



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

Appeal Number: AA/10223/2013

THE IMMIGRATION ACTS

**Heard at Birmingham
on 28th August 2014**

**Determination Sent
14th October 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**FAHIM ARAB
(Anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Birkumshaw of the Coventry Law Centre.

For the Respondent: Mr Mills – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge P J Clarke, promulgated following a hearing at Birmingham on 10th April 2014, in which he dismissed the Appellant's appeal against the refusal to vary his leave to enter or remain in the United Kingdom and a direction for his removal to Afghanistan.
2. The Appellant is a national of Afghanistan born on 1st February 1993. His immigration history is set out in the determination and need not be repeated here.

3. The Judge considered the evidence in some detail in the determination including noting that the Appellant had mental health problems and suffered from PTSD and that he had been the subject of two psychiatric reports which the Judge specifically mentions in paragraph 79 of the determination.
4. Having set out the relevant background information the Judge makes his credibility findings from paragraph 82 of the determination in which he concludes that the Appellant has not made a genuine effort to substantiate his claim due to the way in which his account changed [82(i)], that the Judge was not satisfied with the explanation for the absence of material factors at the Appellant's disposal [82(ii)], that the Judge was not satisfied that the Appellant's statements were coherent and plausible and did not run counter to the available specific and general information [82(iii)], or that the general credibility of the Appellant had been established [82(v)]. The Judge did accept that the Appellant made his asylum claim at the earliest opportunity [82(iv)].
5. In paragraph 83 of the determination the Judge prefaced his findings by making five preliminary points indicating that both in the Judge's approach to his consideration of the evidence and conduct the Appellant received a fair hearing.
6. In paragraph 84 the Judge set out the reasons for doubting the Appellant's credibility which includes findings of inconsistency, lack of supporting evidence, contradictory accounts, and attempts to embellish the claim. As a result the Judge was not satisfied as to the credibility or plausibility of the account.
7. The Judge then proceeded to assess any risk the Appellant may face on return in light of his findings and concluded that the account was not credible, that the Appellant can return to his home area, that if that is not correct he can relocate internally as the background material and legal authorities indicate that it is safe for the Appellant to relocate to Kabul and that even if his uncle who lives in Kabul is no longer alive he has been able to speak to his wife. It was not found that the Appellant has established he is entitled to be recognised as a refugee or a person entitled to a grant of humanitarian protection.
8. In relation to the human rights element of the appeal, the Judge found neither Article 2 nor 3 engaged on protection grounds as it was not established that the Appellant would face a real risk of torture, inhuman or degrading ill-treatment if returned to Afghanistan, or any threat to his life. The Judge, in paragraph 93, refers to the claim that his medical condition as well as severe muscle wastage from an unknown childhood illness engaged Articles 3 and 8. In this respect the Judge notes that the later medical report is well over a year old, that the Appellant has not been for any interviews or counselling since

October 2013 and therefore concluded that the reports could not still be fully be relied upon; although it was accepted the Appellant has suffered PTSD and a generalised anxiety disorder [93]. The Judge noted the comment from the author of one report that the medical facilities in Afghanistan are not likely to be an adequate but noted that the Country of Origin Information Service report showed there was some mental health facilities in Afghanistan and it was not found that applying the relevant case law a breach of Article 3 based upon medical circumstances [95] nor of Article 8 on health grounds had been proved.

9. The judge considered the freestanding Article 8 ECHR ground and noted that it was not claimed family life was engaged. There was an alleged girlfriend but no mention of the relationship at the hearing. The Judge also noted that the Appellant has been in the United Kingdom for five years and the lack of supporting evidence regarding a private life claim. The Appellant was unable to meet the requirements of paragraph 276ADE of the Immigration Rules as a result of which the Judge was not satisfied the right to private life under Article 8 was engaged on the facts.
10. The grounds of appeal challenge the decision by reference to paragraph 79 of the determination whether the Judge sets out the evidence of Dr Delamage and observations of the Appellant's former social worker, and challenges the weight attached to this report by the Judge. Ground 1.2 specifically refers to the fact the report is over a year old, and to the experts view that therapeutic work could only commence after status was resolved. The grounds assert that the Judge did not explain in what why the reports could not be relied upon and in this context full reasoning is required. The Judges finding in paragraph 94 regarding the availability of mental health facilities in Afghanistan is noted although criticised in the absence of a finding that they will be suitable or adequate to meet the Appellant's needs.
11. The grounds also challenge the assessment of Articles 3 and 8 in paragraph 95 on the basis there is no assessment the Appellant's mental health based upon the evidence before the Tribunal, including the propensity to self harm, which could be decisive and also as to any assessment of humanitarian protection in Afghanistan.

