



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/08436/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34
On 17 June 2020

Decision & Reasons Promulgated
On 26 June 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

HAJIGUL ABBASSI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The appellant, a citizen of Afghanistan, has appealed to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 7.11.19, in which First-tier Tribunal Judge EMM Smith dismissed the appellant's appeal against the respondent's decision of 14.8.19 refusing his further submissions in support of his claims for international protection and humanitarian protection.
2. In essence, the appellant's claim is that his father worked for the Taliban but disappeared in 2008. The Taliban approached the appellant seeking revenge, asserting that his father had stolen weapons from them. He claims that he was forced to wear suicide vests but he surrendered himself to the authorities. In consequence, he was beaten by the Taliban and forced again to wear a suicide

vest. Eventually, he fled Afghanistan and came to the UK in October 2013 at the age of 13.

3. He first made a claim for international protection in February 2014, which was refused in the decision of the respondent made on 4.2.15, but he was at the same time granted discretionary leave to remain because of his young age. The appellant appealed the refusal to the First-tier Tribunal, which dismissed his appeal in September 2015. Permission to appeal to the Upper Tribunal was refused. On 5.7.19 he made further submissions, the refusal of which is the subject matter of the appeal to the First-tier Tribunal referred to above.
4. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Simpson on 21.1.20, on the basis that it was arguable that the judge gave weight to immaterial matters arising at the hearing concerning the appellant's partner's name and the length of their relationship, whilst failing to give weight to country information about the Taliban and Afghanistan. It was also found arguable that the First-tier Tribunal failed to make a compliant article 8 ECHR proportionality balancing exercise, and failed to "provide all round an adequacy of reasoning on matters at issue, asylum, humanitarian protection and human rights, private & family life."
5. On 20.4.20 the Upper Tribunal issued directions proposing that, because of the COVID-19 pandemic, the error of law decision be decided on the papers without an oral hearing. Both parties have responded to those directions with written submissions in which it is agreed that the error of law decision can be made without any further hearing. The tribunal has received the appellant's unsigned and undated submissions sent by email on 12.5.20, and the respondent's submissions by Stefan Kotas, dated 19.5.20. It is not necessary to repeat or précis the lengthy submissions. However, I confirm that both sets of submissions have been carefully considered and taken into account before making my decision.
6. I have had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal*, to the UTIAC Presidential Guidance Note No 1 of 2020, *Arrangements during the COVID-19 pandemic*, and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). I am satisfied that it is appropriate to determine this appeal without a hearing because both parties are in agreement that the Tribunal should do so.
7. I therefore proceed to consider and determine this appeal on the papers.
8. The grant of permission does not appear to correlate well with the drafted grounds of application for permission to appeal to the Upper Tribunal. Those grounds were drafted in rather vague terms and contain a series of assertions and disagreements with the decision of the First-tier Tribunal. It is submitted that the First-tier Tribunal failed to fully consider the content of the evidence as a whole but it is not particularised what evidence was not properly taken into account. Similarly, the grant of permission is somewhat vague and fails to engage adequately with the drafted grounds of application.

9. The appellant's submissions go beyond the grounds relied on in the application for permission to appeal to the Upper Tribunal. The submissions now rely on UNHCR Guidelines as to the risk on relocation to Kabul. As stated below, the finding that relocation to Kabul would not be unreasonable or unduly harsh was a finding in the alternative. The primary finding is that the factual claim is not credible and that there is no reason why the appellant will not be able to return to his family home. The submissions in this regard do not identify any material error of law in the decision of the First-tier Tribunal.
10. The first argument in the drafted grounds is that the appellant and his partner have formed a strong family and private life in the UK. However, this ground is little more than a disagreement with the findings of the First-tier Tribunal. When assessing the appellant's overall credibility, the judge at [28] of the decision considered the oral evidence as to that relationship. It was pointed out that the appellant varied as to the length of his relationship with Ms Singh, first stating 3-4 months, and then 2-3 months. A letter from Ms Singh claimed that she had known the appellant since 2015. In oral evidence, she said 4-5 months. The letter in support gave a different name, the explanation for which the judge found incredible. Other evidence suggested that the relationship began around June 2019. It was accepted at the First-tier Tribunal appeal hearing that the appellant and Ms Singh could not meet the requirements of Appendix FM in relation to family life, even under the exceptions of EX1 and EX2. In any event, it does not appear to have been argued by the appellant's representative that there were insurmountable obstacles to family life continuing outside the UK. Despite the adverse credibility findings, the judge accepted that there was a relationship in existence.
11. With regard to this relationship, the grounds also assert that "the proportionality assessment and under section 117B(6)" of the Nationality, Immigration and Asylum Act 2002 is not fair, because the appellant is in a relationship with his partner. The appellant has provided documentation which, it is asserted, demonstrates that the relationship cannot be enjoyed elsewhere. It is claimed that the partner cannot go to Afghanistan because she is Sikh. It is submitted that these are exceptional circumstances overriding the public interest. However, no satisfactory evidence was adduced to demonstrate that the partner would be unable to accompany the appellant to Afghanistan.
12. In support of the exceptional circumstances argument, the written submissions purport to rely on post-decision evidence relating to a forced marriage protection order made in the UK when the appellant's partner was in India and her parents attempted to prevent her returning to the UK. It is pointed out that the relationship with the appellant is not supported by Ms Singh's parents. However, it is difficult to see the direct relevance of this material. At its highest, it is said that as she cannot return safely to India and is not with her parents any separation from the appellant would be harsh. However, this information was not before the First-tier Tribunal and is not relevant to the issue as to whether there was an error of law in the decision of the First-tier Tribunal.

