



IAC-AH-KEW/DN-V2

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

Appeal Number: AA/01473/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 25th September 2015**

**Decision & Reasons Promulgated
On 9th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR SIFAT NIAZI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Smyth, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born on 31st August 1993. His immigration history is set out in full detail at paragraphs 423 of the decision of First-tier Tribunal Judge Monaghan promulgated on 11th June 2015. Prior to the matter coming before the First-tier Tribunal Judge on 26th August 2014 the Appellant had made an application for further leave to remain in the United Kingdom seeking discretionary leave based upon Article 8 of the European Convention on Human Rights. He also claimed that Articles 2 and 3 of the European Convention on Human Rights would be breached if he were removed to Afghanistan. That application was

refused by Notice of Refusal dated 22nd December 2014 and subsequent to that the matter went on appeal before Judge Monaghan at Hatton Cross on 22nd May 2015. In a detailed determination of 69 paragraphs the Appellant's appeal was dismissed on asylum grounds and under Article 3 of the European Convention of Human Rights and the Appellant was not found to be in need of humanitarian protection. However the Appellant's appeal was allowed under Article 8 outside the Rules.

2. On 24th June 2015 the Respondent lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that the First-tier Tribunal had failed to provide adequate reasons for accepting the Appellant's evidence that he had been disowned by his father and had failed to provide adequate reasons for its conclusions in respect of Article 8 of the European Convention of Human Rights.
3. On 6th July 2015 Judge of the First-tier Tribunal Landes granted permission to appeal. Judge Landes found that it was arguable that the judge had failed to provide adequate reasons for the credibility findings as set out in the first ground. He noted that credibility was an issue although the judge had not recorded this as being part of the Presenting Officer's submissions and that was apparent from the content of the submissions of the Appellant's Counsel. In the circumstances, and in circumstances where it was clear from the earlier determination of Judge Malins that she had not found the Appellant credible in respect of the facts underlying his asylum claim it was arguable that Judge Monaghan should have given some reason for finding the Appellant to be credible on the point that his family had disowned him on the grounds that he did not believe in God.
4. Judge Landes did not consider that there was force in the second ground independent of the first ground i.e. the Article 8 appeal. He noted that the judge had clearly identified the relevant factors not fully reflected in the Immigration Rules – that the Appellant had been disowned by his parents; that he had not yet reached the stage that Judge Malins had envisaged when she had initially allowed his appeal on Article 8 grounds; that the Appellant was continuing to be a role model and significantly, that the Appellant's mental health had deteriorated at least in part because of the Respondent's conduct in failing to extend the Appellant's leave and that the precarious nature of the Appellant's status in the UK had at least in part been contributed to by the Respondent. However given that the finding of breakdown in relationship with the family in Afghanistan appears to have been very significant to the judge's ultimate conclusions if she did indeed err as alleged in the first ground then Judge Landes considered that it was arguable that this must also have affected her ultimate conclusion.
5. On 15th July 2015 a Rule 24 response was served on behalf of the Respondent. That Rule 24 response effectively is in the form of a skeleton argument prepared by Counsel to which are annexed his handwritten notes. It submits that aspects of the Secretary of State's grounds are misleading and argues strongly that the Secretary of State's appeal should be dismissed and the decision of the First-tier Tribunal judge should stand.

I have read thoroughly all fifteen paragraphs of the Rule 24 response and have cross-referenced so far as it is appropriate the comments made therein to the handwritten notes of Counsel attached thereto.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. However for the purpose of continuity throughout the appeal process the Secretary of State is referred to herein as the Respondent and Mr Niazi as the Appellant. The Appellant appears by his instructed Counsel Mr Smyth. Mr Smyth is familiar with this matter being the author of the Rule 24 response and having represented the Appellant before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Bramble.

Submissions/Discussions

7. Mr Bramble starts by noting the basis of the appeal and the emphasis put on the first ground by Judge Landes when granting permission to appeal. He is aware of a note prepared by Mr Chowdhury, the Home Office Presenting Officer prepared on the date of the hearing clearly setting out the circumstances of the case. He emphasises from within the Home Office Presenting Officer's note the paragraph that states

"Any emphasis that the Appellant's relationship with his father has broken down is not credible because there was a discrepancy on the Appellant's account. This is because, the Appellant in oral evidence said the last contact he had with his father was two months before the hearing (assuming March), however, in his witness statement the Appellant said at the date of RFRL which is December 2014. For this reason I asked the Immigration Judge to make an adverse credibility finding of the Appellant."
8. He points out the conflict with which he believes in such circumstances Mr Smyth has bearing in mind his own submissions and the Rule 24 response. Mr Bramble submits that the correct approach is for Mr Smyth to step aside and ask for an adjournment.
9. In response Mr Smyth points out that the materiality of whether or not the Home Office Presenting Officer raised issues are referred to within the Rule 24 response and the judge referred to the cogency of the oral evidence i.e. he submits that it was logical and coherent and therefore it was open to the judge to find that evidence credible. Bearing in mind the absence of the Appellant's uncle as a witness he submits that the Secretary of State's position is not assisted and that there is no challenge specifically made to the Appellant's renunciation of Islam.
10. It is his submission that the appeal does not actually get off the ground. He submits that the Grounds of Appeal are not made out. Mr Bramble argues that the Appellant claimed in his oral evidence that he last spoke to his father a couple of months ago, that he claims to have told his father he

no longer believes in God and that as a result of this conversation his father called him an infidel and stated he wanted him dead. He points out that the Home Office Presenting Officer at the hearing did not accept as credible that the Appellant's relationship with his father had broken down and despite this, and despite the previous adverse credibility findings made by Judge Malins, the Tribunal accepted this aspect of the Appellant's account as set out at paragraph 50 of the determination. He submits that the First-tier Tribunal had failed to provide any reasons for accepting this account and that this inadequacy of reasoning was unsustainable.

