



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09468/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13 February 2019

Decision & Reasons Promulgated
On 22 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

SHAMSHAD [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Saunders of Counsel
For the Respondent: Ms S Jones, Senior Presenting Officer

DECISION AND REASONS

1. The appellant born on 1 January 1999 and a national of Afghanistan appealed against a decision of the respondent this refusing his claim for asylum and humanitarian protection in the United Kingdom.
2. First-tier Tribunal Judge Khan dismissed his appeal in a decision dated 31 August 2018. Permission to appeal was at first refused by First-tier Tribunal Judge Davidge and subsequently granted by Deputy Upper Tribunal Judge Davey in a decision

dated 9 January 2019 stated that it is arguable that the decision disclose material errors of law but gave no reasons.

3. The First-tier Tribunal Judge Khan in an extensive decision found the appellant not credible. He noted that the core of the appellant's claim is that the Taliban came to his family home when one of them was injured and the appellant went with another Taliban to bring a doctor to see the injured Taliban. When the appellant returned home, he saw fighting between government forces and the Taliban at his house and the government forces killed all the Taliban men. The government suspected the appellant was involved with the Taliban and left a message for him to report to the headquarters. It was also the appellant's case that he fears Taliban because they believe that the appellant spied for the authorities and that is why members of the Taliban were killed at his house. The Judge was clear about the basis of the appellant's claim.
4. The Judge considered the psychiatrist report which stated that the appellant should be considered a vulnerable witness because he claims that he was 16 years of age when he entered the United Kingdom. The respondent however did not accept the appellant's age and social services who assessed his age stated that he was 21 or 22 years of age as of 22 May 2017. The age assessment team found that the appellant's identity document, the Taskira did not fit into the chronological timeline given by the appellant and of his claimed awareness of his age. The Judge found that the appellant has understated his age in order to claim to be a minor so that he could benefit from his minority and said he does not accept the appellant's evidence that he did not know anything about his age.
5. The Judge found stated that the appellant claims he had number of encounters with the Taliban but the one that made him leave Afghanistan was in July 2015 when he went to get a doctor with a Taliban because one of them was injured. The appellant stated that the Taliban came to his father and asked him questions about the appellant, and they suspected that the appellant was working for the Afghan authorities and that he had informed them of the Taliban presence at his family home. The Judge did not find this explanation credible or consistent, in light of the appellant's own evidence that one of the Taliban went to the doctor's house with the appellant and therefore the appellant would not have had any opportunity to inform the authorities. It was only when the appellant returned to his home that he saw that there was a fight going on between the government forces and the Taliban and the government forces killed all to Taliban. The Judge did not find this evidence credible and said that the appellant has made up his evidence to make an asylum claim in the United Kingdom.
6. The Judge found that the appellant's departure from Afghanistan, after this incident, within a day as it were, was not credible because large sums of money had to be found to pay the agents to take the appellant out of the country. He noted that the appellant's father was a farmer and therefore would not have been able fund this unexpected expense within a day.

7. The Judge did not find credible that the appellant had not contacted his mother since he left Afghanistan but claims that he managed to have indirect contact with his mother through a family in Croydon which is how she was able to send him his identity document and the Taliban threat letter to his family. The Judge said that the appellant has not given a credible explanation for why he had not contacted his mother or other family members until he needed his identity card from Afghanistan.
8. The Judge found that the appellant travelled through many European countries on the way to the United Kingdom but did not claim asylum despite the fact he was fingerprinted in Hungary and remained in France for about a month.
9. The Judge considered the two expert reports produced by the appellant. The first one was a psychiatrist report and the other was by a document expert, Mr Jawed in respect of his Taskira identity document and the letter from the Taliban to his family. The Judge did not accept this evidence because he found that it does not accord with the appellant's timeline.
10. The Judge stated that all the information given to the psychiatrist and about his circumstances was given by the appellant himself. The Judge noted that this does not sit well with the appellant's evidence that he has memory problems and easily forget things.
11. In respect of risk of return the Judge stated that the appellant, on the lower standard of proof, has failed to establish persecution in the past or risk of persecution in the future as he does not accept the claim that events that took place in Afghanistan as stated by the appellant. He also found that for the same reasons the appellant is not entitled to humanitarian protection. He stated that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Qualification Directive.
12. The appellant's renewed grounds of appeal state the following which I summarise. The First-tier Tribunal Judge makes no reference to or findings about returning the appellant to Kabul and therefore his decision was inadequate. The judge did not take into account the Joint Presidential Guidance Note 2 of 2010 in respect of vulnerable appellants and therefore the evidence must be assessed in light of the appellant's diagnosed mental health conditions. The Presidential Guidance states that "some forms of disability cause or result in impaired memory". The assessment of vulnerability is a fundamental element of judicial decision-making in the asylum context as has been repeatedly emphasised by the higher courts including the Court of Appeal's recent reinstatement of the principles in **AM Afghanistan**.
13. The appellant provided genuine proof of his age which is highly significant to the credibility of the appellant's account of his age and there has been no analysis of that assessment consideration of any of the appellant's evidence or submissions about his age.
14. The Judge did not deal with the risk to the appellant under 15 (c) which was pursued in written submissions and not oral submissions. The appellant's Counsel at the

