



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09524/2018

THE IMMIGRATION ACTS

Heard at Field House

On 3rd April 2019

**Decision & Reasons
Promulgated
On 1st May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR Z G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam instructed by Inayat Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 17th July 2018 to refuse his claim for asylum and humanitarian protection. First-tier Tribunal Judge Chana dismissed the appeal in a decision promulgated on 28th December 2018. The Appellant appealed to this Tribunal with permission. On 5th March 2019 I set aside the decision of Judge Chana in relation to Article 8 only. I accepted that Judge Chana made an error of law in her approach to Article 8 for the reasons set out in my decision on error of law which is appended hereto. Judge's Chana's decision in the asylum appeal still stands.

2. The resumed hearing took place on 3rd April 2019. The appellant submitted a supplementary bundle including a further witness statement from his girlfriend dated 27th March 2019 and Foreign & Commonwealth Office Travel Advice for Afghanistan. At the hearing I heard oral evidence from the Appellant and from his girlfriend through Pashtu and Urdu interpreters separately. At the outset of the hearing Mr Tufan said that the Secretary of State was not disputing that the Appellant has a girlfriend. Mr Aslam clarified that the Appellant and his girlfriend do not live together on a full-time basis therefore it is accepted that they do not meet the requirements of Appendix FM.
3. The Appellant gave oral evidence at the hearing. He confirmed his witness statement of 28th August 2018. He described his physical issues saying that he has chest pain and a pain in his kidney and his stomach. He said that he takes pain relief medication. He also said that he cannot sleep at night everything his father did to him, the beatings etc, comes back in front of his eyes. In cross-examination the Appellant said that there is no definite diagnosis at the moment because they are trying to find out what is wrong with him. He said that he went for an appointment last week and when he had a camera test down his throat. He said he does not know at the minute what his condition is. He had also been recently referred for treatment in respect of dental problems and Mr Aslam clarified that there were medical entries in his GP notes in relation to a renal stone and a prescription for folic acid.
4. In her oral evidence the Appellant's girlfriend confirmed her three witness statements of 28th August 2018, 11th December 2018 and 27th March 2019. She said that she has leave to remain for a period of two and a half years as a dependant of her mother. Her leave to remain is due to be renewed in June this year. She said that she lives with her mother but that she and the Appellant rent a room where they usually spend two nights and three days a week together. She tells her mother that she is going to stay with a friend. She cannot stay in the Appellant's room because there are Muslims in the building and they would not approve of the relationship. She has not told her mother that she stays with the Appellant. In cross-examination Ms Hussain also said that she and the Appellant communicate in Urdu.
5. In his submissions Mr Tufan submitted that there were two limbs to the Article 8 appeal, the medical issues and the relationship. In terms of the medical issue he submitted that there were no reports and no diagnosis from any medical professional. He submitted that there are ongoing investigations but these are nowhere near the high threshold required to meet Article 3. He pointed there was no diagnosis of any medical mental health issues. He submitted that the Appellant's relationship with his girlfriend is precarious, she is not settled in the UK. He accepted that there is some sort of relationship but it is no more than that of boyfriend and girlfriend and does not come within the Rules. If she obtained settlement in the future she could sponsor an application from the Appellant. He referred to Section 117B factors. He said there was no evidence that the

Appellant speaks English. He is not financially independent and his leave to remain has always been precarious.

6. Mr Islam submitted that the starting point was the evidence before the First-tier Tribunal Judge. He accepted there are no medical reports but submitted that the medical evidence there does show that the Appellant is subject to ongoing investigations. He accepted that there is no confirmed diagnosis in relation to physical or mental issues. However he referred to the Respondent's bundle at C11 to 12 and the Appellant's bundle at pages 36 to 48. He submitted that this evidence shows that the Appellant has been subjected to tests and has multifaceted health issues although he accepted it is not clear what these might be. He accepted that the evidence does not meet the high threshold in Article 3.
7. However he submitted that it is relevant to Article 8. He submitted that the Appellant had demonstrated that there are very significant obstacles to his reintegration in Afghanistan in accordance with paragraph 276ADE. He relied on the skeleton argument before the First-tier Tribunal, in particular paragraph 26 which relies on the decision in **AS**. The relevant factors in this case, in his submission are that the Appellant is not in good health; he has no network in Kabul; he has been out of the country since he was 13; he maintains that he came to harm from his father; he has no education; and he has no capacity to survive in Kabul so could not relocate there. He referred to paragraph 27 of the skeleton argument and pointed that the health care is not well provided for in Kabul. The Appellant would not have access to accommodation. He submitted that an added risk factor is that the Appellant has been in the UK since childhood, he has been here for over nine years, since the age of 14. He would be perceived as westernised. In his submission all of these factors amount to very significant obstacles under 276ADE. He submitted that all of these factors are relevant to the assessment of Article 8. He submitted that the relationship is serious, the couple have been together for almost seven years, since the Appellant was 17 and they intend to marry. He submitted that the Appellant receives significant support from his girlfriend and that would be lost if he was returned to Afghanistan. He accepted that this was not an EX.1 case and he accepted that the Appellant's girlfriend is likely to be on a ten year route so she has a long way to go until she is settled in the UK. However he would lose that support and he is now a central part of her life. He submitted that there are very significant obstacles as well as the country circumstances in Afghanistan and his relationship with a partner and returning him would be disproportionate.

