Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04415/2019 (P)

THE IMMIGRATION ACTS

On 5th November 2019 at Manchester Civil Justice Centre And 1st September 2020 (by way of remote oral hearing at Field House)	Decisions & Reasons Promulgated On 11th September 2020

Before

UPPER TRIBUNAL JUDGE COKER

Between

MOHAMMED [N]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation on 5th November 2019:
For the appellant: Mr J Markus instructed by Aman Solicitors Advocates
For the respondent: Mr Tan, Senior home Office Presenting Officer

Representation on 1st September 2020:
For the appellant: Mr S Saeed of Aman Solicitors Advocates
For the respondent: Ms S. Cunha, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, an Afghan citizen born in August 2000, arrived in the UK in early 2016 and claimed asylum on 25th April 2016. His claim was refused by the

respondent and his appeal heard by the First-tier Tribunal on 18th July 2019 and dismissed for reasons set out in a decision promulgated on 9 August 2019.

2. His claim was based on a number of reasons which were rejected by the First-tier Tribunal judge in a detailed decision. Permission to appeal was sought by the appellant, and granted, to challenge the decision in relation to one issue only – the issue of a blood feud.

3. The First-tier Tribunal judge found that a blood feud developed between the appellant's older brother, Sher, and a warlord, member of Parliament and person of great influence – Commander Naqib. The feud arose out of the relationship between Sher and Naqib's daughter. He found that Naqib had issued a threat to kill members of the family, that Sher had disappeared, and another older brother Shams had been killed. But the judge concluded that although there had been a blood feud, it was no longer active on account of the appellant's age at its instigation and a severe case of revenge had occurred.

4. The appellant relied upon two grounds of appeal:

Ground 1: that there was nothing in the appellant's evidence or in the evidence of Mr Omarzada (whose evidence has not been challenged) to suggest that the blood feud had concluded; the judge had failed to take into account Mr Omarzada evidence that he reported that had the appellant not left then he too would have faced a threat to his life.

Ground 2: that although the judge considered the UNHCR Guidelines, there was nothing in those Guidelines which suggested that the feud the judge had concluded had been resolved, could be or would have been resolved in the way suggested by the judge.

5. Mr Omarzada is a family friend. His evidence in so far as relevant to the grounds of appeal was that he travelled to Afghanistan and whilst there he met Sher in 2014 who told him that he and his wife were living in constant fear from her father and they feared for their safety and that of his family members. That was the last time he met Sher. In 2018 he travelled again to Kabul to find out further information about Sher. Whilst there he met a gentleman named Khawany who had assisted the appellant. Khawany informed Mr Omarzada that Sher had been kidnapped and there was no information about him, and that Shams had been killed in Kabul because of Sher's marriage to Naqib's daughter. He told Mr Omarzada the appellant's father had been killed in a Taliban controlled area.

6. The First-tier Tribunal judge recorded

> "57. The central account given by Mr Omarzada was largely unchallenged and intact since I found him to be a straightforward and reliable witness …
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> …
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> 62. I was satisfied that the witness [Mr Omarzada] was generally reliable. I accept that part of his account at least was based on what he was told by a third party. However, it is consistent with the Appellant's account, albeit he had heard the details form his mother who speculated about the reason for the death and kidnapping. Nonetheless, given the witness evidence and

his meeting with Khawany, I am satisfied that I can give credence to the overall account especially as I accept that there was a dispute and the suggestion that Naqib was a person of great influence and a warlord was not put in issue. There was no challenge to Mr Amerada's evidence that he had met Khawany and that the latter told him about the killing and kidnapping and the death of the Appellant's father and the family escape from Afghanistan. So while I was unable to accept the Appellant's evidence alone, based on his mother's speculation and taking account of concerns I had about general credibility of the Appellant (of which more below) I was satisfied to the lower standard following the witness evidence and the corroboration it provided.

…

101. I have not been referred to any specific evidence about blood feuds. However within the very comprehensive UNHCR 'Eligibility Guidelines for Assessing the internal Protection Needs of Asylum Seekers from Afghanistan' a section is devoted to the issue. Although the section is short it is based on a significant range of source material some of which I have considered.

102. It is accepted that blood feuds can arise from murders but also other triggers including family matters. Blood feuds can last for decades. Under the customary law system in principle revenge must be taken against the offender. Under certain circumstances the offender's brother and other patrilineal kin may become targets. In general revenge is not taken against women and children. When the Appellant's brother married Naqib's daughter the Appellant was just 11 years old….

