



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14095/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7 May 2019

Decision & Reasons Promulgated
On 21 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J. Gazzain, Counsel instructed by United Solicitors
For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge O'Brien, promulgated on 27 February 2019, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.

2. As this is an asylum appeal, I make an anonymity direction, continuing that made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:-

“It is arguable that having accepted the appellant’s evidence as to his personal history in Afghanistan the Judge’s failure to expressly consider §7.7.2 of the respondent’s COI “Afghanistan: unaccompanied children” (1 April 2018), which addresses “bacha bazi”, adversely impacted upon the consideration as to whether the appellant could reasonably relocate within Afghanistan with the support of extended family members.”
4. The Appellant attended the hearing.
5. Mr. Tarlow accepted on behalf of the Respondent that the decision involved the making of a material error of law. He asked that I remake the decision allowing the Appellant’s appeal on asylum grounds. Taking this into account, I set the decision aside and remade the decision, allowing the Appellant’s appeal.

Decision and Reasons

6. At [40] the Judge states,

“The Appellant’s account of being used by a local commander as a dancing boy for his amusement and pleasure is consistent with background evidence. It also lacks any specific political element or allegations of physical abuse that one might expect in a fabricated account; put simply, in my judgment the account seems too sophisticated to be made up. I accept that it is reasonably likely to be true.”
7. At [44] and [45] he states:

“I am not satisfied that the Appellant was persecuted because of imputed political opinion but am satisfied that it was because of his membership of a particular social group: young men in Afghanistan. Even if I were wrong about that, I would still be satisfied that the Appellant faced a real risk of serious harm on return arising from sexual abuse.

Given that the Appellant’s abusers worked for a pro-government militia working closely with the police against the Taliban, I am satisfied that the Appellant would not have sufficient protection from the state on return.”
8. Mr. Tarlow accepted that, having found the Appellant’s account to be true, the appeal should have been allowed with reference to paragraph 7.7.2 of the CPIN Afghanistan: Unaccompanied children, April 2018. This paragraph states:

“There is a culture of silence and shame that prevents bacha bazi victims and their families from seeking assistance. Victims and their families reportedly face social isolation, particularly if the boy becomes well known in bacha bazi circles. Those who try to complain to authorities also face threats from perpetrators or are fearful due to the high status of perpetrators who are sometimes officials or police. Running away has reportedly resulted in beatings.

Victims are frequently themselves punished, detained when seeking assistance, or revictimized.”

9. The Judge found that the Appellant was at risk on return, and that there was no sufficiency of protection. However, having made these findings, he found that the Appellant could relocate in Afghanistan. This conclusion is at odds with the finding that he would not be able to avail himself of state protection. The Judge has not explained how the Appellant’s extended family would be able to protect him, if there is no protection from the state. The CPIN makes clear that the culture of silence and shame will prevent both the Appellant and his family from seeking assistance, and that his family will also face social isolation.
10. I find that the evidence set out in the Respondent’s own guidance shows that there was a risk on return to the Appellant. The Judge’s findings should have led to the Appellant’s appeal being allowed on asylum grounds. He failed to take the evidence in the CPIN into account. It was submitted by Mr. Tarlow that this was a material error of law and, as stated above, he asked me to remake the decision allowing the Appellant’s appeal.
11. I thanked Mr. Tarlow for his approach to this appeal.

Notice of Decision

12. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
13. I remake the decision allowing the Appellant’s appeal on asylum 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 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 19 May 2019

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

I have allowed the appeal. In the event that a fee has been paid or is payable, I have considered making a fee award. I have decided to make a fee award for the whole fee paid as the Appellant's account was found to be true, and the Respondent's own guidance indicates that he is therefore at risk on return.

Signed

Date 19 May 2019

Deputy Upper Tribunal Judge Chamberlain