsafe assumption, given that, although the Appellant has a brother in the Afghan Army, the family's power and influence essentially arose from the Appellant's father close association with Mr Daudzai, and the father was now dead. The possible loss of power and influence will affect the level of protection afforded to the Appellant (paragraph 43).

10. Finally, in reliance upon the well-known decision in **Bagdanavicius [2004] 1 WLR 1207**, where Auld LJ had stated in the Court of Appeal that,

> "Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require" (paragraph 55),

the judge had failed to approach the level of risk to the Appellant from this standpoint.

11. For his part, Mr Mills, appearing as Senior Home Office Presenting Officer, on behalf of the government, submitted that it was accepted that the Appellant had been specifically targeted on account of his father's political activities. It was accepted that the father had died and the uncle had been killed. However, what this would suggest is that the Appellant would not now himself be at risk. The judge's conclusions were not wrong. The judge was aware that the father had died (through natural causes involving a heart attack), and that the uncle, who was an army officer, had been killed. The judge also noted that the Appellant's brother was a commanding officer in the Afghan Army. It was not unreasonable of the judge to conclude that the brother could provide him with protection. The judge properly acknowledges that the father was no longer there. However, it remained the case that the family itself was wealthy and was well connected (paragraph 40). Indeed, the brother in the UK had actually gone back to Afghanistan to attend to the father's funeral, and this demonstrated that this was a family that could call upon resources in Afghanistan to ensure their safety.

12. In reply, Mr Fraczyk submitted that the family history to date demonstrated, that even at the time when the father, who was acknowledged to be well connected with Mr Daudzai was alive, attacks were taking place on the family. Furthermore, the possibility of revenge on the family continued to remain. The Appellant had, after all, been kidnapped at one stage from an army base. This demonstrated that he was not safe anywhere. One must not forget that there was ongoing family involvement with the Afghan government here. Therefore, there was a continued risk.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion, notwithstanding Mr Fraczyk's commendable efforts to persuade me otherwise, and his detailed but succinct skeleton argument before me. My reasons for so concluding are as follows.

14. First, this is a case where the judge had concluded that,

> "There is no evidence to suggest that the first kidnapping was politically motivated and it seems to have been foiled with relative ease; indicating how well connected his family is, being able to alert checkpoints with sufficient speed and with sufficient authority to ensure the apprehension of the kidnapper before any real harm could be done. His family were able to take him to a place of safety to live amongst the military ..." (paragraph 40).

15. Second, where the shooting of the brother's vehicle took place, together with the placing of a bomb in that vehicle, the judge concluded, as was open to him to so conclude, that, "there is no evidence to suggest that the Appellant was in any way a target, indeed given his brother's rank and position in the Afghan Army, it is more likely than not that he is the target".

16. Third, the judge then concluded, in a manner which is most important even now after the demise of the father and the uncle, that "the family is wealthy enough to have him escorted by security guards to and from school" (paragraph 40).

17. Fourth, the judge observed how "the Appellant's brother is able to return to Afghanistan", and that this was done "without apparent let or hindrance; let alone being the subject of any form of attack" (paragraph 41).

18. Fifth, in relation to the night letters, the judge was entitled to conclude that "there is no evidence before me to explain why these letters were not produced and I find this significantly undermines the claim".

19. Sixth, the judge also was entitled to conclude that he found that "the Appellant has failed to prove, even to the lower standard, such letters were sent to his family or that they require him to join the Taliban" (paragraph 52), thereby dealing with Mr Fraczyk's point before me, namely, that the judge overlooked the fact that the letters were sent to the family, and not to the Appellant.

20. Seventh, and no less importantly, the judge was clear that,

> "This is not an instance where a young boy would be sent to Afghanistan to fend for himself in a strange city where he has no family or connections but rather the Appellant would be returned to his family; a family who have demonstrated the ability to protect him in the past and who are able to rally the Afghan authorities to their assistance if needed".

21. Eighth, although Mr Fraczyk submits otherwise before me, without any evidence to that effect, the judge had concluded that, "there is no evidence that this level of protection would not continue if the Appellant were to be returned to Kabul now and I find will be safer there for him than most of those who live there" (paragraph 43).

22. Finally, the judge drew attention to how it was that this was a case where "in particular his brother who serves in the Afghan Army, had the resources to meet him at the airport and take him home safely, doubtless accompanied by guards as seems to have been the case in the past" (paragraph 44).

23. For all these reasons, the judge gave ample reasons for concluding that the appeal could not succeed and there is no error in the determination that is material.

Notice of Decision

24. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

25. An anonymity direction is made.

26. This appeal is dismissed.

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

Deputy Upper Tribunal Judge Juss 25th April 2019