103. It is the Appellant's case that revenge has been taken, not only against the offender, his brother Sher who was allegedly kidnapped, but also through the death of Shams. It appears that the murder and kidnapping occurred some years after the disputed marriage and in Kabul where Naqib had a position of influence.

104. For these reasons, I am not satisfied that the Appellant has shown that he is at real risk. I accept that if he was likely to be in danger of being attached for purposes of revenge then a grant of international protection would be appropriate …

…

106. However, on the specific facts of this case and the Appellant's claim that a very severe act of revenge has occurred and given his age at the relevant time, I do not conclude that he is at real risk at the hands of Naqib as part of a blood feud."

Error of law decision

7. On 5th November 2019 I heard submissions from the representatives of both parties and made the following decision:

"1. There are a number of difficulties with the First-tier Tribunal judge's conclusion that the appellant is not at risk because of the blood feud.

2. The judge accepts the evidence of Mr Omarzada, which relays information from a third party, in reaching his finding that the appellant's family were the subject of a blood feud. Although the

judge does not accept Mr Amerada's opinion that the appellant is at risk from the Afghan authorities and the Taliban:

> "63. … While I accept that Mr Omarzada has understandably kept up to date with events in Afghanistan and indeed visited in 2014 and 2018, he did not suggest in his statement that Khawany had told him of any adverse interest by the Afghan authorities in the Appellant or the Taliban."

the judge gives no reason or explanation for rejecting the statement by Mr Omarzada that he had been told by Khawany that if the appellant had not left when he did "there would have been a great threat" and yet accepted the other information relayed by Khawany. It would of course be open to the judge to reject some of Mr Amerada's evidence but reasons for such rejection are to be [provided] accepted. The judge in this instance has not rejected that part of the evidence save in a conclusion that the blood feud has finished.

3. The judge refers to having considered some of the source material referred to in the UNHCR Guidelines although the source material was not actually in the bundle. I do not accept Mr Markus' submission that the judge has undertaken research off his own volition – the substantive document was in the appellant's bundle and it is reasonable for the judge to examine source material that led to the UNHCR Guidelines but the judge has not identified what source material he actually looked at, what it said, its date and he says he only looked at some of it. The judge has plainly taken account of the source material but in the absence of setting out what it said it is not possible to identify why this formed part of the basis for the judge's conclusion that the appellant was no longer at risk.

4. The Guidelines refer to blood feuds sometimes lasting for decades; this seems to contradict an assumption by the judge that because the appellant was a child at the time then he would no longer be at risk. If that were the case then one would not expect blood feuds to last for decades or generations.

5. Although the Guidelines refer to "in principle revenge must be taken against the offender", in this case revenge has been extracted not only against the offender (Sher) but also another brother, Shams. The judge has not explained how he reached the conclusion that this meant that further revenge would not be sought, particularly given Khawany's view, or why the fact that there were two incidents of revenge as oppose to simply against the 'offender' that did not provide a reason for concluding that in this case the generality did not apply. Nor does he explain on what basis he reached the conclusion that the severity of the revenge could result in termination of the blood feud.

6. Taking these matters as a whole I am satisfied that the First-tier Tribunal judge has failed to provide adequate reasons for his conclusion that the appellant is not at risk on return to Afghanistan. The judge has erred in law such that I set aside the decision of the First-tier Tribunal judge in so far as he finds the appellant not to be at risk on return from the blood feud, a decision to be made on that issue at a resumed hearing."

8. I made directions for the resumed hearing to be heard: submissions only and for a fresh bundle documents to be filed and served. The pandemic COVID-19 then intervened hence the delay in the final determination of this appeal. The resumed hearing was held via Skype for Business. Although there were some initial problems arising out of difficulties with the respondent's server, these were resolved, and all parties and I were satisfied that the hearing was satisfactorily concluded.

9. The appellant had filed a further witness statement of Mr Omarzada and an expert report by Dr Giustozzi together with copies of the UNHCR annual report for 2019, the UK Home Office CPIN 20 August 2019 and the EASO country of origin information report. The respondent provided at the hearing the CPIN on anti-government elements dated June 2020 and the CPIN on the security and humanitarian situation, dated May 2020.

10. In accordance with further directions made, the parties had agreed the list of issues for the Upper Tribunal to decide. These were as follows: –

(a) Having regard to the unchallenged findings made by the First-tier Tribunal that the appellant's family were the subject of a blood feud, is the appellant himself at risk as a result of that blood feud?