Error of law

12. Before the Upper Tribunal Mr Birkumshaw referred to the Judges finding that the Appellant was not coherent and to the PTSD diagnosis. It was submitted that it was relevant that the reason there was no therapy was that the Appellant's status had not been resolved although the report did not set out what therapy there could be. It was submitted the Judge erred as it is a combination of factors that is relevant and that if the Appellant is returned to Kabul he will still be a

vulnerable person; as it was claimed social-service are still involved in his life although it was not established that this evidence was before the Judge. It was also submitted the evidence refers to unusual behaviour and angry outbursts and that the determination contains gaps which the Judge was required to resolve.

13. It is my primary finding from a reading of the determination and the papers within the file that the Judge clearly considered both the written and oral evidence made available with the required degree of care, that of anxious scrutiny. If one takes paragraph 94 of the determination in isolation it could be said that the nature of the available mental health facilities in Afghanistan had not been dealt with in a comprehensive manner although the Judge cannot be criticised doing so in the absence of a full diagnosis or assessment of the required therapy.
14. The conclusion of the medical reports that therapeutic treatment could not begin until the Appellant's status had been resolved appears to be based upon a conclusion that the Appellant's mental health probably worsened as a result of uncertainties about his future and that those uncertainties in his mind are effectively a block to meaningful therapeutic work. The medical expert concluded that a resolution, one way or the other, of his future was required before his mental health problems could be formally addressed. That summaries clearly set out by the Judge in paragraph 79 (vii) of the determination and is not a factor that enables the Appellant to succeed in relation to any claim for international protection, per se. The Judge also noted in paragraph 79 (vi) that the social worker stated the Appellant had reported experiencing very bad nightmares and unpleasant daytime experiences of reliving traumatic events, that he had cut himself with a knife at one point although did not regularly deliberately self harm. It is said there was significant evidence he posed a risk to itself in terms of impulsive self injurious behaviour. The second report notes difficulties regarding his emotions and suicidal ideation and anger episodes which did not meet the diagnostic threshold.
15. The material before the Judge therefore spoke of a number of issues that the Judge considered none of which individually or cumulatively satisfied the high threshold set out in the case law referred to by the Judge in paragraph 95 of the determination.
16. The Judge noted the Appellant had PTSD but this does not provide a basis on the facts, or medical evidence, to enable the Appellant to succeed or to show that the Judge's findings are irrational.
17. I find that the judge did consider the material adequately, as set out above, and has given adequate findings for the conclusions reached. In relation to Article 15 (c) of the Qualification Directive, the Appellant has no specific profile that will create a risk to him on return and there

is no evidence of the required degree of indiscriminate violence in Afghanistan such as to indicate arguable legal error in the Judge's conclusions on this point. The Judge found the core of the claim not to be credible, that the Appellant has family including a mother and father in Afghanistan who can assist him if required, and that there was no evidence that he would be alone or that any specific factors created an arguable risk to the Appellant when all the circumstances were properly considered.

18. There is no arguable error with regard to the human rights assessment. The Judge considered the factors he was required to consider and noted that the Appellant has entered the United Kingdom as a minor, as this is clearly recorded in his immigration history.
19. As it has been found the Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings that have been made, the weight to be given to the evidence was a matter for the Judge - see SS v Secretary of State for the Home Department [2012] EWCA Civ 155. No failure to consider the evidence or of a structural nature in the way the evidence was assessed in the round in the determination has been established. The Judge heard the oral evidence in addition to the written material and no legal error material the decision to dismiss the appeal has been established in his conclusions based upon that material.

Decision

20. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

21. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 30th September 2014

