



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/11502/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided Under Rule 34 (P)  
On 6 October 2020**

**Decision & Reasons Promulgated  
On 12 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**R T**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation (by way of written submissions)**

**For the appellant: Mr J Dhanji of Counsel instructed by SMA Solicitors**

**For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

## **Background**

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Kamara on 4 June 2020 against the determination of First-tier Tribunal Judge Anthony, promulgated on 6 February 2020 following a hearing at Birmingham on 31 January 2020.
2. The appellant is an Afghan national born on 1 January 2000. He entered the UK as a minor aged 16 1/2 on 31 August 2016. He claims asylum on 29 September 2016. His claim was refused on 19 September 2017 and an appeal against that decision was dismissed by First-tier Tribunal Judge Chapman. The appellant then made further submissions on 18 October 2018. these were accepted as a fresh claim but refused on 4 November 2019, giving rise to these proceedings.
3. Judge Anthony heard oral evidence from the appellant and his brother who was granted refugee status in 2012 after a successful appeal before First-tier Tribunal Judge McMahon. She found, however, that the fresh evidence could not displace the adverse findings of Judge Chapman on the protection claim. She also found that the appellant's relationship with his brother did not amount to family life for the purpose of article 8 and that his private life which was established during a period when his status was precarious did not engage article 8. Accordingly, she dismissed the appeal.
4. The grounds argue that the judge erred on two counts: (i) in failing to give weight to Judge McMahon's positive findings on the appellant's brother's credibility which would, if considered, have impacted upon the Judge Anthony's assessment of his evidence at the hearing; and (ii) in failing to consider paragraph 276ADE(1)(vi) in the context of the appellant's relationship with his brother and former foster carer, his depression and inability to access mental health care on return to Afghanistan.

## **Covid-19 crisis: preliminary matters**

5. The usual procedure following the grant of permission would have been to list the matter for hearing but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and instead directions were sent to the parties on 29 July 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
6. The parties have responded. The appellant's submissions are dated 12 August 2020 and the respondent's are dated 17 August 2020. There has been no reply from the appellant to the respondent's submissions to date. I now proceed to consider the matter.

7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
8. I have had regard to the grounds, the determination, the submissions and to all the evidence before me before deciding how to proceed. A full account of the facts are set out in the papers on file and the issues to be decided are straightforward. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I am satisfied that the appellant has been given the opportunity to raise any objections to a paper determination and has not done so in his written submissions. The respondent is content that the matter be determined without an oral hearing. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

### **Submissions**

9. Mr Dhanji, in his submissions for the appellant, relies upon the grounds for permission. He submits that the judge erred in law in failing to give any weight to the fact that the appellant's brother had previously been found by the tribunal in his own appeal to be a credible witness. It is submitted that that assessment should have been given weight when his credibility as a witness in support of the appellant's appeal was assessed. The appellant adduced documentary evidence from a man in Afghanistan in support of his claim that he had been abducted and imprisoned by the Taliban. These documents were purportedly obtained with the help of the appellant's brother. The judge considered the documents but was not satisfied that they were reliable. It is submitted that had the judge given weight to the fact that the appellant's brother had previously been found to be a credible witness, she would have reached a different conclusion as to the provenance of the documents from Afghanistan. It is accepted that the positive credibility findings in the past did not mean that the judge was bound to accept the brother's evidence in the present appeal, but it is argued that it was a relevant consideration to which the judge should have attached some weight.

