



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002414

First-tier Tribunal Nos: PA/54687/2021
IA/14151/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1st November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

KG
(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini, Counsel; instructed by JJ Law Chambers

For the Respondent: Ms S McKenzie, Senior Presenting Officer

Heard at Field House on 6 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Burnett dismissing his protection claim. The decision was promulgated on 26th May 2023.
2. The Appellant applied for permission to appeal against that decision which was granted by Upper Tribunal Judge Sheridan in the following terms:
 1. The judge found it undermining of the appellant's credibility that he did not adduce corroborative evidence about going AWOL or to confirm his length of service. The judge arguably erred by failing to address whether such evidence could reasonably have been obtained by the appellant.
 2. I do not restrict the grounds that can be pursued but make the observation that the other grounds appear weak.
3. The Respondent provided the Appellant with a Rule 24 response which I have also taken into account in reaching this decision.

Findings

4. At the close of the hearing I reserved my decision which I shall now give. I find that the Grounds of Appeal demonstrate material errors of law in the following respects (in relation to Grounds 2 and 3, but not Grounds 1 and 4).
5. In relation to Ground 1 and the complaint that the Appellant's sister did not have any understanding of military terminology and that she knew of the Appellant's troubles in Pakistan and the questions that may or may not have taken place between her and the FtTJ, as Mr Bazini rightly noted, I have not been provided with either a copy of the digital recording or the Record of Proceedings from the First-tier Tribunal Judge. Neither do I have a witness statement from the advocate in question at the First-tier Tribunal testifying as to the nature of the evidence given and the questions asked of the Appellant's sister in line with BW (witness statements by advocates) [2014] UKUT 568 (IAC). Therefore, I do not find that a material error of law is identified in Ground 1.
6. Turning to Ground 2 and the complaint that the judge has misstated that a discrepancy remains between the screening interview and the evidence given in the asylum interview, I am satisfied that a material error of law does exist in respect of this ground. However, before turning to that ground which criticises §35 of the First-tier Tribunal Judge's decision, I first look at §34 which contains what Mr Bazini described as an important finding of fact made by Judge Burnett. At §34 of the decision Judge Burnett states "I have considered carefully the appellant's claims. I concluded that he may have encountered the Taliban but I do not consider he is at any risk from them now given he has left the military". Mr Bazini highlighted that the sole encounter the Appellant had with the Taliban occurred in December 2009 as highlighted in his evidence given in his asylum interview and his witness statement (and in several other places discussed below). Given the Judge's acceptance that the Appellant had encountered the Taliban, which the Appellant says in turn gave rise to his being mistrusted by the Pakistani Air Force, the judge's misbelief of the Appellant's account at §35 (the

subsequent paragraph) due to the discrepancy in the dates allegedly given in the screening interview versus the asylum interview become far more important to the adverse findings, as the encounter with the Taliban is what gave rise to the Appellant's problems in the first place. Furthermore, given that the Respondent has also accepted in her refusal letter that the Appellant worked for the Pakistani Air Force as a radar technician, it is an important discrepancy that the judge needed to resolve. Mr Bazini criticises the statement at §35 where the judge's findings give the impression that the Appellant has only recently changed his account of when he left the Pakistani Air Force. Mr Bazini says this is not the case and a mistake of fact has occurred. To illustrate the absence of any discrepancy, Mr Bazini took me to numerous instances in the screening interview and in the Asylum Interview Record which all demonstrated that the incident in question had occurred in December 2009. Those instances are chiefly as follows.

7. Starting with SCR3.3, this answer reveals that the Appellant left Pakistan on 29th March 2010 by air coming on a direct flight to the UK. Turning from there to SCR5.2 the Appellant is asked if he was a member of any national Armed Forces and if so had he taken part in any fighting when and where and what was his role. His answers include that he was based at Mianwali from 2001 to 2005 and also at Samungli from 2005 to 2008 and that his role was an aircraft technician. The reference in that answer to 2008 is, in all likelihood, what has given rise to the Secretary of State's belief that the Appellant claimed to leave the Pakistani Air Force in 2008, although I note that the answer given here does not state this by any means. In addition, SCR4.1 in the same document makes clear that the Appellant was accused of having links with the Taliban by the Air Force and security agencies and that this "happened in 2009". Therefore if one were to take SCR5.2 in isolation, one might well think that the Appellant was only with the Pakistani Air Force until 2008, however that is not the nature of the question posed at 5.2 nor does it purport to suggest this is when his troubles occurred which gave rise to him leaving the air force and the accusation against him in 2009. In addition, Mr Bazini took me to answers AIR13, 48, 106-107, 110, 164 and 225 of the Asylum Interview Record which all pertain to the Appellant being visited by the Taliban in 2009 and that he was living in or near Minhas Air Force Base from 2008 to 2010. I pause to note that given that the screening interview was merely to screen the Appellant for the nature of his claim, and given that it states where he was posted at other air force bases including Samungli from 2005 to 2008, it may well be that there was a third Air Force base that should have been noted at that time but was later given in the Asylum Interview Record. To my mind, this does not necessarily demonstrate an inconsistency as a fuller account was given in the asylum interview itself which is its purpose (*cf. YL (Rely on SEF) China* [2004] UKIAT 00145 at [19]). The remaining instances in the Asylum Interview Record which Mr Bazini took me to all showed that the Taliban accosted the Appellant and his family in December 2009, that he returned from leave with his family to his base on 14th December 2009 and that his father decided it was best for him to leave Pakistan in January 2010; all of which points to consistency with his account that he then later left Pakistan in March 2010. In addition to these two interviews I also take note of the fact that there was a Statement of Additional Grounds that followed within two weeks of the interview which also mentioned that the Appellant was in the Air Force in 2009. Therefore, with the above evidence in mind, the judge's finding that the Respondent's refusal letter at paragraph 55 gave rise to a suggestion of an inconsistency was not comprehensively resolved as the judge failed to have regard to the material that Mr Bazini has taken me to which was before the judge and which points to the possibility that the judge may have well reached a different view on the

evidence had anxious scrutiny been given to this evidence. In light of the above analysis, I find that the judge erred in concluding that there was an “important discrepancy” that was raised by the Respondent which had not been satisfactorily addressed in the Asylum Interview Record, owing to the references to the Asylum Interview Record and the Statement of Additional Grounds (not to mention the additional references in the Screening Interview) explored above.

8. Turning to Ground 3 and the argument that the judge set too high a standard of proof in requiring the Appellant to produce documentation showing the Appellant was employed by the Air Force in 2010, I accept Mr Bazini’s submission that the judge set too high a standard of proof. Notwithstanding a recitation of the correct standard in the decision at §25, in harmony with the decision in MAH (Egypt) v. Secretary of State for the Home Department [2023] EWCA Civ 216, as noted by Lord Justice Singh at [49] to [53], the lower standard of proof is merely an assessment of the risk on return and the requirement for corroboration to the exacting degree sought by the judge demonstrates that a standard higher than a reasonable degree of likelihood was sought by the First-tier Tribunal. I remind myself of [52] of MAH (Egypt) which confirms that “even a 10% chance that an applicant will face persecution for a Convention reason may satisfy the relevant test”. Therefore in harmony with the decision in MAH (Egypt) I find that the corroboration sought in documentary form demonstrated a higher standard than that required being applied by the First-tier Tribunal thus representing a material error of law.
9. In relation to Ground 4 and the argument that the failure to take into account relevant factors and evidence in considering the delay in claiming asylum, I do not find this ground easy to understand as pleaded by the former representative, and in any event I do not find that it would represent a material error of law that could undermine the decision (notwithstanding the errors identified in Grounds 2 and 3 already).
10. In light of the above findings, I find that the decision of the First-tier Tribunal does contain material errors of law.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of material errors of law.
12. Notwithstanding that the Secretary of State did not challenge the finding by First-tier Tribunal Judge Burnett at §34 that the Appellant may have encountered the Taliban, I cannot see that there is any sense in preserving this finding at the expense of the remainder of the decision which is infected by legal error; and therefore I set aside the decision in its entirety for the sake of convenience of the First-tier Tribunal in needing to re-make this decision.

Directions

13. The appeal is to be remitted to IAC Taylor House.
14. The time estimate given for the appeal is three hours.
15. I direct that a further Skeleton Argument is to be prepared by Counsel no later than two weeks prior to the date of hearing.

16. The Appellant's solicitors are to advise Taylor House listing in respect of the number of witnesses to attend and whether or not an interpreter will be required in addition to providing Counsel's dates to avoid.
17. The appeal to the Upper Tribunal is allowed.
18. The decision is set aside in its entirety.
19. I maintain the anonymity direction made by the First-tier Tribunal.
20. This matter is to be remitted to the First-tier Tribunal to be heard by any judge other than Judge Burnett.

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 October 2023