11. Mr Bramble refers to the minute made by the Home Office Presenting Officer pointing out that this is a clear reference as to how the evidence was put along with comments made before the judge. He notes at paragraph 36 that reference is made to oral testimony being taken from the Appellant where it is said that the Appellant last spoke with his father a couple of months ago and therefore the Home Office Presenting Officer brings into play the Appellant's credibility. He takes me to paragraph 42 quoting that the findings of fact made by Judge Malins are adopted and in fact are not even disputed and that following the authority of *Devaseelan* the judge should have been mindful of the previous evidence and that this is relevant at paragraph 62 where the judge concludes that the Appellant gave credible and cogent evidence about being disowned by his family due to his lack of belief in God. He submits that this is a balancing factor that needs to be taken into account and that no explanation has been given by the judge as to how she found the Appellant to be credible especially on the previous judge's view and therefore submits that there is a material error which renders the whole determination invalid and that the matter should be addressed again. On that basis he asks me to find that there is a material error of law and to set aside the decision of the First-tier Tribunal and to remit it for re-hearing.
12. In response Mr Smyth takes me to his Rule 24 reply pointing out that credibility insofar as it relates to the Respondent's religious beliefs and the breakdown in the relationship with the Appellant's father were not challenged by the Home Office Presenting Officer. He points out that at paragraph 62 of the decision the judge has found that the Appellant gave credible and cogent evidence and submits that the judge has directed himself properly and that it is not necessary to address every detail. He submits that the judge has given ample reasons as to why she allowed the appeal under Article 8 and that it is not open to the Tribunal to overturn unchallenged findings which are set out at paragraphs 64 and 66. Further the judge has he submits directed herself to Section 117B of the Immigration Rules. He submits that there is either no error of law or if there is an error it is not material and that unchallenged findings of the judge cannot be disturbed.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by

taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

15. I have set out in quite considerable detail in this determination the submissions made by the legal representatives. They are supported respectively on behalf of the Appellant by the Rule 24 statement and attached notes and on behalf of the Respondent by the minute produced by the Home Office Presenting Officer. I start by reminding myself that it is not the role of the Upper Tribunal to re-hear a matter unless there are material errors of law and that findings made by the First-tier Tribunal Judge should only be set aside in such circumstances and that it is always open to an analysis that another judge on another day may have come to a different conclusion but the First-tier Tribunal Judge heard the evidence and providing he/she gives full logical reasons which are not perverse then it would not be open to the Upper Tribunal to overturn them.
16. A proper approach to credibility requires an assessment of the evidence and of the general claim. These can consist of the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors. It is theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. The judge has in this case carried out such an exercise. It is necessary to remember that this is an appeal pursuant to Article 8 outside the Rules. It is only on that basis that the Appellant has succeeded. The judge has analysed the evidence and made findings of fact which she was fully entitled to. She has thereafter gone on to draw conclusions on the Appellant's asylum claim noting that the Appellant had not shown in his earlier appeal to the lower standard of proof that he had a well-founded fear of persecution when he left

Afghanistan and draws conclusions which remain unchallenged that he cannot succeed on his asylum appeal, his appeal pursuant to Article 3 of the European Convention on Human Rights or his humanitarian protection claim.

17. The judge then goes on to consider the Appellant's claim pursuant to Article 8. It is these findings that are challenged. It is accepted that the Appellant cannot satisfy paragraph 276ADE of the Immigration Rules. It is thereafter that the judge has gone on to consider the position outside the Rules and to consider the principles outlined in *Razgar [2004] UKHL 27*. She has made findings by way of conclusions on proportionality at paragraphs 60 to 67 and has given further consideration to the authority of *JS (Former Unaccompanied Child - Durable Solution) Afghanistan [2013] UKUT 00568 (IAC)* and latterly gone on to consider the public interest in maintaining immigration control at paragraph 68. Whether another judge would have reached the same conclusion is always a moot point but this judge heard the evidence. She has carried out a thorough analysis and has set out her reasons in detail. She has made findings that she is entitled to and I agree with the submissions made by Mr Smyth that she has given ample reasons as to why the appeal was allowed under Article 8 and that it is not appropriate to overturn unchallenged findings. I acknowledge the point made by Mr Bramble that the decision may seem to be contrary to the views previously expressed on credibility particularly by Judge Malins but this is a detailed decision where full consideration of all the evidence including the previous facts have been taken into account. In such circumstances I am satisfied bearing in mind that the issue before me is whether or not there is an error of law in the finding that the Appellant's appeal should be allowed pursuant to Article 8 outside the Immigration Rules that there is no material error of law disclosed in the decision of the First-tier Tribunal Judge and in such circumstances the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris