IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004604

First-tier Tribunal No: PA/51196/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

MR ZMZ
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Gajar, Counsel, instructed Sediqi & Sediqi Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 4 December 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 with permission against the decision of First-tier Tribunal Judge Hamilton ('the Judge') who dismissed his appeal on protection grounds.

Background

2. The appellant is a citizen of Afghanistan. He arrived in the UK on or around 5 September 2019 on a student visa valid to October 2021. He subsequently extended his leave to October 2023 as a post study worker. He claimed asylum on 4 August 2022 on the basis that he and his family have received threats from the Taliban. Before coming to the UK he had run his own business in Afghanistan, he had received threats from the Taliban, however he had left to come to the UK to study hoping that the interest in him would disappear.

3. Following the Taliban's return to completely control the country in August 2021, and specifically his family having received threats in late 2021, they left and moved to Pakistan. The appellant visited them there in February 2022. A senior Taliban intelligence officer had visited the appellant's family home, this officer ('Y') is a distant relative of the appellant's mother. He specifically had a list with the appellant's name on it. He visited in March and July 2022.

4. Upon learning about this, the appellant claimed asylum in August 2022.

5. His application was refused and his appeal came before the Judge on 10 August 2023. In his decision the Judge made the following findings:

    a. He did not accept that the appellant or his family had been targeted by the Taliban or that they were of any particular adverse interest to the Taliban.

    b. That his family were not in Pakistan or, if they were, that they have left Afghanistan due to threats from the Taliban.

    c. He did not accept that the appellant's family are dependent on him.

    d. He did not accept that someone of the appellant's profile would be at risk without more or than any other adult male in Afghanistan.

    e. In relation to Article 8 he concluded that there are no very significant obstacles to integration on return to Afghanistan, and that his removal would be proportionate.

6. The appellant appealed relying on 7 grounds of appeal. Permission was granted on all grounds by First-tier Tribunal Judge Gumsley.

The error of law hearing

7. Mr Gajar developed all 7 grounds of appeal in his oral submissions. The summary of them being:

    a. The Judge made a material mistake of fact in his reasoning by finding that "the appellant subsequently claimed to be have been so frightened of the Taliban that he left the country". This was a mistake of fact because the appellant never said he fled Afghanistan because of this. The appellant referred to several extracts of his interview and screening interview where he was clear in that he came to the UK to study on his T4 visa. He says he made it clear in his claim that it was only subsequent events since leaving Afghanistan that lead him to making his asylum claim.

b. The Judge failed to have regard to material evidence in that the Judge found that the Appellant had not shown that either he or his family were of interest to the Taliban or that his family are in Pakistan. In coming to these conclusions the Judge erred by failing to engage adequately or at all with the consistency to which he has said his family are in Pakistan throughout his screening and substantive interview. Further a letter from his family's landlord in Pakistan was in the bundle and a copy of the tenancy agreement. This letter was stamped and attested by a notary public from Pakistan. The Judge did not consider this evidence when coming to his conclusion that the appellant's family were not in Pakistan.

c. The Judge has materially erred in law in unlawfully requiring corroboration contrary to *WAS (Pakistan) v Secretary of State for the Home Department [2023] EWCA Civ 894* in relation to the appellant's ability to show that Mr Y was related to him. The appellant's case is that M was a distant relative of the Appellant's mother and that Mr Y was M's brother.

d. The Judge acting irrationally by concluding that "*Furthermore, if at the time he claimed asylum, the appellant knew Y had been appointed the chief intelligence officer in his local area and had personally come looking for him and his father, it is reasonable to expect this to have been mentioned in his statements or his AI.*" This is irrational because the appellant did mention the person identified as Y at questions 57 and 58 as being the brother of M.

e. The Judge placed excessive weight and/or made irrational findings in relation to when the appellant or his father were made aware that the Taliban were looking for him in 2022.

f. The Judge failed to make findings of fact as to whether the appellant was running a forex business in Afghanistan between 2018 and 2019 as claimed. This was central to the claim and a business that was in line with the Appellant's business qualifications from Pakistan and his later progression of this interest with his degree in the United Kingdom. There had been a similar failure to make findings on a the Appellant's fear of return that, as an educated man the Taliban want him to work for them. This was a standalone feature of the claim that required determination.

g. In relation to the s8 point taken against the appellant the Judge materially erred by failing to subjectively consider whether the appellant's explanation that his student leave was in effect an indirect form of protection was a credible one.

8. Mr Wain submitted the Judge had not materially erred:

a. The Judge had taken into account one of the factors was to study, however the appellant in his interview mentions his business being threatened in the year before coming to the UK. The Judge's conclusion is consistent with what was said in his interview.

b. The Judge references the documents he had before him, however did not find the account reliable as to his family circumstances, the documentation was therefore not evidentially weighty.

c. The requirement for corroboration needs to be read in the context of paragraph 47. The Judge has considered the evidence and lawfully drawn am inference he was entitled to on the evidence before him.

d. The Judge's finding was in relation to naming Y, which clearly was not in the interview. The Judge's finding has to be read in that context and is one that was reasonably open for him to make.

e. The Judge referred to other discrepancies in relation to his findings and the complaint made in the grounds is therefore not a fair one given the Judge's overall finding.

f. The Judge was aware that the appellant's claim was to run a forex company and so it was in his purview when determining the claim. The ground of appeal in relation to the risk from the Taliban wanting him to work for the, was not put in the appellant's skeleton argument before the FTT, and it is not a Robinson obvious point. The Judge cannot be criticised for failing to resolve it.

g. The Judge had before him a clear s8 point to resolve, he did so against the appellant, the appellant's complaint is little more than a disagreement.

9. At the end of the hearing I reserved my decision.

Decision and reasons

10. I have carefully considered the oral submissions of both representatives and am grateful to both of them with the clarity in their respective cases. I am satisfied that the Judge did materially err in law in determining the asylum claim. My reasons for this are as follows.

11. Despite Mr Wain's submissions it is clear that the appellant did not say in his screening interview or in his substantive interview that he left Afghanistan because of the fear he had from the Taliban. In both he made it clear that he left in order to come and study in the UK. The circumstances which he, now in part, relies on as to his narrative were not incidents in and of themselves that he identifies as being why he left or why he claimed asylum. The Judge's characterisation of why he left Afghanistan on this erroneous basis has plainly infected his conclusion at paragraph 37 that:

37. I did however find implausible the appellant's claim that, at some point, when the Taliban demanded money from him, he told them he could not afford to pay and changed his phone number to avoid speaking to them. The background evidence shows the Taliban did not hesitate to use violence against people who would not co-operate with them and the appellant subsequently claimed to have been so frightened of the Taliban harming him that he left the country. The fact I find the appellant's claim to have taken such a risk implausible does not, in itself, lead me to dismiss his account as untrue. However, I take it into account when considering the evidence as a whole.

12. Whilst the Judge does bookmark this finding as being not one, in itself, to dismiss the appellant's account, he does not return to it to either correct it, or to outline why he has not placed weight on it in his rejection of the appellant's narrative. It plainly in my view is a reason, amongst several, for not accepting the appellant's claim. It is however incorrect given the references in the interviews to leaving Afghanistan to study such that it was never part of his claim that he was "so frightened" of the Taliban that he had to leave the country. As a result I find that ground 1 is made out.

13. The Judge also has erred in failing to adequately reason why he does not accept the appellant's family is in Pakistan. The effect of the finding is asking the appellant to prove a negative as to his family not being in Afghanistan. The Judge had before him both a narrative throughout the claim that his family was in Pakistan, but also that documentation had been provided which evidenced that they were there. The Judge did not have to accept that documentary evidence, but if he did not do so, he was required to explain why that documentary evidence was not sufficient to show his family being in Pakistan at the times claimed. Ground 2 is therefore made out.

14. Taking the grounds then in a slightly different order, I find ground 4 made out. The Judge plainly does criticise the appellant for failing to mention Y in his statement or interview, however Mr Gajar is correct to point out that at questions 57 the appellant does identify the brother of M, and that M's brother was a "senior member" with intelligence of Taliban. The appellant then expressly names Y at question 58.

15. For all the above reasons the Judge has fallen into errors of law in relation to the findings he made. On top of that, I am further persuaded that ground 3 is made out. In my judgment the Judge's conclusion that the appellant could not provide "independent evidence" linking Y to the appellant is unreasonable. In WAS (Pakistan) v Secretary of State for the Home Department [2023] EWCA Civ 894 the Court of Appeal outlined:

> *84. "I paraphrase a question which Phillips LJ asked Mr Holborn in argument, 'What evidence did the UT expect?' It is very improbable that there would be any direct evidence of covert activity by the Pakistani authorities, whether it consisted of monitoring demonstrations, meetings and other activities, monitoring social media, or the use of spies or informers. I do not consider that Sedley LJ was suggesting, in paragraph 18 of YB (Eritrea), that a tribunal must infer successful covert activity by a foreign state in the circumstances which he described. He was, nevertheless, making a common-sense point, which is that a tribunal cannot be criticised if it is prepared to infer successful covert activity on the basis of limited direct evidence. Those observations have even more force in the light of the great changes since 2008 in the sophistication of such methods, in the availability of electronic evidence of all sorts, and in the ease of their transmission. To give one obvious example, which requires no insight into the covert methods which might be available to states, it is very easy for an apparently casual observer of any scene to collect a mass of photographs and/or recordings on his phone, without drawing any adverse attention to himself, and then to send them anywhere in the world.*
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> *85. I consider that, on this aspect of the case, the UT erred in law by losing sight of the fact that direct evidence about 'the level of and the mechanics of monitoring' in the United Kingdom is unlikely to be available to an asylum claimant or to a dissident organisation, and by imposing too demanding a standard of proof on A. The UT repeatedly said that A had not 'established' things, that 'cogent evidence' of something was absent, and that parts of A's evidence were not supported (see further, the next paragraph).*
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> *86. A related point is that the UT's approach was to posit two mutually exclusive alternatives: a tiny level of support for MQM-L which was not capable of drawing the attention of the Pakistani authorities, and, therefore, of putting A at risk on return, and the level of support which A described in his*

exaggerated but nevertheless nebulous evidence. If that was the UT's approach, its danger is to obscure a third possibility, which is that, on the UT's other findings, A did support, or could be perceived to support, MQM-L to an extent which might, to the lower standard, attract the attention of the authorities and therefore put him at risk. I consider that the UT's findings that A had exaggerated his role (which were open to it on the evidence) dominated the UT's analysis of potential risk; and that the UT erred in law in this respect. There were photographs of A at demonstrations, and the UT accepted that he had been to four outside Downing Street and one outside the Pakistan High Commission. The UT accepted that the authorities would keep an eye on the High Commission. There was also a photograph of AH on A's Facebook account.

87. A recurrent theme of determination 4 is that A's evidence about aspects of his claim was not supported by other evidence, and, by implication, for that reason alone, to be rejected, without the need to consider, to the lower standard, its intrinsic probability. As I have indicated, on at least three occasions, the UT observed that there was 'no cogent evidence' that something was the case (paragraph 132, line 4, paragraph 133, line 3, paragraph 140, line 3). That theme indicates a linked error. That error is that the UT treated the specific preserved findings that A was not credible about particular aspects of his claim, coupled with their own findings that he was not credible about other aspects of his claim, as a proxy for analysing the relationship between their own general findings about risk, A's evidence generally, and the uncontested evidence about A's role. It is a trite proposition that credibility is not 'a seamless robe', even if, on analysis, some, or most of the evidence proves to be incredible. Findings that some aspects of a witness's evidence are not credible should not, in a protection claim, be generalised to all his evidence. The fact-finder must also consider the intrinsic likelihood, to the lower standard, of the significant aspects of his claim."

16. The appellant's narrative was that M was a distant relative of his mother and that Y was M's brother. It is unclear what evidence the Judge was expecting the appellant to be able to provide in this context, but it was in my view wholly irrational to find against the appellant that there was no independent evidence of the claimed relationship. The family link was not the central point, the central point was that the appellant had come to the attention of a senior intelligence officer of the Taliban. The Judge's dismissal of the narrative stemmed in my view from an unlawful expectation of corroboration.

17. In my judgment the above errors are such that the Judge's conclusions on the appellant's narrative are not sustainable. Grounds 5- 7 are not as clear cut however I consider that given the above I do not need to resolve them. I find that the errors identified in grounds 1 – 4 such that they have infected the overall assessment, and his decision has to be set aside. No findings of fact can be preserved.

18. The appeal is allowed. The appeal is to be remitted to the First-tier Tribunal for a *de novo* hearing before any Judge other than Judge Hamilton.

Notice of Decision

The appeal is allowed.

The case is remitted to the First-tier Tribunal for rehearing *de novo* with no preserved findings.

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 23rd January 2024