



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06540/2014

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2015

Date Sent
on 13 July 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL KAMARA

Between

MR GA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E King, counsel instructed by JD Spicer ZebSolicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge R L Walker (FTTJ) dismissing the appellant's appeal against the refusal of his claim for international protection.
2. Permission was granted, and an error of law subsequently found on the basis that the FTTJ had failed to assess the reliability of all the documents relied upon by the appellant, made findings unsupported by the background material, failed to consider a relevant Country Guidance decision and that

his consideration of the internal relocation issue was inadequate. The reasons are annexed to this decision.

3. The matter came before me for a rehearing to re-make the decision, taking into account the evidence before the FTTJ.
4. The background to this matter is that the appellant arrived in the United Kingdom, with leave to enter as a student, on 8 August 2007. During 2010, the appellant brought his wife and children to the United Kingdom as his dependants. He returned to Afghanistan on 11 December 2012 during a break from his studies. His last period of leave to remain as a Tier 4 migrant was due to expire on 7 October 2013. During the afore-mentioned break, the appellant says that he was employed in Afghanistan by an NGO, namely Generation of Youth Co-ordination (GYCO). His role was to carry out a survey in his home village of Panjwayi of the views of young people on the government and current affairs in Afghanistan. The appellant believed that local people were suspicious of him owing to his residence in the United Kingdom and also because his brother, Dr SAA, had left Afghanistan. Dr SAA had been targeted by the Taliban owing to treating a female patient and had been recognised as a refugee in the United Kingdom. On 5 January 2013, the appellant states that he found a threatening note from the Taliban on the windscreen of his car after returning from lunch in a bazaar in Panjwayi. Thereafter the appellant was advised by his manager at GYCO that it was too dangerous for him to continue working for the organisation. The appellant states that he went into hiding and returned to the United Kingdom on 12 January 2013. He applied for asylum during March 2013.

The Hearing

5. I heard oral evidence from the appellant and his brother, Dr SAA, as well as submissions from both representatives. I also had regard to both parties' skeleton arguments, the appellant's bundles of documents submitted for this hearing, background evidence and case law provided on behalf of the respondent.
6. In examination-in-chief, the appellant relied upon his undated witness statement and identified and discussed each of the documents he had submitted in support of his asylum claim. The appellant was asked for his opinion as to why the threatening letter from the Taliban was left during the day as opposed to the night. He replied that they found an opportunity as he was mainly in the office for work purposes. At night, he was staying with various friends whom he had not seen for a long time. He added that night letters are usually delivered to a region or town but that if a letter was directed to one person, a night letter was not used. The appellant stated that his colleagues did not receive threatening letters while he was there. He reiterated that local people were suspicious of him because he had been in the United Kingdom for a long time, he had been educated here and his

brother lived in the United Kingdom. That brother had difficulties with the Taliban for medically treating a woman. The appellant's father had been a soldier and two of the appellant's sisters lived in the United Kingdom. The appellant was of the view that his circumstances were different from NGO colleagues who normally lived in Afghanistan. Furthermore, he believed that the nature of the questions he was posing when undertaking the survey led people to believe that he was collecting data and spying for the British government. The appellant explained that GYCO were involved in collecting primary data which could be sold to other NGO's or bodies needing secondary data. He had been given the task of collecting data in Panjwayi, as it was his home area. When asked why he had not applied for asylum immediately on his return from Afghanistan, the appellant explained that he needed to discuss the situation with his family, which includes his wife, mother and brother. He was not an independent person but responsible for others. In addition, the appellant's brother was working as a GP in Northampton at the time and he wanted to discuss the matter in person and not over the telephone.