hearing adopted her written submissions as part of her case and Judge Khan states that he has considered the appellant's legal representatives' skeleton argument. Therefore, his failure to make any findings about this is unexplained.

15. The rest of the grounds of appeal explained the errors made by First-tier Tribunal Judge about the evidence and the Judge had materially erred in his findings based on the evidence before him.

Decision on whether there is an error of law

16. I have considered the decision of the First-tier Tribunal Judge with great care to determine whether he fell into material error. After considering the grounds of appeal, I find that the grounds are essentially disagreements with the Judge's findings of fact on the evidence in the appeal. The Judge was entitled not to accept the appellant's evidence that he had come to the adverse attention of the Taliban and or the Afghan authorities before he left the United Kingdom and therefore, he would not come to any adverse attention from anyone on his return.
17. The Judge's reasoning in this regard. The judge was entitled to find that the appellant had understated his age of 16 and was entitled to believe Social Services as to their age assessment of putting the appellant's age at 20 to 21 years of age. The Judge the appellant's identity document did not fit the appellant's chronological timeline is provided to the age assessment team of his awareness of his age. His findings did not amount to "a bare acceptance of Social Services age assessment without any proper analysis of the evidence". There is no burden on the Judge to analyse every piece of evidence on every finding that he makes. The decision makes it clear that he has considered all the evidence in the round before reaching his conclusion including the appellant's Taskira document which he claims that he received from his mother in Afghanistan. It is implicit in the decision that the Judge found that the appellant was able to contact his mother when he needed this document but otherwise said that he had no contact with his mother without a credible explanation. The Judge was entitled to make an adverse credibility finding against the appellant in respect of his evidence in this regard.
18. The grounds of appeal also state, that the Judge when he stated that the appellant would not have been of interest to the Afghan authorities because the family home belonged to the appellant's father who would be deemed responsible and if there was any suspicion to be accredited it would be to his father and not the appellant. The grounds states that this finding is based solely on the Judge's personal opinion as to how Afghan authorities would think and behave, and it is unsupported by any evidence. The Judge is entitled to use his common sense and experience to make his findings. I find that there is no merit to this argument because the Judge was entitled to find that the head of household would be the first target of suspicion. This was a credible finding in light of the evidence that it was the appellant who went with the Taliban member to the doctor but it was the father who remained at home and would have had more opportunity to call the authorities.

19. The Judge's reasoning that it was impossible for the Taliban to have suspected the appellant of informing the authorities about them, because there was a Taliban member accompanied the appellant when he went to the doctor's house, and he would have lacked an opportunity to inform the authorities. The appellant's evidence in his witness statement was that the Taliban member did not come with him into the doctor's house and had gone by the time he left the house. Therefore, the grounds argue that there would have been a substantial period when the appellant was unaccompanied by any member of the Taliban, which fundamentally undermines the point made by the Judge and this was undue speculation as to the thoughts and beliefs of the Taliban. This explanation is fraught with incredibility because no timeline is suggested as to when or how the appellant would have the opportunity to have called the authorities because when he returned home the authorities and the Taliban were at war with each other. The Judge's findings were open to him on the evidence.
20. It was argued that the judge when he stated that he "did not know how much or how finances were raised for the appellant's journey to the United Kingdom" given that his father's only income was from farming and found that it is not credible or consistent that the appellant's trip could have been arranged so suddenly as it would be expected there would have to be a long process of planning for his trip abroad. The grounds argue that this conclusion by the Judge lacks any proper evidential basis because he failed to appreciate the appellant in his oral evidence said that his family were not poor like other people and that his father owned and worked on the land and therefore it would be plausible that money was available to facilitate the appellant's departure. There is no perversity in the Judge's finding that raising money on the day before the appellant's sudden departure was not credible on the evidence before him. The grounds of appeal do not set out the evidence that was before the Judge other than the appellant's oral evidence said that his family are "not poor" without setting out what that means. This is more of a quarrel with the Judge's findings and not a material error of law.
21. The grounds state that it is unclear why the Judge does not accept that the appellant had no contact with his mother but made indirect contact with her through his friend in Croydon. The Judge was entitled to find it incredible and implausible that the appellant would not have contact with his mother directly and would indirectly contact her when he needed his identity document to be sent to him from Afghanistan. The Judge was entitled to find that the appellant had not provided a credible explanation for why he did not contact his mother earlier given his claim that his parents sent him out of the country when he was 16 years of age.
22. The grounds further complained that the Judge did not accept the appellant's journey to the United Kingdom as he had stated that he could not claim asylum in another country because he was under the control of an agent who had beat him and kicked him. The Judge was wrong to conclude that the United Kingdom was the target by the appellant and his family for other reasons other than protection reasons. Considering all evidence in the appeal the Judge was entitled to find that the appellant's intention was to travel to the United Kingdom. The judge did not believe

