



IAC

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

Appeal Numbers: AA/03271/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2016**

**Decision & Reasons Promulgated
On 9 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR W.H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Benfield, Counsel instructed by Sriharans Solicitors
For the Respondent: Mr P. Duffy, Senior Home Office Presenting Officer

DECISION ON ERROR OF LAW AND REASONS

Introduction

1. The appellant is a citizen of Afghanistan born on 8 July 1992. The appellant entered the United Kingdom as a Tier 4 (General) Student on 12 January 2012 (with a visa valid until 15 October 2013). The appellant claimed asylum on 20 July 2012. The respondent refused that claim on 10 February 2015.
2. The appellant appealed and the appeals came before Judge of the First-tier Tribunal NMK Lawrence on 3 August 2015. In a decision promulgated on

28 August 2015 the Judge dismissed the appeal on asylum and humanitarian protection grounds and further on human rights grounds.

3. Permission to appeal to the Upper Tribunal was granted on 27 October 2015. Permission was sought on five grounds: Rejection of the claim as incredible/implausible; Assessment of credibility in relation to screening and substantive asylum interview; Failure to give adequate reason for rejecting documentary evidence; Failure to properly consider the medical evidence; Failure to consider the background evidence and failure to give reasoned findings in relation to Humanitarian Protection. The appeal then came before me.

Error of Law

4. Although the respondent's Rule 24 argued that the Judge had made findings in relation to the photographs and documents submitted by the appellant, in that the Judge directed himself to the appropriate case law of Tanveer Ahmed [2002] Imm AR 318 and found that he was unable to attach any weight to the documents or photographs submitted by him 'a discredit witness' (sic), Mr Duffy conceded, quite properly, that the respondent was in difficulty in relation to the Judge's approach to the documents.
5. Although the Judge had at [18] to [22] found the appellant to be lacking in credibility, it is not clear that the Judge applied the principles of Tanveer Ahmed despite setting those principles out. The Judge failed to give any further reasons for rejecting the documents which included to a number of letters purportedly from the Taliban, photographs, a death certificate, copy ID cards and an envelope they came in. A number of these documents, including the claimed letters from the Taliban potentially go to the core aspects of the appellant's claim, that his father was in the Taliban, was killed because he left the Taliban and the appellant was subsequently abducted and forced to be a suicide bomber but escaped. The Judge erred in failing to consider these documents in the round. I am further satisfied that this error is material, as I cannot safely say that had the judge given proper consideration to these documents he would inevitably have reached the same conclusion. The decision contains an error of law such that it must be set aside.
6. The remaining grounds are therefore academic. I indicated at the hearing that there was no merit in grounds 4 and 5 as these were merely disagreements with the Judge's findings. However although Mr Duffy, in relation to the Judge's credibility findings, was of the view that the Judge had made valid findings including that it was not credible that the appellant returned to Afghanistan in order to obtain a passport, again Mr Duffy accepted that there were difficulties in the Judge's approach to plausibility. Although the case law, including HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 accepts that fact-finders can rely on their 'common sense and his ability, as a practical and informed person, to identify what is or is not plausible', the Courts are clear that it is not a safe basis on which to reject facts (simply because they are so

unusual as to be thought unbelievable), particularly where they are said to have occurred 'within an environment and culture which is so wholly outside the experience of the decision maker' (paragraph 72, HK).

7. The Judge found the appellant's claims to be 'inconceivable' and that it was 'odder still' that his father was asked to rejoin the Taliban. There is no indication that the Judge viewed these claims in the context of the prevailing situation in Afghanistan and Pakistan and in relation to the Taliban. These errors are also material, in light of the lack of other sustainable credibility findings; in particular the Judge's central reason for disbelieving the appellant was that the Judge found that the Appellant had provided a different account at his substantive asylum interview than he had at his screening interview. I am not satisfied that there was any rational basis for that finding. Having considered both accounts there is no significant material difference. Although what the appellant has provided is substantially more detail at his substantive interview, that is the purpose of such an interview and the appellant was specifically advised at the beginning of the screening interview (B2) that the information was 'mainly for administrative purposes' and that he would 'not be asked at this stage to go into detail about the substantive details of your asylum claim.'
8. I am satisfied therefore that the errors in the judge's consideration are sufficient that the decision of 28 August 2015 cannot stand and should be set aside in its entirety. No findings are preserved.

Conclusion

9. The decision contains an error of law and is set aside. It was agreed that fresh findings of fact need to be made.

Notice of Decision

The appeal is allowed. The determination of the First-tier Tribunal is set aside. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2(b), the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge NMK Lawrence.

Anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 3 February 2016

Deputy Upper Tribunal Judge Hutchinson