My Findings

Article 3

8. The appeal under Article 3 was not pursued before me and I find that it has not been established that returning the Appellant to Afghanistan would breach the UK's obligations under Article 3.

Paragraph 276ADE of the Immigration Rules

9. Mr Aslam submitted that the Appellant meets the requirements of paragraph 276ADE (1) (vi) which provides:

“276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

...

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK.”

10. The Appellant’s account of his background in Afghanistan was rejected by First-tier Tribunal Judge Chana. She rejected the Appellant's claim that he had been assaulted by his father with a knife or threatened by him [20-23]. The judge rejected the Appellant's claim that he has not been in contact with his family in Afghanistan [28-29]. The judge found that the Appellant has an uncle and siblings in Kabul and that his father is not a Taliban Commander as claimed [31]. In light of these preserved findings I am satisfied that the Appellant will have family support in Kabul.
11. The Appellant claims to have physical and mental health issues. However, despite the opportunity afforded by the adjournment of the hearing to remake the decision under Article 8 the Appellant has not produced any medical reports to establish any physical or mental health conditions. I accept that he has been undergoing tests for some time in relation to physical health issues but there is no evidence of any diagnosed condition or of any treatment or potential problems in relation to any physical issues on return to Afghanistan. There is no medical evidence of any mental health issues. The Appellant and his girlfriend say that he suffers from nightmares but, as his account of issues with his father was not accepted, his explanation that he has sleep issues due to memories of beatings inflicted by his father lacks credibility. There is no medical evidence to support any claim of depression or other mental health issues which would impact on his ability to reintegrate in Afghanistan.
12. The Appellant gave evidence through a Pashtu interpreter. His girlfriend said that they communicate in Urdu. Accordingly he will have no language issues upon return to Afghanistan.
13. Mr Tufan accepted that the Appellant is in a relationship with his girlfriend. However they do not live together. Her mother does not know about the relationship and his girlfriend has temporary leave to remain in the UK. If they wish to continue the relationship it would be open to her to return to Afghanistan with the Appellant, accordingly the relationship is not a barrier to the Appellant's integration in Afghanistan.

14. Mr Aslam submitted that the Appellant is westernised and that this is a factor which would amount to a barrier to integration. However apart from the fact that he has been in the UK since he was 14 there is no evidence that he is westernised. He still speaks Pashtu, there is no evidence as to his activities or behaviour in the UK or as to those with whom he associates in the UK. Mr Aslam did not point to any background evidence to suggest that time spent in the UK in itself creates a perception of westernisation or that this in itself would lead to a risk in Afghanistan or any barrier to reintegration there.
15. Considering all of the evidence I find that the Appellant has not established that there are very significant obstacles to his integration in Afghanistan.

Article 8

16. Mr Aslam accepted that the Appellant cannot meet the requirements of Appendix FM on the basis of his relationship.
17. I have considered the Appellant's appeal under Article 8 in accordance with the guidance in **R v SSHD ex parte Razgar [2004] UKHL 27**. Whilst he has established a relationship with his girlfriend this does not meet the definition of a partner in the Immigration Rules and amounts to only a limited family life. I accept, based on the length of time he has spent in the UK and on his relationship with his girlfriend, that the Appellant has established a private life in the UK. I accept that his removal would interfere with his family life if his girlfriend decides not to go to Afghanistan with the Appellant. I accept that his removal would interfere with his private life in the UK. In light of my findings above as to paragraph 276ADE and the concession made by Mr Aslam in relation to family life, such interference is in accordance with the Immigration Rules.
18. In considering proportionality I take into account that, although he complains of physical and mental health problems, the Appellant has produced limited evidence to support those claims and has not established that he has any significant physical or mental health problems. There is limited evidence of treatment in the UK and no evidence that there would be any lack of equivalent treatment in Afghanistan.
19. I take account of the relationship between the Appellant and his girlfriend. The Appellant's girlfriend has limited leave to remain in the UK with her current leave due to expire in June. She could accompany the Appellant to Afghanistan. Alternatively she could sponsor an application for entry clearance at an appropriate time. The Appellant's girlfriend's mother is unaware of the nature or extent of the relationship. Although the relationship is a factor to be weighed in the Appellant's favour and against the public interest, it is of limited weight because the Appellant's girlfriend is not a 'qualifying partner' within the Immigration Rules and neither had established immigration status when the relationship was formed or developing.