(b) If so, is it reasonable for the appellant to relocate to Kabul?

(c) Following *AS (Afghanistan),* the country guidance case being considered by the Upper Tribunal, is there a general risk under article 15(c) of the Qualification Directive that the appellant will be harmed if he returns to Afghanistan?

11. In the light of the further witness statement from Mr Omarzada, the respondent informed the Tribunal she wished to cross-examine him and so arrangements were made for an interpreter to be present. I heard oral evidence from Mr Omarzada whose English was very good but, where the question was complex or his answer was complex, he had the assistance of an interpreter. I heard oral submissions from Ms Cunha on behalf of the respondent and from Mr Saeed on behalf of the appellant.

Consideration

12. Mr Omarzada was cross examined at length in connection with the evidence set out in his most recent statement which, in essence, referred to his most recent visit to Afghanistan in 2019. Whilst there, he said that he had gone to Khawany's butcher's shop in Kabul in order to make enquiries as to the appellant's family, as requested by the appellant. He said that the appellant had told him that he had made several attempts to contact Khawany by calling his phone number "but the phone seemed to be off". Mr Omarzada said that in September 2019, during the course of his visit in Afghanistan, he went to the shop, but Khawany was not there. He relayed the conversation that he had with the current owner during the course of which he received information that Khawany had been threatened by Commander Naqib "in relation to a matter that involved distant family members called Shams and Sher Mohammed."

13. The exact nature of the communication between the current owner of the butcher's shop, the witness and how he obtained the information in connection with the reason why Khawany had left the butcher's shop was the subject of intense cross-examination by Ms Cunha. Ms Cunha asked, in particular, why the witness had asked questions about Commander Naqib when it seemed that the mere mention of Commander Naqib resulted in fear and the possibility that the witness himself and his family could come to some risk through the asking of questions.

14. Ms Cunha submitted that Mr Omarzada had not verified with anybody what he had been told by the current owner of the shop, he could not recall the name of the current shop owner and that it was inherently implausible that such a conversation could have taken place given the level of fear that Commander Naqib engendered. She submitted it was implausible that this Commander would be randomly spoken of between people who had not previously met. She submitted that if the Commander did in fact have an interest in the appellant's family as claimed, then he would have pursued Mr Omarzada because Mr Omarzada 'had been asking questions'.

15. I am satisfied that Mr Omarzada's evidence was that he had not directly questioned the current butcher shop owner about Commander Naqib and Shams and Sher Mohammed. I am satisfied that the information that Khawany sold the shop because of threats from Commander Naqib was volunteered to Mr Omarzada by the shop owner who was relying on what he had heard. This was not a case of a random person going into a random shop and randomly asking questions of an unknown quantity or quality but a case of an individual going to a shop where he previously knew the owner and engaging in conversation with the current owner. I do not accept the submission that it is inherently implausible for a conversation to take place between someone who knew the previous owner and the new owner as to the whereabouts of the previous owner, or for information to come out during the conversation of the new owner's understanding why the previous owner had left.

16. Ms Cunha's submitted that the account by Mr Omarzada was untrue because, given the fear that Commander Naqib was held in, Mr Omarzada would not have placed himself and his family at risk by asking questions. This was not the evidence. Mr Omarzada made clear that he himself had no issue with the Commander and there was no need for the Commander to 'come after him or his family'. The evidence was not that Mr Omarzada initiated the questions about Commander Naqib but that it arose during the conversation; Mr Omarzada did not ask questions directly about Commander Naqib. His evidence was that when Commander Naqib was referred to, he did not ask any more detailed questions.

17. Ms Cunha submitted that no weight could be placed upon Mr Omarzada's evidence about the conversation with the owner of the shop not only because of the matters referred to above but also because Mr Omarzada had failed to undertake any verification of the information, could not recall the name of the new shop owner and that the expert and country evidence did not support the claim that the Commander would seek revenge upon the appellant.

18. There was no requirement for Mr Omarzada to undertake any verification of the information he received from the owner of the butcher's shop. Mr Omarzada's evidence consisted of relaying the conversation he had with the shop owner; it was not an interrogation, and nor could he be expected to have undertaken an interrogation. As for not recalling the name of the shop owner now, that is hardly surprising given the time that has elapsed; that does not reflect adversely upon his evidence. The First-tier Tribunal judge found Mr Omarzada to be generally reliable and to have given consistent evidence. I also found Mr Omarzada's evidence to be honestly and consistently given. Although Ms Cunha questioned Mr Omarzada closely about the community organisation that he was involved with and seemed to be implying during cross examination that Mr Omarzada's evidence may have been tainted because of these community links, this was not a submission that she made. Mr Omarzada was a close friend of one of the appellant's brothers and this evidence was not the subject of challenge either in the First-tier Tribunal or before me.

19. Ms Cunha drew attention to a difference in the appellant's account as to whether his brother had eloped with Commander Naqib's daughter or whether the feud had arisen because of a marriage between the Commander's daughter and the appellant's brother. She submitted that the Commander's daughter would not have been able to marry the appellants brother without her father's consent although I was not directed to any evidence to support this submission. It seems that Ms Cunha was submitting that either the inconsistency in the appellant's account as to whether it was an elopement, or a marriage cast doubt on the claim overall, or that if the couple were in fact married then the feud could no longer exist because the Commander's consent must have been given. Ms Cunha did not make this submission in so many words and I am driven to the conclusion that she placed little weight upon this distinction. In any event whether there was an elopement or a marriage I am satisfied that there was a dispute that led to Sher being abducted and disappearing. As the First-tier Tribunal judge found, the eloping brother has disappeared, and the other brother had been killed in Kabul by Commander Naqib or under his authority. There was no challenge to that finding of the FtT judge by the Secretary of State and those findings stand.

20. Ms Cunha submitted that the claim by the appellant did not amount to a blood feud. She submitted that Dr Giustozzi's report not only relied upon evidence that was several years old but also gave details of very few honour killings, that there had been no recent evidence of any increase or decrease in such killings, that the focus in Afghanistan had now changed given the ongoing negotiations, that the focus of Commander Naqib had been resolved namely the disappearance of the perpetrator and there was no evidence that the elopement/marriage of his daughter would be a priority given that the perpetrator had already disappeared. The appellant's claim that he would be pursued was, she submitted, neither plausible nor reasonable. Ms Cunha submitted that there was no evidence that a child, now an adult, returning years later (the elopement took place in 2011) would be a target. She submitted that Shams could have been killed because he was looking for Sher and that 'technically' the Commander had got what he wanted and therefore the dispute ended. She submitted that with the disappearance/death of Sher the

Commander would have achieved what he wanted. She relied upon Dr Giustozzi's report which she said demonstrated that it was a case of resolving honour and not the commencement of a blood feud; Shams "may have been killed accidentally". The appellant would not, she submitted, be actively looking for his missing brother and that the death of Shams could not demonstrate that the appellant would now be at risk. Although I was provided with two CPIN reports by Ms Cunha, she did not draw my attention to any particular sections of those reports. I have nevertheless considered them.

21. Dr Giustozzi's report is lengthy and a considerable part of the report deals with issues around the Taliban. Mr Saeed very properly relied upon pages 14 to 18 only of the report. In paragraph 9, Dr Giustozzi states

> 'adultery or unacceptable relations of any kind between men and women are a very common source of blood feuds and honour killings. Honour killing remains very common in Afghanistan and in many regions the police openly admit that they do not interfere with how the clans settle their accounts.'

It is correct that much of the source material relied on by Dr Giustozzi pre-dates 2014. His report goes on to say:

> '13. Feuds are between families; the fact that a member of the family might not have had anything to do with the original incident starting the feud does not mean in any way that he will be less affected. So a male member would be at risk of being targeted with physical violence in a feud, and a female member might be at risk to being traded in a settlement to the feud, even if they had no role in starting the feud…
>
> 14. Blood feuds are pursued with impunity even in Kabul city. …'

22. Section 7 of the EASO report deals with blood feuds and revenge killings. The report explains that

> 'blood feuds for revenge- taking can be the result of personal violence or wrong-doing that is seen as being against honour, disputes involving land, or family conflicts and relationships…. Those who are empowered to exact revenge are the patrilineal descendants of someone wronged, against the patrilineal relatives of the perpetrator, with the aim of restoring balance between groups and individuals…. Shame is connected to the behaviour of women. Women's behaviour is seen in society only as a reflection of the reputations of their families and male family members, specifically. Women cannot accumulate honour or better the standing of the family, only men can do this by protecting their property, and their families. Therefore, protection of the family women's honour is a primary concern of Pashtun men, and under the concept of *Namus,* it is the duty of men to protect the owner of the women they are responsible for; failure to do so results in a loss of respectability in the eyes of others. *Namus* is thus a frequent cause of conflict…. feuds can go on for generations…. Disputes may also become violent over honour issues; a woman's refusal of marriage, eloping, or running away to escape an arranged marriage, for example, can result in revenge killings or spark feuds.'