the appellant's explanation that he was under the control of an agent. The Judge stated at paragraph 1 that the appellant was detained and fingerprinted in Hungary before leaving through more unknown countries and arriving in the jungle in Calais on 20 October 2015. This conclusion was available to the Judge on the evidence that he was not under the constant monitoring of an agent as was his claim.

23. The grounds state that the expert evidence of Dr Zadeh about the genuineness of his Taskira but makes no further comment on this report. The grounds states that this error by the Judge shows the lack of anxious scrutiny of the appellant's evidence. It is implicit in the decision that the Judge did consider the report but did not accept the document given his reasoning that it did not fit into the timeline given by the appellant to social services. It is evident from the decision the Judge considered all the evidence in the appeal.
24. The grounds states that in respect to the Medical Legal Report by Dr Roy the Judge stated that the information provided to Dr Roy does not sit well with the appellant's evidence that he has memory problems and easily forgets things. The Judge considered this report and concluded that Dr Roy has based his evidence at what the appellant has told him about his circumstances and that it is not for the expert to make credibility findings, but it is that of the Tribunal. I find it is not a material error of law for the Judge to have said that he would not have been able to give details to Dr Roy if he had memory problems because the primary reason why the Judge place no reliance on Dr Roy's report was because it was based on the appellant's own evidence to the doctor.
25. The grounds complained that the Judge did not consider the appellant's humanitarian protection claim on the bases of the indiscriminate violence in Afghanistan as set out in the skeleton argument. The grounds allege that the Judge did not consider the risk and undue harshness of internal relocation given the appellant specific vulnerabilities. The Judge did not accept the appellant was credible and therefore was entitled to find that the appellant was not vulnerable as he was 21 or 22 years of age when he came to the United Kingdom. It was implicit that the appellant's return would be to Kabul and the Judge was aware that the appellant's mother was in Afghanistan who would assist him on his return to settle down into the country.
26. I find considering all the evidence in the round, the Judge did not fall into material error and his decision it was based on all due scrutiny on all the evidence before him and gave proper intelligible and adequate reasons for arriving at his conclusions. I find that a differently constituted Tribunal would not come to a different conclusion on the evidence in this appeal.
27. The Judge did consider article 15 (c) at paragraph 31 of his decision and stated that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Qualification Directive. This is in line with the recent case of **AS Afghanistan CG [2018] UKUT 118 (IAC) AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** which states that a low-level interest for the Taliban not a

senior government or security official, honest by historic real risk of persecution from the Taliban in Kabul. It states that it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

28. The Judge did not find the appellant to be a vulnerable individual or that he had mental health issues because he did not believe that the events that the appellant claimed to have occurred in Afghanistan, did occur. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh. The Judge found that the appellant came to this country as an economic migrant and therefore he can return to Afghanistan safely. The appellant has been in contact with his mother and therefore will have support on his return. On the evidence in the appeal, the appellant would not face a real risk of persecution in the place of the proposed relocation and it would not be unduly harsh to expect him to relocate within Afghanistan. **ST Afghanistan [2018] EWCA Civ 2382**
29. In **HK and others (minors - indiscriminate violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)** the Tribunal said that where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are uncontactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return.
30. Considering this background evidence, I find that a differently constituted Tribunal would not come to different conclusion in respect of the Qualification Directive. The grounds of appeal argued that the existence of country guidance does not preclude the Tribunal from considering a point or departing from the said guidance. There was no reason given for the First-tier Tribunal to have departed from the country guidance in this appeal. It is notable that this argument about the Qualification Directive was not in Counsel's oral argument although it was in the skeleton argument. The Judge found the appellant's narrative not to be credible and also found that he came to this country for a better life and not for reasons of protection. There is no merit and the grounds of appeal.

Notice of Decision

The appellant's appeal is dismissed

Signed by

Dated 18th day of February 2019

A Deputy Upper Tribunal Judge
Ms S Chana