20. In weighing the public interest I also take account of the fact that the Appellant cannot meet the requirements of the Immigration Rules.
21. Section 117B of the Nationality, Immigration and Asylum Act 2002 provides that the maintenance of effective immigration controls is in the public interest and sets out a number of factors to be weighed in the public interest. There is no evidence that the Appellant can speak English (117B (2)). He is not financially independent (117B (3)). Any private life he has in the UK was established whilst he was here precariously and is therefore of little weight (117B (5)).
22. Weighing all of these factors I am satisfied that the decision to refuse the Appellant's application for leave to remain on human rights grounds is proportionate to the respondent's legitimate aim of the maintenance of an effective system of immigration control.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law in its consideration of Article 8 of the European Convention on Human Rights.

I set that part of the decision aside and remake it.

The appeal is dismissed on human rights grounds.

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 their 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: 25th April 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT **FEE AWARD**

No fee is payable therefore there is no fee award.

Signed

Date: 25th April 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

APPENDIX



IAC-AH-DN-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09524/2018

THE IMMIGRATION ACTS

Heard at Fox Court

On 13th February 2019

**Decision & Reasons
Promulgated**

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Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR Z G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, instructed by Inayat Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant, a national of Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 17th July 2018 to refuse his claim for asylum and humanitarian protection. First-tier Tribunal Judge Chana dismissed the appeal in a decision promulgated on 28th December

2018. The Appellant appeals to this Tribunal with permission granted by First-tier Tribunal Judge Buchanan on 22nd January 2019.

2. The Appellant puts forward three Grounds of Appeal contending as follows:
 - The judge erred in failing to properly consider the Appellant's private and family life under Article 8 in failing to engage with the medical evidence about the Appellant's health issues;
 - the decision is unfair in that the judge failed to consider whether there would be significant obstacles to the Appellant returning to his home country and failing to consider that there would be interference with his family life if he is separated from his partner;
 - the judge has failed to properly engage with the fact that the Appellant has had mental health issues as set out in his partner's witness statement.
3. At the hearing before me Ms Appiah acknowledged that the grounds of appeal and, she contended that the grounds challenge not only the findings on human rights but also the judge's findings on the asylum appeal. She contended in particular that the third ground incorporates a reference to the decision as a whole and therefore was sufficient to incorporate a challenge to the asylum decision.
4. I have considered the grounds as a whole, they emphasise the Appellant's mental health in the context of his human rights appeal. The judge granting permission to appeal clearly interpreted the grounds as referring to the human rights issue, I note in particular the conclusion at paragraph 4 of the permission to appeal that it is arguable that the omission to address medical evidence in the assessment relating to satisfaction of the Immigration Rules and/or the claim outside the Immigration Rules is a material error of law. Looking at the grounds read with permission to appeal and with the decision of the First-tier Tribunal it is clear in my view that the reasonable interpretation of the grounds is that they refer only to the judge's decision in relation to Article 8.
5. I further take account of the fact that, although the grounds are handwritten and brief, they were clearly prepared on the Appellant's behalf by his solicitor. In my view any leeway which may be afforded to an Appellant in person in terms of articulating the grounds is not extended to the representatives. Accordingly, I treat the grounds and the permission to appeal as relating only to the Article 8 assessment. There is accordingly no challenge to the judge's decision as to the asylum appeal and that decision will stand.
6. In terms of the challenge to Article 8, at the hearing before me Mr Walker accepted that the judge stated at paragraph 35 that the Appellant is now an adult and an Afghanistan national "and in good health". He accepted that this conclusion fails to take into account the medical issues identified by the Appellant's partner and the medical evidence in the Appellant's bundle at pages 36 to 48. He accepted that the issue of the medical

evidence in the context of Article 8 was raised in the skeleton argument before the First-tier Tribunal at paragraph 43(h). Mr Walker accepted that it appears that the judge failed to consider the medical evidence which was clearly raised in the skeleton argument and the Appellant's bundle and in the Appellant's supplementary bundle.

7. I agree that the judge failed to consider the medical evidence and the evidence from the Appellant's partner as to his mental health. The Appellant's partner made a supplementary statement dated 11th December 2018 which makes significant reference to issues which she claims indicate that the Appellant has been suffering from depression and suffers flashbacks and nightmares. It appears from the consideration at paragraphs 41 to 46 of the decision that the judge failed to take this evidence into account. Of course, the First-tier Tribunal Judge could have decided to attach little weight to any of this evidence but, in failing to address it, it is not possible to conclude that she had it in mind in reaching her decision. I accept that the failure to consider this evidence is a material error given that this evidence could have an effect on the proportionality assessment and on consideration of paragraph 276ADE of the Immigration Rules.
8. In these circumstances I find that the judge made a material error of law in her approach to Article 8. I set aside that part of her decision. The decision in relation to asylum will stand.
9. I adjourn the hearing for a resumed hearing to consider any further oral or documentary evidence in relation to remaking the decision on Article 8 grounds.

Directions

1. The resumed hearing will take place on 3rd April 2019 at Field House.
2. The following interpreters will be required - Urdu and Pashtu.
3. The parties are to serve on the Tribunal and on each other any further documents or witness statements to be relied upon no later than five days before the date of the resumed hearing.

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 their 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: 5th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes