



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

Appeal Number: PA/09825/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 February 2019**

**Decision & Reasons Promulgated
On 12 March 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**N J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimons, Counsel, Duncan Lewis & Co Solicitors
(Harrow office)

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

DECISION AND REASONS

1. The appellant, a national of Afghanistan, has permission to challenge the decision of Judge Black of the First-tier Tribunal (FtT) sent on 12 October 2018 dismissing his appeal against the decision made by the respondent on 4 October 2017 refusing to grant protection. The appellant's appeal had originally come before another Judge of the FtT but his decision had been set aside.

2. The grounds of appeal on which permission was granted were twofold, it being alleged:
 - (1) first, that the judge's approach to credibility was flawed by virtue of failing to take into account the appellant's vulnerability as attested to by the medical evidence, in particular the ("uncontradicted") report of Professor Katona; and
 - (2) that the judge made inconsistent and/or inadequate findings on the appellant's relationship with his uncle, and failed to apply the lower standard of proof.
3. I express my gratitude to both representatives for their targeted submissions.
4. I am not persuaded ground (1) is made out.
5. First of all, the judge clearly did take into account and apply the Joint Presidential Guidance Note No 2 of 2010 on vulnerable witnesses: see paragraph 6 and other paragraphs I shall refer to next.
6. Second whilst the judge plainly attached significant weight to Professor Katona's report, noting at 39 that his "expertise is not challenged before me" and that "due weight" was to be given to "his opinion on the impact of symptoms of PTSD on the ability of a young person to give a full and clear account and being able to answer questions in a perceived adversarial environment", the judge did not consider Professor Katona's report conclusive and in the same paragraph spelt out very clearly her reasons why:

"39. However, Professor Katona says himself he has given his opinion both on the basis of what he has been told by the appellant and on his own observations. He first examined the appellant in January 2018, about eight years after the appellant claimed asylum. As Professor Katona himself observes, there were significant discrepancies in the account as to where the appellant's father was killed and while I accept "people who have been traumatized may be markedly suggestible when under pressure and say what they think their questioner wants to hear", this is a case where the appellant has given various accounts in different environments: in two interviews, in his asylum statement and in two appeal statements and in oral evidence. He has had many opportunities over the years to provide a coherent account and to address the discrepancies identified by Judge Page. While I accept he was probably suffering from "full-blown PTSD" at the time of the interviews, the inconsistencies are very significant indeed and go to the core of his claim that his father was shot by the Taliban. I take Professor Katona's opinion into account in the round but do not consider that, without more, it is sufficient to explain or undermine the findings of the Judge on the existence of "massive" discrepancies in the appellant's evidence given over time."

7. In several subsequent paragraphs the judge makes abundantly clear that she did not consider the report of Professor Katona afforded sufficient basis to explain the breadth of the appellant's various inconsistencies: see especially paragraphs 54, 67, 68 and 74.
8. Third, as Professor Katona himself acknowledged in his report, it is ultimately a matter for the judge taking into account the totality of the evidence, including the medical evidence to assess credibility and it is entirely clear that the judge did approach the evidence holistically.
9. Fourth, the judge did not simply place the professor's opinion on one side and her overall assessment on the other, but went through all of the main shortcomings in the appellant's evidence (vagueness and lack of detail as well as inconsistencies). In this regard, the judge, noted specifically that, despite having the opportunity to explain the discrepancies identified in his account, first by the respondent and then by Judge Page, the appellant had been unable to satisfactorily explain them: see paragraph 56. That was clearly a correct approach, particularly given that there was no medical evidence before Judge Page and so the new medical evidence had to be assessed as to its relevance to credibility. At paragraph 63 the judge concluded:

"63. Whilst I take into account the psychiatric evidence and give it evidential weight, there are so many inconsistencies in the appellant's evidence that it calls into question his reliability and credibility as a witness. The core of the appellant's claim is not complex yet it is inconsistent. The appellant's illiteracy, lack of education and poor mental health do not sufficiently explain the significant discrepancies and inconsistencies in his account."
10. I consider that assessment to be entirely within the range of reasonable responses.
11. In light of my foregoing observations, I regard Ms Fitzsimons's submissions as essentially asking me to set aside Judge Black's decision simply because she did not consider Professor Katona's opinion determinative of credibility. Yet the judge's credibility assessment was entirely within the range of reasonable responses. Ms Fitzsimons submitted that Judge Black misunderstood Professor Katona and had not given his report a "fair reading". She pointed in this regard to paragraph 55 where the judge said:

"55. I take into account that the appellant's account of his life in Afghanistan is broadly consistent with the background material: his inability to go to school due to the prevailing conditions in his home area; his experience of explosions and the presence of the Taliban in Nangarhar. I also acknowledge that these experiences would have been traumatic for the appellant as would his experiences while travelling out of Afghanistan and to the UK, the refusal of his asylum claim, the dismissal of his appeal, his precarious immigration status, his departure from the home of his foster parents in the UK and his inability to finish his course of education here. The medical evidence does not suggest that his

poor mental health is due to any single event and particularly not one which occurred in Afghanistan, such as the death of his father or any threats by the Taliban. The medical evidence is not sufficient to demonstrate a causal link between the claimed past persecution and his present symptoms.”

I am unable to agree that this constitutes an unfair reading of the Professor’s report. Nowhere in the Professor’s report does he state that the appellant’s PTSD was caused by his adverse experiences in Afghanistan; at paragraph 7.3.6 he simply states that they can be attributed to “medication, substance abuse or other illness”.

12. Turning to ground (2), this outlines that one of the key arguments before Judge Black was that since the hearing before Judge Page there was now new evidence showing that the appellant had made contact with an uncle who was able to corroborate his claim. It was submitted that a French asylum court had found Mr AKJ to be credible and had granted him asylum and that this was very pertinent to the appellant’s case since this man’s evidence was consistent with the appellant’s, describing threats to his family, departure from Afghanistan with his nephew. The common circumstances were listed as being:
 - a) Both share the same surname;
 - b) Both are from Nangarhar;
 - c) Both left Afghanistan at the same time;
 - d) Their accounts about the core index events are broadly consistent;
 - e) They both disclosed in different jurisdictions that they had fled to Kabul: in the Appellant’s case, with his uncle, and in Mr AKJ’s claim, with his nephew;
 - f) Mr AKJ was found to be credible by the French court and granted asylum on that basis;
 - g) The Appellant was arrested and detained by the Respondent when seeking to depart the UK for France, at the time he claims he re-established contact with his uncle.
13. It was said that the judge’s reasons for disbelieving that this man was the appellant’s uncle were internally inconsistent and relied on too high a standard of proof.
14. I am unable to accept the proffered criticisms. In the first place the judge gave sound reasons for disbelieving the claimed connection, noting inter alia that the appellant had given a different reason for his flight than that provided in the evidence from the uncle and his family (paragraph 42); that the appellant had not made mention prior to 1 October 2018 of having a brother, Adil and had given inconsistent accounts of his siblings (paragraph 43); that the appellant’s previous mention of a maternal uncle was of someone of very different age (paragraph 44); that the appellant’s and this man’s evidence as to the date the appellant’s father was killed

and whether the appellant had gone to school, was different (paragraphs 45-46,; and that the appellant had referred to fleeing Afghanistan with his maternal uncle, whereas he said this man was his paternal uncle (paragraph 51). At paragraph 58 the judge properly concluded in light of these shortcomings, that Mr AKJ (who gave evidence by way of video link) was credible in relation to the appellant's claim.

15. Secondly, the only substantive challenge to these adverse findings (separately from ground 1) was to assert that they were internally inconsistent in view of what the judge had said at paragraph 65

“65. In his statement dated 5 October 2016 the appellant refers to staying with an elderly and distant relative in Kabul. He has telephone contact with his mother. His mother and siblings live in Nangarhar. Mr [AKJ] also told me that the person who put the appellant and [him]in contact on facebook, lives in Afghanistan. This suggests the appellant has retained contact via social media and telephone with family and friends in Afghanistan and undermines his evidence that he has no support there.”

I do not accept that there is internal inconsistency. Ms Fitzsimons argues that this shows that the judge must first have accepted that Mr AKJ was in fact his uncle and that “that is the only logical reading” of the said paragraph. However, the function of paragraph 65 is to highlight a further point of internal inconsistency in the appellant's and AJK's evidence; it is not to make a judicial finding of fact. It refers first of all to what the appellant said about relatives in Afghanistan and then to what Mr AJK “also told me”.

16. As regards the contention that the judge imposed too high a standard of proof, that is not borne out by the decision. The judge correctly identified at paragraph 17 that the standard of proof she had to apply was the lower standard and there is nothing said elsewhere to suggest that any standard other than the low one was applied.
17. For the above reasons I conclude that the judge did not materially err in law in either of the two respects contended for in the grounds. Accordingly the judge's decision to dismiss the appellant's appeal must stand.

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: 8 March 2019

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal