



IAC-TH-CK-V1

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

Appeal Number: AA/09267/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 24th March 2014

**Determination
Promulgated
15th April 2014**

.....

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

BILAL RAHIMI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Khan of Counsel instructed by Parker Rhodes
Hickmotts Solicitors

For the Respondent: Mr Diwncyz, HOPO

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Shimmin made following a hearing at Bradford on 22nd November 2013.

Background

2. The Appellant is a citizen of Afghanistan born on 15th October 1990. He arrived in the UK on 29th January 2007, was detained and taken to Coventry police station. He was sent to a hotel from which he absconded.
3. On 20th June 2011 he made an appointment with the asylum seekers unit but failed to attend the interview as arranged.
4. He subsequently made a series of applications for an EEA residence card on the basis of his relationship with his partner Ausra Blazgyte, a citizen of Lithuania and finally claimed asylum on 14th February 2013. He was refused on 20th September 2013.
5. The Appellant claimed that his older brother used to work with the Taliban and disappeared in 2003. Three Taliban members visited his home and asked the Appellant to join them. In 2004 he started to train with them, under duress. He was taken to a training camp two or three times a week for about six months. In November 2005, when his father found out that he had joined the Taliban, he tried to stop him going. He locked the Appellant in his room, and when the Taliban came looking for him and his father refused to hand him over, they killed him.
6. In 2006 the Taliban put a suicide bomber jacket on the Appellant. He was driven on a motorcycle by a man named Habib but jumped off, threw the jacket away and escaped without returning home. It took him two weeks to get to Iran but he was then detained by the authorities and returned to Afghanistan. He made it back to Iran on two further occasions before managing to pay an agent to bring him to the UK.
7. The Immigration Judge said that although the Appellant was only just 17 when he arrived in the UK, he must have been mature for his years having been trained by and fought for the Taliban. He was obviously astute and resourceful. He held it against him that he did not take the opportunity to explain his situation to the authorities when he first arrived. He observed that the Appellant was treated humanely in the UK and provided with a hotel which should have compared very favourably in his mind with the peremptory returns to Afghanistan by the Iranian authorities.
8. The judge did not accept the Appellant's explanation for his failure to attend the screening interview, which was because his partner was ill. He had several friends who had written in support of his appeal, who had known him since 2007 and 2008. They had successfully claimed asylum and one is now a British citizen. The judge concluded that, from as early as 2007, the Appellant would have been able to source reliable information as to the immigration process. The inordinate delay in making the claim seriously damaged his credibility.
9. The judge considered the Appellant's evidence about the Taliban training camp. He noted that at interview he was unable to give any details at all about being able to clean and reload a Kalashnikov, knowledge which he would have expected him to have had his story been true.

10. The judge noted that the Appellant's account of his escape was discrepant. In his asylum interview he said that Habib ran behind him but he managed to escape and in oral evidence he said that Habib was lying on the ground.
11. The judge considered the expert report from Tim Foxley MBE. He concluded that even if he was wrong as to the truthfulness of the account the Appellant had an internal relocation alternative in Kabul. Mr Foxley did not reach any firm conclusion as to the reasonableness of relocation but said that as the Appellant is a fit young man with a good command of the English language it would not be unreasonable to expect him to live there. Given the passage of time, even if the Appellant's account was correct, he would not be at real risk either from the Taliban or from the authorities. According to the objective evidence thousands of former Taliban fighters have agreed peace deals with the authorities in recent years.
12. The judge considered the evidence in relation to the Appellant and his EEA partner and concluded that he was in a durable relationship with her. He also accepted that she was a qualifying person exercising treaty rights in the UK. He therefore allowed the appeal to the extent that the Secretary of State consider the Appellant's application for a residence card in the light of his findings.
13. Finally he considered whether there would be a breach of Article 8 by his removal. He found that the couple could continue family life in Lithuania or the Appellant could return and apply for entry clearance under the Immigration Rules.