23. Section 10 of the May 2020 CPIN report draws attention to the EASO report as a reference point. The report does not seek to distinguish the EASO comments on honour killings/blood feuds.

24. The background material including the report by Dr Giustozzi acknowledges that a blood feud can start with a transgression which offends the so-called honour of the main protagonist. In this case the undisturbed finding of the First-tier Tribunal is that Commander Naqib considers his honour to have been besmirched because of the elopement/marriage of his daughter with/to Sher. Contrary to the submissions made by Ms Cunha there was no evidence before me that Shams had been killed accidentally or that in this case the abduction/disappearance of Sher had led to the conclusion or satisfaction of the Commander's "honour". The Secretary of State in the reasons for refusal letter and the First-tier Tribunal judge's findings do not distinguish between honour killing and blood feuds. An elopement/marriage can in certain circumstances trigger a feud. The list of agreed issues to be decided by me includes the question "Having regard to the unchallenged finding made by the First-tier Tribunal that the appellant's family were the subject of a blood feud, is the appellant himself at risk as a result of that blood feud?" I do not accept Ms Cunha's submission that this was not a blood feud.

25. The First-tier Tribunal judge incorrectly concluded that the feud had been satisfied and that the appellant would no longer be at risk. There was however no evidence to suggest that was the case. At its very essence, the appellant's brother had eloped/married Commander Naqib's daughter contrary to the agreement of both families; that brother had been abducted/disappeared and another brother, Shams, killed in Kabul. That killing, combined with the evidence of Mr Omardaza and Khawany is such that there can be no conclusion other than that the appellant would be at risk of being killed by Commander Naqib or under the authority of Commander Naqib because of the behaviour of Sher. That Commander Naqib, who it is acknowledged is a powerful Commander within the Afghanistan power structures, may be focused on other matters because of the various negotiations that are pending at present, does not mean that if the appellant were to reappear in Afghanistan the opportunity would not be taken to kill him.

26. The answer to that first question is, on the basis of the evidence before me, yes.

27. The second question concerns whether it is reasonable for the appellant to relocate to Kabul. In determining this question I take account of the fact that Shams was killed in Kabul and note that Khawany himself fled Kabul as a result of threats that he had received. If the appellant is able to hide in Kabul, Kabul city or elsewhere in Afghanistan then he would plainly not be at risk of being killed. His claim is not that he is at risk of indiscriminate violence or that he requires general humanitarian protection. Rather his claim is that Commander Naqib is a powerful enough person to be able to trace him wherever he goes. The appellant's evidence to the First-tier Tribunal that the family had moved a short distance away from their original home because they were moving to an area that was not under the influence of Commander Naqib, was accepted. A similar possibility may continue to exist somewhere in Afghanistan but the

significant difficulty that arises is that the lines and areas of control and authority shift frequently; the appellant would not know on his return to Afghanistan where the particular areas of authority now lie and in any event wherever he was he would be expected to disclose who he was and where he came from. Word would, I am satisfied, make its way back to Commander Naqib that he had arrived in the country and where he was. The reach of the Commander is extensive and includes Kabul. I am satisfied that the Commander, no matter that he is focused on wider scale negotiations, would seek to avenge his honour. The satisfaction of honour is a matter of great importance, as identified in the EASO report and impacts upon all aspects of life. The appellant would not be able to avoid risk. There is no adequacy of protection available in the appellant's circumstances.

28. The answer to the second question is therefore 'No' it is not reasonable for the appellant to relocate to Kabul or Kabul city.

29. I am satisfied that the appellant is at risk of being killed as a result of a blood feud involving Commander Naqib as the perpetrator; that in the light of the considerable background evidence available about the lack of police protection in such cases and the power of the Commander there is no sufficiency of protection; internal relocation is not an option open to the appellant both in terms of relocation within Kabul city and Kabul where the reach of Commander Naqib is such that the appellant's whereabouts would become known and revenge would be extracted.

Conclusion

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal that the appellant is not at risk of being persecuted because of the blood feud if returned to Afghanistan.

I remake the decision and allow the appeal against the decision of the respondent refusing the appellant international protection.

Jane Coker
Upper Tribunal Judge Coker Date 7 September 2020