7. The appellant stated that it was his dream to be educated in the United Kingdom and return to Afghanistan and work for an NGO on a good salary. Indeed, he had worked in that capacity before arriving in the United Kingdom in 2007. The appellant further explained that he had classes to attend and felt secure when he returned to the United Kingdom as he still had a student visa.
8. In response to questions posed in cross-examination, the appellant explained that he had asked his former boss at GYCO to write an email. The appellant did not know why the first letter his boss sent made no mention of a threat from the Taliban. The appellant had not requested the first letter, which was concerned mainly with his salary and practical matters. He denied having stayed in Panjwayi after he received the letter from the Taliban; stating that he returned to GYCO's office in Kandahar city. The appellant stated that he called the former colleague who had seen the Taliban letter in order to ask him to be a witness. The appellant said that he was born in Panjwayi but lived in Kandahar city; returning to Panjwayi during the summers. The appellant returned to Panjwayi after 2001 when his brother fled. He has an uncle still living in Panwayi, some of whose children still lived in the area. The appellant had not thought that the villagers would be suspicious of outsiders and when he had been given the job with GYCO, he had been excited to work in his home town. It was well-paid role. At this point, Mr Jarvis indicated that he was now challenging the appellant's claim to have worked for GYCO at all. The appellant stated that after receiving the threat he went to Kandahar city and stayed with a sister until 9 January 2013. Thereafter he went to Kabul and stayed with his brother-in-law's brother until a flight was available on 12 January 2013. The appellant denied hearing reports from his family of any interest in him from the Taliban since his departure. When asked why the Taliban had not killed him, the appellant stated that he could not explain

their thinking. The appellant stated that he would not need financial support from his brother if it was safe for him to return to Afghanistan because he could earn a good salary. He had earned £3,000 for the short time he had worked for GYCO.

9. Dr SAA's evidence was that he was working as a GP in a Northampton surgery at the time the appellant returned from Afghanistan in January 2013, whereas the appellant was living in London. The brothers had met in person one or two weeks after his return in order to discuss the threat from the Taliban. Dr SAA agreed to financially support the appellant and his family. In response to questions posed in cross-examination, Dr SAA accepted that Kandahar city had been increasingly infiltrated by the Taliban. He agreed that he told the appellant in 2010 (when the appellant returned to collect his children) that there would be a problem for him because of his own profile. Dr SAA had advised the appellant not to go to Panjwayi but, if possible, to stay in Kandahar or Kabul.
10. Mr Jarvis relied upon his skeleton argument and further argued that the appellant's claim was not credible. Reliance was placed on Y v SSHD [2006] EWCA Civ 1223. Alternatively, even if his claim was accepted, he submitted that the appellant would not be at risk on return to Afghanistan because he could relocate within the country. He argued that it was incredible that the appellant would decide to work in Panjwayi, a small district referred by the appellant's solicitors as the birthplace of the Taliban, where people knew what had happened to his brother, Dr SAA and any suspicions about the appellant might be compounded by his western education. The appellant's evidence that he was excited by the job opportunity was inconsistent with Dr SAA's evidence that he warned him about Panjwayi being too dangerous. It was implausible that the appellant would deliberately return to a village under control of the Taliban. With regard to the Taliban letter, he submitted that these could be made to order and that even the Taliban have threatened those who produce false Taliban documents.
11. Mr Jarvis argued that it was implausible that the appellant could have avoided being detained or killed, particularly when he had missed the appointment made in the letter to report to the Taliban. With regard to the letter from GYOC, I was asked to note that it made no specific mention of a threat to the appellant's life. I was asked to consider all the appellant's documentary evidence in the round and to place no weight on any it. Mr Jarvis asked me to disregard the evidence of the witnesses in Afghanistan who had provided statements at the appellant's request. The brother's evidence did not amount to corroboration as he only knew what he had been told. I was asked to note that no other members of the appellant's family had been approached or indicated that there was any further investigation by the Taliban.
12. Mr Jarvis submitted that the appellant had not provided a reasonable explanation regarding his failure to seek asylum straight away upon his return

to the United Kingdom in January 2013. He referred me to passages from the Case of H and B v the UK, the Taliban were only able to concentrate on high profile targets. There was no evidence of ongoing interest in the appellant, even locally and thus the appellant was not a refugee nor at risk of a violation of his rights under the ECHR.

13. With regard to the appellant's alternative case in relation to Article 15(c) of the Qualification Directive, Mr Jarvis submitted that the evidence before me was insufficiently detailed in relation to the geography of attacks and the nature of the civilian victims. He asked me to note that this argument failed in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC). It was not unduly harsh for the appellant to relocate to Kabul and according to his own evidence he would have no difficulty in supporting himself. He asked me to disregard the evidence from the Afghan ambassador regarding removals to Afghanistan as this was no more than a technical barrier to removal. Mr Jarvis also briefly addressed Article 8 ECHR, however this aspect was not pursued by the appellant.
14. Ms King relied on her own skeleton argument and submitted that Mr Jarvis' approach in relation to credibility was the opposite of what was said in Y. She asked me to find that the appellant had provided credible documentary evidence to corroborate his case and that his credibility was not damaged by the delay in him seeking asylum. She argued that the appellant was at risk in his home area but that internal relocation was not an option owing to the difficulty of living anonymously with a wife and three children. In this she referred to an extract from PM and Others (Kabul-Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089. She took me to evidence which, she argued, indicated that Taliban letters were not always delivered at night and that the Taliban's methods of pursuit varied. Ms King argued that the appellant would be viewed as a western collaborator and spy and that this heightened the risk to him. Reference was made to the general deterioration in the security situation in Afghanistan, however she argued that the appellant would be at risk regardless and that this deterioration only heightened the risk to him. In terms of the reasonableness of relocation under 15(c), Ms King argued that the appellant's ability to support him self and his family relied upon him obtaining a good job, which would raise the risk of his whereabouts being disclosed. She considered that he was in a higher risk category in that he had a profile above and beyond others which would create a breach of article 15(c).

15. I reserved my determination.

Consideration and findings

16. In assessing the appellant's claims, I have applied the lower standard of proof. I have also born in mind the relevant case law including the very detailed assessment of country conditions in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC).

17. I begin with consideration of the appellant's subjective evidence. While Mr Jarvis argued that I should reject the appellant's evidence relating to the employment with GYCO, I note that the respondent had not criticised this evidence in the reasons for refusal letter.
18. I find that the appellant has provided credible evidence to show that he was working for the NGO in question. From the outset, the appellant provided his work identity document, a letter revoking his contract which alluded to his contract not being completed owing to "security reasons," a summary of his earnings, photographs of the appellant in the field and supporting evidence from GYCO and a former colleague. I find these documents to amount to good corroborative evidence of the appellant's account of his employment. Furthermore, the appellant's oral and written account of his employment in Afghanistan has been detailed and consistent. For instance, during his evidence before me I considered that he provided a fluent account regarding the purpose of the evidence gathering he was engaged in on behalf of the NGO. I therefore accept that the appellant was employed as claimed between December 2012 and January 2013.
19. Mr Jarvis argued that it was implausible that the appellant would have worked for this organisation in this particular area of Panjwayi. I find that the evidence before me reliably shows that he did just that. While I accept that the appellant was told of the risks by his brother, I find the appellant's explanation as to why he was keen to take up the position, to be credible. That explanation included his understanding that he would be working for a reputable NGO in that area, that the project was already set up, that others were already doing the work and that he would be working in his home area, where he did not see himself as a stranger. I also take into consideration that the appellant had previously worked for an NGO in Afghanistan without adverse incident and that his plans were to undertake such work on a permanent basis once he completed his studies in the United Kingdom. While the appellant's outlook may have been on the optimistic side, I see nothing implausible that he would seek such work.
20. I now turn to the reliability of the letter said to be from the Taliban. That item was criticised in the refusal letter as the respondent was of the view it did not contain a stamp. However, I examined the original item and it appeared to me to contain a blue smudged stamp. I have taken into consideration that it is possible that such evidence can be falsified. However, there are aspects of this letter which are consistent with what is known about such letters. Both parties relied upon the Canadian Immigration and Refugee Board report on night letters which was published on 10 February 2015. At page 5 of that report, it is indicated that such letters can include the title "Islamic Emirate of Afghanistan," which the letter produced by the appellant does. The said report emphasises that there is no set layouts to these letters. Accordingly, I find that the appearance of the letter is not inconsistent with what is known about similar letters. The respondent strongly relies upon the fact that the

Taliban letter in question was not delivered at night. While the IRB report refers to “most” night letters being distributed at night, the implication was that this was not always the case and that insurgent groups use a range of media to communicate.

21. Ms King referred me to the Afghanistan Annual Report on Protection of Civilians in Armed Conflict:2013, which reported a number of night-letters being found in public buildings including on a district administrator's desk during a voter registration gathering, which I accept was unlikely to have been held under the cover of darkness. The appellant's oral evidence was that he was mainly in Kandahar city, staying with a range of friends. I therefore accept as plausible that the Taliban may not have been able to track him down overnight in Panjwayi. I also find it plausible that the letter was placed on the vehicle driven by the appellant, which I heard was used by other family members in his absence, while he was having lunch in Panjwayi.
22. Mr Jarvis asked me to reject the appellant's account on the basis that the Taliban had no enduring interest in him, evidenced by the fact that he was still alive and no reports of further interest had reached him via his family. I find that it is to the appellant's credit that he has not claimed that the Taliban have made enquiries about him at the homes of his extended family. The IRB report refers to a number of scenarios in relation to those who receive a night letter. Those include no warnings, multiple warnings or an invitation to defend oneself at a Taliban court. I therefore do not accept that the appellant's non-compliance with the invitation (which in any event was impossible as the date had passed) would automatically result in his death. I have carefully considered the fact that the Taliban letter was said to have been delivered two days after the deadline for the appellant to present himself. I am not prepared to accept that this alone makes the document unreliable. Nor do I speculate as to why it was not delivered on time. It is not possible to say why the Taliban did not harm the appellant or have not visited his extended family, without venturing into speculation. However, I would be cautious in concluding that those facts indicate that he would not be at risk if removed to Afghanistan now.
23. I have no difficulty with the fact that the appellant invited his two witnesses in Afghanistan to produce additional letters in support of his appeal. That he attempted to obtain further corroboration, I find, enhances the credibility of his claim. I place a moderate amount of weight on those additional letters, reduced only as the witnesses could not attend to be cross-examined.
24. The appellant delayed seeking asylum for approximately two months. I accept his explanation, that he needed to discuss this with family, as a reasonable explanation. I also take into consideration the fact that the appellant was lawfully present in the United Kingdom and that his leave to remain did not expire until October 2013. It is also to his credit that he did not wait until his leave expired before making his claim.

25. I accordingly accept that the appellant worked for the said NGO, that he received a threatening letter from the Taliban and that he left Afghanistan prematurely owing to this threat. I find that it is reasonably likely that the appellant remains at risk in his home area, which includes Panjwayi village and Kandahar city. The Refugee Convention reason in this case is that he fears persecution owing to his actual or imputed political opinion. I accept that the appellant is perceived by the Taliban as a spy for the United Kingdom government on the basis of his employment with GYCO carrying out surveys, his western education and his brother's previous difficulties with the Taliban. A report by the European Asylum Support Office (EASO) on Afghanistan dated 6 December 2012 refers to the impossibility of reversing a label of being a spy. Therefore, the fact that the appellant immediately stopped working for GYCO upon receiving the letter is most unlikely to have reduced the risk to his life as the other risk factors remain.
26. I now consider whether the appellant and his family could be expected to internally relocate. The EASO report concludes that *"if a low-profile civilian accused of being a spy can flee and resettle in a safer area, he can normally escape targeting by insurgents, unless there are specific individual circumstances which would preclude this possibility."* I accept that it is likely that the appellant's individual circumstances would prevent him being able to evade the label of spy. Those circumstances being the fact that he has resided in the United Kingdom for over 7 years, that he has received an education here, that his brother also fled the Taliban and that most of the appellant's immediate family all reside in the United Kingdom.
27. There is also the fact that the appellant would not be returning as a single man who could live anonymously. His children are of school age and he would need to make connections in the community in relation to their health and schooling. I accept Ms King's submission as to the relevance of Dr Giustozzi's evidence before the AIT in PM and Others regarding the necessity of the appellant having to "reveal something" about himself in order to establish trust for the purpose of obtaining employment or accommodation. I find that the nature of Afghanistan society means that there is a risk that the appellant's whereabouts could be discovered by people in his home area. Therefore in order to remain safe in Kabul when seeking work, the appellant would have to conceal his work for NGO's, not reveal his home area or that he had been educated in the United Kingdom. All factors which could assist him in obtaining a job with which to support his family. The various background reports before me reveal a recent deterioration in the security situation in general and in Kabul in particular, with the Taliban infiltrating the city, most notably with the attack on the Afghan parliament. The Amnesty International report on Afghanistan for 2014/15 reports a year on year increase of 24 % in relation to civilian casualties. This deterioration does not create the risk for the appellant, but heightens the risk to his safety which he has already established.

28. I find that the appellant has established that it is reasonably likely that he would be persecuted for a Refugee Convention reason were he to be removed to Afghanistan.
29. As I have found that the appellant is a refugee, there is no need for me to consider any further his alternative argument that his removal to Afghanistan would be contrary to the United Kingdom's obligations under regulation 15(c) of the Qualification Directive.

Conclusions:

The making of the decision of the First Tier Tribunal did involve the making of an error on a point of law and is set aside.

I re-make the decision in the appeal by allowing it on asylum grounds.

Signed

Date: 11 July 2015

Deputy Judge of the Upper Tribunal