



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03918/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2018

Decision & Reasons Promulgated
On 14 August 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

M H
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal, Counsel instructed by Virgo Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.
2. This is an appeal by a citizen of Afghanistan against a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State on 20 February 2018

refusing him refugee status, humanitarian protection and/or leave to remain on human rights grounds.

3. I consider the First-tier Tribunal Judge's decision in more detail below but the short point, and the primary reason for giving permission to appeal to the Upper Tribunal, is that it is arguable that, on the judge's findings, the appeal should have been allowed.
4. At paragraph 13 of his decision the First-tier Tribunal Judge considers the claim under the Refugee Convention. He notes that the appellant relied on two routes to support his application. He said that he was at risk in Afghanistan from the Taliban and he said that he was at risk from the Afghan government security forces. It was his case that both concerns arose from his connection with a bomb explosion. The Judge explained that the interest of the security forces was aroused by the explosion occurring at a traffic booth where the appellant and a business partner stored stock for sale. The claim in respect of the Taliban arises from the claimant's belief that he was the target of the bomb because of his father's previous involvement with the Taliban and later rejection of Taliban values. The Judge decided that the central issue in the appeal was the credibility of the appellant.
5. The Judge recognised that bomb explosions are a "regular feature of events in Kabul" and then referred to background evidence to justify that finding. The Judge also noted that the appellant's claim that his father was killed after he severed his links with the Taliban was consistent with the background information. The judge said at paragraph 18 of his Decision and Reasons:

"The general background given by the appellant is not inconsistent with the objective information and bearing in mind the lower standard of proof, the age of the appellant and his lack of education, I find that he has given a credible account of the incidents which occurred while he was in Afghanistan."
6. However, while the Judge accepted that the appellant might have believed that he was the intended target of the bomb he found it more likely that the bomb explosion was a "general, random attack which utilised an intersection on several roads." More helpfully to the appellant, the Judge found that it was "likely" that the appellant was wanted by the Afghan security forces. He regarded it as a likely line of enquiry that the police would want to talk to anyone who had access to the place where the bomb was planted. At paragraph 20 the Judge said:

"The appellant would, of course, be an initial suspect for the placing of the explosive device and, doubtless, he would attract more suspicion because he suddenly disappeared after the incident. However, I find that taken at its highest, the claim by the appellant demonstrates a fear of prosecution for involvement in a serious criminal offence and not a fear of persecution on the basis of implied political views."
7. The Judge then went on to emphasise that he accepted the "general credibility of the history of the incidents which the appellant has included in his claim" but he did not accept that this led to a well-founded fear of persecution from the Taliban or the security forces of the Afghan government.

8. Appropriately, Ms Popal concentrated her submissions on the background material that had been served for the hearing before the First-tier Tribunal. She drew to my attention a report on prison conditions prepared by the Home Office Country Information and Guidance Unit dated September 2015. Crimes against the security of this State can carry the death penalty and, unsurprisingly, terrorist related offences are taken very seriously by the authorities in Afghanistan.
9. At paragraph 4.1.5 the report referred to an Amnesty International Report dated 2014/15 which concluded that the State of Afghanistan often applied the death penalty after unfair trials. It then illustrated that point. It is also right to note that there was some indication of the government of Afghanistan responding to international criticism of its use of the death penalty but it is not possible to say that that criticism had led to the policy actually changing.
10. A particular concern was reference in the Amnesty International Report cited by the Home Office to decisions being “largely based on confessions from the accused, which are often coerced, including through torture or other ill-treatment.”
11. The US State Department Report on human rights covering the year 2014 said that there were “reports of harsh and sometimes life-threatening conditions and abuse in official detention centres.”
12. This is amplified later on in the Home Office Report with reference to “extreme overcrowding” the lack of medical care and poor sanitation. Pre-trial detention can last for three months or more and often does the phrase used was “routinely stretching up to three months or longer”. There is a description of a prison from a BBC News article. This records complaints about an inadequate supply of water, stifling heat and an irregular and inadequate supply of electricity. Overall the report gives a description of constitutional safeguards intended to ensure basic standards of decency and humanity failing to ensure their intended results. I do not think it can be said that detention by the authorities in Afghanistan is always contrary to Article 3 rights but it is a grim and depressing experience that in many cases will fail to meet international standards. My attention was drawn to extracts from a United Nations Assistance Mission in Afghanistan on the treatment of conflict related detainees in custody published in February 2015. This says:

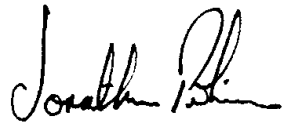
“UNAMA also observed the Government’s efforts to address torture and ill-treatment over the 23 month period including implementation of Presidential decree 129. UNAMA’s observation is that these efforts, while significant, have had mixed results. An encouraging sign was the finding that the overall percentage of detainees interviewed who experienced torture was 14% lower among the 790 detainees UNAMA interviewed compared to UNAMA’s previous observation sample. The change may partly have resulted from new policies and directives banning torture, increased inspection and visits to detention facilities from external organisations, focused training on alternative interrogation techniques and on other measures by national and international actors.”

13. The fact that there is considerable improvement is of little comfort to a person who does not experience it.
14. I have considered the documents as a whole. I have drawn attention to those that I found most helpful in the light of the submissions made to me.
15. Mr Kandola drew my attention to the judge's findings and his conclusion that the authorities had a legitimate interest in the claimant but the claimant should have nothing to fear.
16. The same documents do refer to proper procedures following concerning arrest and access to Counsel.
17. Nevertheless, arbitrary arrest and detention remains a problem and pre-trial detention can be prolonged. This is explained at the Afghanistan 2017 Human Rights Report included in the appellant's bundle.
18. Drawing these things together I have no hesitation in saying the First-tier Tribunal erred in law because it did not explain adequately why, against this background evidence, the Tribunal had concluded that the claimant did not face a real risk of ill-treatment. I therefore set aside the decision.
19. I now have to decide how this is to be remedied. The findings of fact are unchallenged and I see no reason not to follow them.
20. The background material here illustrates the difficulty that so often faces people assessing a risk in countries about which they know a limited amount. No-one can deny the legitimate interest the authorities would have in the appellant. He was a key holder, possibly irregularly, of some sort of police booth that he used for storage that somebody used as a place to plant a bomb. It may be that he was entirely innocent as alleged and that the authorities will quickly eliminate him from enquiries and he would have no risk. My difficulty is that there is clear evidence before me that the authorities in Afghanistan do not treat people properly, that there are many examples of ill-treatment leading to torture and unreliable confessions that are used against them sometimes in capital trials. It is difficult to assess the likelihood of the appellant coming across such ill-treatment. The risk of detention in extremely difficult conditions is, I find, made out. The crime is serious. The authorities have reason to suspect the appellant not only because he was a key holder but because he made off very soon after the bomb had exploded. Of course they are going to want to interview him and of course the matter is of sufficient importance for there to be the least real chance of his name being known to the police and their finding him in the event of return.
21. What I do not have in the background material are examples of the police behaving properly, of people being interrogated fairly and if appropriate released when enquiries are complete after they have been undertaken with due expedition. It may happen sometimes but as far as I can see the more serious the crime the less likely the police are to behave properly. The authorities are concerned about attacks on the State.

I do not know what would happen to the appellant in the event of his return. It may be the appellant would be perfectly all right but my task is to assess if there a real risk of serious ill-treatment. Given the background evidence about the behaviour of the police and the inadequacy of constitutional safeguards I have to conclude that the background evidence only properly supports the conclusion that the claimant would be at risk on these findings of fact. Further, as the authorities would at least suspect him of being an opponent then the risk of ill treatment is for a reason protected by the Refugee Convention.

Notice of Decision

22. It follows therefore that having found an error of law I overturn the decision of the First-tier Tribunal and I substitute a decision allowing the appeal against the Secretary of State's decision.



Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 13 August 2018