The Grounds of Application

14. The Grounds of Appeal argue at some length that the judge erred in his assessment of credibility, in particular that the Tribunal had given inadequate and irrational reasons for concluding that the Appellant had been mature for his years. There was a factual mistake in that the Appellant had only just turned 16 on arrival and not 17. Miss Khan said that the findings of the judge were internally inconsistent in that he had rejected the Appellant's claim to have been trained by the Taliban and yet cited this as a reason for the Appellant's maturity.
15. She submitted that the Appellant had produced a huge amount of evidence, including a sixteen page statement which had not properly been considered by the judge.
16. Miss Khan also argued, in reliance on the grounds, that the judge had not engaged with the Appellant's argument that he feared a return to Afghanistan, which is why he did not bring himself to the attention of the authorities at an earlier date. Neither did he consider the evidence that it would be a more certain route for the Appellant to apply to stay as the partner of an EEA national rather than claiming asylum. There were specific reasons for the delay which the judge had not taken into account.

17. The grounds also argue that the judge erred in his interpretation of the evidence in relation to the Kalashnikov. It was not his case that he trained solely in the use of Kalashnikovs and the judge had speculated in relation to what knowledge the Appellant was likely to have had.
18. Finally, the judge had misinterpreted the expert evidence and had failed to address the detailed submissions as to why the Appellant could not reasonably relocate in Kabul or why his knowledge of English would mitigate against the unreasonableness of detention. He had not properly engaged with the argument that the Appellant would be at risk in Kabul.
19. The grounds also argue that the judge had erred in his assessment of Article 8. Miss Khan submitted that, given that the judge had found in the Appellant's favour so far as his relationship with his partner was concerned, it was not possible to make a decision on Article 8 at this stage, since if he was entitled to a residence card his removal would clearly not be lawful. She suggested, and this was not resisted by Mr Dinowycz, that the correct course would be to allow the appeal on Article 8 grounds to the limited extent that Article 8 would need to be reassessed when the decision on the residence card was made.

Findings and Conclusions

20. So far as the asylum claim is concerned, the grounds amount to a lengthy and discursive disagreement with the decision. This is a very thorough and well-reasoned determination. It was open to the judge to reach the conclusions which he did for the reasons which he gave.
21. There was an inordinate delay in the claim for asylum in this case. The Appellant came to the UK in 2007 and did not claim for a further six years. During that period he had two instances of contact with the authorities - on the first occasion he absconded and on the second failed to attend an interview. The judge was entitled to note that during this period the Appellant had two close Afghan friends who were supporting him in his appeal and who had successfully claimed asylum. The conclusion that the Appellant would have been aware of the immigration process is unassailable. The fact that four years after he arrived, it was possible for him to seek to remain in the UK on an alternative basis, is not an adequate explanation for the delay.
22. So far as the contradictions in the evidence are concerned, it was the Appellant's own case that he was trained to use a Kalashnikov. The judge was entitled to take his case at face value and to decide that it was internally inconsistent. Moreover the grounds fail to mention the significant inconsistency in the evidence of the escape from the Taliban which, as the judge said, should have been a dramatic and memorable event for the Appellant.
23. There is no misinterpretation of the expert report. The relevant paragraph reads as follows:-

“It is hard to say with certainty. I would see this as a low risk but much would depend on what he was doing in the city. There is too little detail provided in your client’s statement regarding his activities. If he was regularly entering Kabul using the same routes and patterns of behaviour and movement he might well return to the attention of Taliban groups; if he were to return to the same parts of the city – perhaps frequenting the houses and hotels in which he used to stay and meeting friends from that time – the risk of coming into contact adversely with Taliban would perhaps move from low risk to medium.”

24. The Appellant said that he went to Kabul ten to fifteen times eight years ago. This is a large city of over 8,000,000 people. The Judge was plainly entitled to find that he would not be at risk on return and that it would not be unduly harsh to expect him to locate there.
25. The grounds do not establish any error of law so far as the judge’s consideration of risk on return. However, by consent it was agreed that his conclusions on Article 8 should not stand.

Decision.

The judge did not err in law in respect of his conclusions on the asylum claim nor the Qualification Directive nor in respect of his conclusions on the residence card. Those decisions stand. So far as his dismissal of the Article 8 claim is concerned the decision is set aside and remade as follows. The appeal is allowed to the limited extent that the Secretary of State should reassess the claim when a decision is made on whether to issue the Appellant with a residence card.

Signed

Date

Upper Tribunal Judge Taylor

2nd April 2014