The judge's failure to take any account of the previous positive credibility findings in respect of the brother tainted her assessment of his credibility, which in turn undermined her conclusion that the documents relied upon by the appellant were unreliable

10. With respect to the second ground of appeal, it is argued that the judge erred in law in finding that the appellant's right to a private life was not engaged. It is submitted that the appellant had lived in the UK for three years and five months at the date of hearing, having entered at the age of 16, and that there was evidence before the judge about his relationship with his brother and the relationship he had developed with his former foster carer. It is submitted that on the basis of that evidence the judge should have found that the appellant had established a private life that fell to be protected under article 8. It is submitted that this error was material as it resulted in the judge failing to determine whether the appellant could satisfy the private life provisions in the rules at paragraph 276ADE. It is submitted that the appellant's depression, low mood and sadness and the difficulties he would face in accessing mental health care in Afghanistan all went towards demonstrating that he would face very significant obstacles to integration on return. It is submitted that when the broad evaluative judgement recommended in Kamara [2016] EWCA Civ 813 was carried out, the appellant was able to demonstrate that obstacles existed and that this would have been positively determinative of his article 8 grounds of appeal. The tribunal is urged to set aside the decision and to remit the matter to the First-tier Tribunal for a de novo hearing, regardless of whether one or both grounds were made out.
11. In his submissions for the respondent, Mr Whitwell notes that there has been no direct attack on the finding that the appellant had failed to discharge the burden on him to demonstrate a well founded fear of persecution. It is submitted that it is not particularised in the grounds how the appellant's brothers evidence directly affects those findings. Whilst it is accepted that the judge did not expressly set out that she had taken into account the previous positive credibility findings in respect of the appellant's brother, it is submitted that the judge had not erred because she had taken account of Judge Chapman's determination in respect of the appellant which had cast doubts on the previous findings in respect of his brother's circumstances. Judge Anthony noted that Judge Chapman found that the appellant's family did not go to Turkey with the appellant's brother, contrary to judge McMahon's decision. Judge Chapman also found that the appellant had continued to live in Afghanistan with his family and that he had close family members who live there. Having rejected his claim of being abducted by the Taliban, Judge Chapman found that the appellant would not be at risk in his home area and that if there had been any interest shown in the appellant's family that was over 10 years ago when the appellant's brother had fled. Judge Anthony considered the appellant's brother's oral evidence as to the

documentation obtained from Afghanistan but considered that there were reasons for not accepting his account as it was not explained why the letter was written on official notepaper from the taxation department and that there was no satisfactory trail for the documentation to establish its provenance even though this could have easily been provided. Mr Whitwell submits that the weight to be attached to the evidence of witnesses is a matter for the judge who looked at the matter in the round and in accordance with Tanveer Ahmed principles.

12. On ground two, it is submitted that the finding that the appellant's private life was not sufficient to engage the Convention was not irrational. It is submitted that nothing specific was relied upon by the appellant as to the nature and extent of his private life other than the length of residence of 3 1/2 years. It is not suggested that the appellant was engaging with the local mental health services in respect of his depression, nor was there any evidence as to his engagement with his former foster carer. It is submitted that, in any event, if there were an error, it was immaterial given the findings that the appellant had spent the majority of his life in Afghanistan, that he spoke the language, that he had close family members who continue to live there, that he would have family support on return, that he could readily readjust to life on return and that he would be able to receive financial remittances from his brother in the UK if necessary. Based on these factors it is submitted that the appellant would be enough of an insider to participate in life in Afghanistan (as per Kamara). The Tribunal is asked to find that the determination contains no material errors and to uphold the decision to dismiss the appeal.

### **Discussion and conclusions**

13. I have considered all the evidence, the grounds for permission, the determination and the submissions.
14. The appellant puts forward two complaints. The first is that the judge failed to factor in the positive credibility finding in respect of the appellant's brother made in his own appeal when assessing his reliability as a witness in the appellant's appeal. I can find no merit in this argument. The judge had note, however, of Judge Chapman's later decision which took account of the determination of Judge McMahon in respect of the appellant's brother. It cannot, therefore, be said that the first determination was disregarded and indeed Judge Anthony engaged with it at paragraphs 6-7, noting that the appellant's brother had been found to be credible and reliable (at 7). However, contrary to Judge McMahon's findings, Judge Chapman did not accept the appellant's brother's account of the family circumstances. It was entirely open to Judge Anthony to rely on Judge Chapman's findings that an entirely truthful account had not previously been given to Judge McMahon.

15. The judge heard oral evidence from the appellant and his brother and considered the documentary evidence relied upon. The weight she attributed to the oral evidence was a matter for her having had the benefit of hearing from both witnesses. Her reasoning for rejecting the unreliability of the documentary evidence was wholly rational and in accordance with Tanveer Ahmed principles. No explanation was provided for how a Facebook acquaintance would have had access to official notepaper when it was not suggested that he worked in the Taxation and Revenue Department of Laghman province. Similarly, she was entitled to reject the other supporting letters which were also written on the same notepaper even though no connection between the authors of the letters and that department had been established. The judge was also entitled to find that no supporting evidence from Facebook had been adduced to show that contact had been made with the man who is said to have supplied the evidence. This was evidence that could easily have been made available. No explanation was provided for why this had not been done. Further, the judge noted that the contents of the documents did not accord with the appellant's own evidence and that the inconsistencies thus further undermined the reliability of the documents. The grounds fail entirely to explain how consideration of a past positive credibility of the appellant's brother could overcome these deficiencies. The judge's conclusion that the protection claim was not made out was, therefore, entirely reasoned and remains sustainable.
  
16. I turn now to the second complaint regarding the judge's assessment of article 8. The judge found that there was no family life between the appellant and his brother as although they saw each other regularly they did not live together, they were both adults and there was nothing between them which went beyond the usual emotional ties. Reliance is placed on the witness statements of the appellant and his brother as to the relationship between them. It has to be said that these are of very poor quality; the print is faint and makes them partially illegible. Other than an assertion that he is supported by his brother, the appellant gives no further details in his statement. There is no information as to the nature of the support given, the frequency of their contact or its form. The appellant's brother provides some information. He confirms they see each other on weekends as he lives in Croydon and the appellant lives in Milton Keynes, that they speak regularly and that he encourages the appellant to go to the gym, but this alone does not demonstrate a relationship of particular dependency. Furthermore, a large part of what the appellant and his brother say is based on the account of the appellant's abduction, an event which two judges have rejected. Moreover, the appellant's brother's concerns as to how the appellant would manage in Afghanistan without him is based on the premise that he would be returning to no one and would be destitute. That is not, however, the true situation as found by the judge. The appellant would be returning to his family and would have more family members to support him

than the single relative he has here and with whom he does not even reside. Although the grounds rely on the appellant's relationship with his former foster carer, the appellant gives a sparse account of his contact with her and her letter is silent on the issue of whether contact continues between them or of any relationship they continue to have. The two sentences on article 8 contained in Counsel's skeleton argument for the hearing provide no assistance.

17. The judge had regard to the medical evidence and accepted that the appellant was depressed and that contributing factors were his ongoing immigration case, the uncertainty in his life and his dependency on others. She found, however, that the appellant's depression was not caused the events described by the appellant but by growing up in a country ravaged by war. She also properly found that Dr Latif's conclusions were premised on the assumption that the appellant would be without a support network on return whereas she had found that he had family in Afghanistan to whom he would be returning and that with their help and support he would be able to access any care he required. These findings are unchallenged.
18. The judge further found, as listed by Mr Whitwell, that the appellant had lived the majority of his life in Afghanistan, that he had been here less than 3 1/2 years, that he spoke the language, that he had a mother and siblings there, that he would have family to return to, that he would be able to readjust to life on return and could continue to receive support from his brother in the UK as required.
19. On the basis of these findings, therefore, it is difficult to see how a private life established at a time of precarious immigration status and over a relatively short period of time could be strong enough to be deserving of protection under article 8. The judge's conclusions were wholly open to her on the evidence and disclose no material errors of law.

### **Decision**

20. The decision of the First-tier Tribunal does not contain any errors of law and it is upheld. The appeal is dismissed.

### **Anonymity**

21. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue the anonymity order made by the First-tier Tribunal.
22. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so

in order to avoid a likelihood of serious harm arising to the appellant from the content of the protection claim.

Signed

R. Kekić

Upper Tribunal Judge

Date: 6 October 2020