



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12186/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On August 24, 2017

**Decision & Reasons
Promulgated**

On September 1, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR S E

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hyder (Legal Representative)

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is an Afghan national. The appellant entered this country on March 16, 2005. He applied for asylum on March 17, 2005 but enquiries revealed he had already claimed asylum in Austria on November 19, 2004. He was therefore removed to Austria to pursue his asylum claim but he failed to do so and returned to the United Kingdom clandestinely around May 2005 and he claims to have been here ever since. On October 12,

2011 his solicitors wrote seeking leave to remain and on February 3, 2012 he made a formal application for leave to remain on human rights grounds. This was refused on September 14, 2012.

3. The appellant then submitted written submissions on October 28, 2013 and these were accepted as an asylum claim and he was formally interviewed on June 3, 2016.
4. The respondent refused his asylum claim on October 20, 2016.
5. The appellant lodged grounds of appeal on November 2, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Judge PJS White (hereinafter called "the Judge") on December 7, 2016 and in a decision promulgated on January 31, 2017 the Judge refused his appeal on all grounds.
6. The appellant appealed this decision on February 14, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Robertson on May 17, 2017 but when those grounds were renewed to the Upper Tribunal permission to appeal was granted by Upper Tribunal Judge Plimmer on July 4, 2017.
7. The respondent lodged a Rule 24 response dated July 18, 2017 in which she opposed all grounds of appeal.
8. The matter came before me on the above date.

Submissions

9. Mr Hyder adopted the grounds of appeal and submitted that the Judge had erred in a number of errors. He submitted:
 - (a) The main issue was whether the appellant's uncle was a Taliban commander. Whilst it was regrettable that the previous solicitors had not submitted the brother's immigration decision the Judge had heard oral evidence from the brother and despite acknowledging there was a link he failed to give any weight to the brother's evidence. The appellant should have been given the benefit of the doubt and the Judge erred by failing to do so.
 - (b) The Judge found the appellant's credibility was undermined by his failure to give a consistent account about where he was detained and the sequence of where he was detained. The appellant had stated in his substantive interview that he was initially detained in Jalalabad and then Kabul and by making the findings he did he erred.
 - (c) The absence of scars from his body or medical evidence of psychological trauma should not have been held against him.

- (d) The Judge erred by finding the appellant was released from detention by the authorities whereas the appellant clearly stated that he escaped by bribing a guard.
- (e) The alleged inconsistency in his witness statement and evidence about the appellant's escape was not an inconsistency. The Judge erred by finding as much.
- (f) The Judge doubted the appellant's credibility by saying he was inconsistent about his uncle's whereabouts but the Judge erred because the appellant referred in his statement to the fact he did not know where his uncle was. There was therefore no inconsistency.

10. Mr Whitwell adopted the Rule 24 and submitted:

- (a) The appellant and his solicitors failed to produce the decision. The Judge cannot be blamed for the appellant's failure to produce evidence. The fact such evidence may be available now does not mean the Judge erred. The burden was on the appellant to prove his case to the lower standard of proof and the Judge found, with reasons, the appellant had not met the standard of proof.
- (b) The Judge gave reasons why he found the appellant was not a credible witness. He did not pursue his asylum claim in Austria, he delayed his claim on this country after he returned and he lied about claiming in Austria.
- (c) The Judge was criticised about referring to inconsistencies but the Judge had regard to an earlier statement made in 2013 and this was open to him.
- (d) The Judge found he used an alias as a kickboxer to avoid detection.
- (e) There was no error in law.

11. I reserved my decision after hearing these submissions.

FINDINGS

- 12. Permission to appeal was granted by Upper Tribunal Judge Plimmer. She found the grounds arguable and today I heard submissions from both representatives.
- 13. Whilst a number of grounds were argued Upper Tribunal Judge Plimmer concentrated on the first ground which was contained in paragraph 3.1 of the grounds of appeal.
- 14. The appellant claimed his uncle was a general in the former Afghan government and was then recruited to work as a commander in the Taliban. After the government collapsed his uncle and brother (who also worked with his uncle) went missing. The appellant claimed the authorities came to his home looking for them and when his uncle did return after

nine months he was arrested and detained. His uncle was released after paying a bribe and he took the appellant to his cousin because he was not safe. The Judge recorded this account in his decision. At the hearing the appellant's brother attended the hearing and it was accepted that the brother had been granted asylum. The Judge recorded at paragraph [16] of his decision that no details of his claim were produced and despite taking evidence from the appellant and his brother the Judge concluded that he did not know what the brother actually claimed or what was accepted by the Judge and the fact the brother had been accepted as a refugee was of limited assistance. At paragraph [30] of the decision the Judge found he was not satisfied his uncle was a commander in the Taliban.

15. Mr Hyder submits that the Judge should have given the appellant the benefit of the doubt and in giving permission Upper Tribunal Judge Plimmer stated-

“Whilst it is regrettable that the appellant’s solicitors did not take steps to provide the First-tier Tribunal’s comprehensive decision dated 20 October 2003 allowing the appellant’s brother’s asylum appeal, given the clear links between the appellant’s claim and his brother’s First-tier claim it is arguable that fairness required the First-tier Tribunal to make further enquiry into the brother’s claim, over and above that which is set out....”

16. The appellant was fully represented in the First-tier Tribunal-as he is today albeit he has changed his representatives. Malik & Malik Solicitors previously represented him and one of their solicitors presented the appellant’s appeal to the First-tier Judge. At no stage did the appellant or his representative ask for an adjournment or even ask the respondent for the brother’s previous decision. Even if an application had been made to adjourn the case the Judge would have had to apply the guidance contained in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). Was there gross procedural unfairness or a complete denial of natural justice? In this case he had both the appellant and his brother giving oral evidence before him.
17. By not seeking the brother’s decision the Judge did not err in law. The Judge had to deal with the case on the evidence before him and for reasons he subsequently gave he refused the appellant’s appeal. He gave reasons why he did not accept the claim about the uncle and although that finding may ultimately be contrary to what was contained in the brother’s decision that does not mean the Judge erred on the evidence placed before him. It was not a Robinson obvious point to ask for the brother’s decision because if it was it is something that would have been raised by the parties at the hearing. The fact the decision was not available over three years after the claim was initially made was not something the Judge needed to investigate further. There would have been a Case Management Hearing before the substantive hearing and in the circumstances I find no merit in the first ground of appeal.

18. The second ground is in paragraph 3.2 of the grounds of appeal. Mr Hyder submitted the Judge erred by finding the appellant was inconsistent with the sequence and places of detention. In paragraph [9] of his witness statement and Q21 of interview he claimed he had been initially detained in Jalalabad and then taken to Kabul but it is argued that the Judge erred in paragraph [19] in how he approached the appellant's detention.
19. In his decision the Judge stated-

"it is slightly of more concern that he should have claimed initially that he was detained in Kabul and subsequently that he was detained first in Jalalabad; it is much less easy to see how he could be confused or mistaken about that."
20. In his statement dated October 28, 2013 the appellant described how he and his family went to live in Kabul and it was there that he was arrested and detained. He did not mention anything about Jalalabad.
21. The grounds of appeal (paragraph 3.2) overlook the fact that the appellant made no reference at all to any detention in Jalalabad and whilst the appellant may have later affirmed where he was detained the Judge was entitled to make the finding he did because there was a difference between his first statement and his subsequent evidence. This ground does not demonstrate an error in law.
22. The third ground related to the Judge's approach to the absence of injuries or any medical problems. There was no medical evidence and the Judge considered the appellant's claim of what happened to him and in the absence of any medical evidence the Judge was entitled to reach the findings he did bearing in mind he was sceptical about the account being given.
23. The fourth ground concerned how the appellant came to be released. In paragraph [20] the Judge stated "it might also be expected that they would not at any stage have released the appellant." Both in paragraph [9] of his statement and Q21 of his interview the appellant claimed he was released after a bribe was paid. The Judge wrongly suggests that the appellant was released and if this was the only reason the appellant's claim was rejected then it could amount to an error in law. However, in the absence of other factors it does not amount to an error.
24. The fifth ground concerned the Judge's findings about the uncle's death. The Judge referred to an inconsistency in his evidence. The appellant claimed in his statement that he had lost contact with his uncle before he left Afghanistan and in his interview he stated he had had no contact since 2004. However, when interviewed he explained that he knew his paternal uncle had been killed and that he had been told this on the night he was brought to Kabul by the authorities.
25. The point the Judge was making was that if the appellant knew when he was taken to Kabul that his uncle had been killed then why did he not

mention this in his 2003 statement. The Judge's finding on this issue was open to him.

26. The second challenge made on this issue was the Judge's approach to how many people's names were given. Mr Hyder's challenge is effectively to one line of the Judge's findings but his findings must not be considered in isolation. His explanation for rejecting the appellant's account was fully reasoned in paragraph [22] of his decision. Those findings were fully open to the Judge.
27. The final ground pursued at the hearing was that raised in paragraph [3.7] of the grounds of appeal. This issue is a re-argument of the period of detention and where his uncle was. The issues raised in paragraph [3.7] take the matter no further. The Judge repeatedly identified inconsistencies in the evidence and the decision taken was open to him.
28. Accordingly, based on the above I find there was no error in law.

DECISION

29. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision.

Signed _____ Date 28.08.2017

Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

No fee award is made because I have dismissed the appeal.

Signed _____ Date 28.08.2017

Deputy Upper Tribunal Judge Alis