



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

PA/14259/2018 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*
On 8 February 2021

Decision & Reasons Promulgated
On 25 February 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

X X

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms E Gunn, instructed by Duncan Lewis, Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of Dr H H Storey, sitting as a FtT Judge, promulgated on 18 September 2020.
2. The technology enabled an effective remote hearing, despite some difficulties in referring to underlying materials. No separate bundles had been provided to the UT, and the versions of previous bundles in the hands of the parties had inconsistent page numbering and incomplete referencing. However, with the assistance of both representatives, all materials referred to were identified in course of the hearing.

3. The grounds of appeal to the UT are headed (i) error in assessment of section 117B(6) [of the 2002 Act]; (ii) speculating on evidence; (iii) no reasons for rejecting material evidence; and (iv) error in approach to medical evidence.
4. The grant of permission, although on all grounds, observes that (i) appears strongest.
5. The SSHD responded to the grant of permission on 30 October 2020, conceding ground (i) only. Mr Bates acknowledged that on the FtT's findings, the appeal should have been allowed under article 8.
6. It was accepted that the appellant could not be expected to go back to Nangahar. Ground (ii) is directed against the finding that he might relocate to Kabul. Ms Gunn said that the FtT speculated on family support and on the possibility of employment. She referred to the appellant's statements about having little information about or contact with family members; an expert report on the likelihood of their being abducted or killed; the flimsy basis for identifying the appellant as a mechanic; and the unlikelihood, as specified in country guidance, of finding any employment, in absence of family connections, other than as a day labourer.
7. On this ground, I prefer the submissions of Mr Bates. The FtT was aware of the appellant's claims about his family, but he failed to establish those. His general credibility was rejected for various good reasons, not challenged in the grounds. The assessment of family contact was made in that context. It was not incredible that someone might be described in Afghanistan as a mechanic even if apparently aged 14 at the time; and that came from a document which he produced.
8. Ground (ii) shows selective disagreement, rather than speculation.
9. Ground (iii) says that the FtT failed to deal adequately with materials about the Covid pandemic specified in the skeleton argument.
10. The judge noted the submissions about the pandemic at several points, but concluded at [77] that although this would increase difficulties for returnees, those were not likely to be significantly greater than those evaluated in the latest country guidance. That was the assessment which the judge had to make. It is not said to lie beyond reason.
11. The evidence provided by the appellant was not "rejected". The judge simply declined to draw from it the conclusion which the appellant wished. The appellant recites the evidence again, but does not show the absence of further elaboration to amount to an error of law.
12. Ground (iv) says that the FtT, having accepted the diagnosis in a report by Dr Singh, made its finding of no significant risk of suicide "in vacuum with no medical basis" which "again amounts to ... mere speculation".

13. It is the ground, not the decision, which is in a vacuum. The assertion does not withstand reference to [51] of the decision. Having accepted the diagnosis as based on clinical observations, the FtT gives the report “limited weight” due to (i) absence of engagement with previous adverse findings; (ii) acceptance of the appellant’s narrative about his experiences and lack of family, which he has otherwise failed to establish; and (iii) absence, contrary to the Istanbul protocol, of consideration of other possible causes. The appellant shows no error in any of those reasons. The finding on the report is far above “mere speculation”.
14. The decision, read fairly and as a whole, is a thorough, indeed painstaking, analysis of the appellant’s case by one of the jurisdiction’s most experienced judges. Grounds (ii), (iii) and (iv) probe for disagreement, but they do not show error on any point of law, such that the decision should be set aside, other than as follows.
15. The decision of the FtT is set aside to the extent explained above. On remaking, the appeal, as originally brought to the FtT, is allowed on article 8 grounds, based on the appellant’s relationship with his child. On other grounds, the appeal stands as dismissed.
16. An anonymity direction is in place. It is doubtful whether that is justified, but as the matter was not addressed in the UT, anonymity is maintained herein.

Hugh Macleman

10 February 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.