13. The written submissions assert that the judge “failed to carry out a proper assessment in respect of the balancing exercise and proportionality assessment in respect of the appellant’s relationship.” However, the judge did consider the claim outside the Rules, pursuant to article 8 ECHR. The judge accepted on the evidence that the appellant and Ms Singh were then in a relationship and had been for only some 3-4 months, so that the relationship was “in its infancy.” The judge made an erroneous reference to s117B(6), as do the grounds, as s117B(6) relates to a parental relationship with a qualifying child when the appellant has no such child. In reality, the very recently formed relationship could only be regarded as part and parcel of the appellant’s private life. It is likely that the judge intended to refer under section 117B(5) of the Nationality, Immigration and Asylum Act 2002 to the fact that little weight is to be given to a private life developed in the UK whilst immigration status is precarious, as it was even though he had been granted discretionary leave. The relationship with a partner that commenced whilst the appellant’s immigration status was precarious, is itself also precarious. Ms Singh must have known from the outset of the relationship that the appellant had no permanent status in the UK and, given that his asylum claim had been refused, was likely to be required to return to Afghanistan. The couple are not entitled to remain in the UK simply because that is their desire. Given its short duration and the circumstances of its creation, in entirely precarious circumstances, it is obvious that the appeal could never have succeeded on the basis of the relationship. The grounds fail to identify in what way the judge made an error of law with regards to this relationship. I agree that the judge could have done a better job of setting out and assessing the relevant factors in the proportionality balancing exercise. However, on the facts of this case, there were no compelling circumstances to justify, exceptionally, granting leave to remain outside the Rules. All that has been relied on in the grounds and the written submissions are that she is estranged from her parents in India and cannot return there. However, that does not render the circumstances in any way compelling. Neither does the unsupported assertion that because she is Sikh she cannot go to Afghanistan amount to compelling circumstances. There is, in reality, nothing unduly or unjustifiably harsh in returning the appellant to Afghanistan even though he had established a relationship of sorts with Ms Singh a few months at the most prior to the appeal hearing. On the facts, I am satisfied that the dismissal of the appeal on human rights grounds was in this case inevitable.
14. In relation to the protection claim it is argued that the judge was too harsh in rejecting the appellant’s claim to have been repeatedly targeted by the Taliban to wear a suicide vest. The fact that the appellant has given this account in his witness statement and oral evidence is not indicative of an error of law; the judge was not bound to accept his account. It is open to the judge to make findings rejecting the factual claim, provided that cogent reasoning has been provided to support those findings and conclusions. I am satisfied that when read as a whole the decision does provide entirely adequate reasoning for the decision. No error of law has been identified in respect of this ground, which is a mere disagreement with the decision of the First-tier Tribunal.

15. It is also asserted in regard to the background factual claim that the judge had ample objective evidence to support the appellant's claim and was, therefore, wrong to dismiss the claim for the reasons stated. Again, this is little more than a disagreement with the decision. The appellant's factual claim in relation to fear of the Taliban as presented to the First-tier Tribunal was, in essence, a restatement of that previously considered by the First-tier Tribunal in 2015, but supported now by CPIN information about the Taliban recruiting young boys. However, in 2015 the First-tier Tribunal entirely rejected that claim and the First-tier Tribunal in 2019 was entitled to take that as a starting point, pursuant to the Devalseen principle, as the grounds accept. Judge Smith then went on to consider the CPIN country background information, accepting both that the Taliban may well be able to trace a person of interest, and that they are known to recruit young boys. Despite taking that information into account, at [26] of the decision, the judge found nothing to justify departing from Judge Mathews findings in 2015. Nothing in this ground demonstrates any error of law on the part of the First-tier Tribunal; the findings were entirely open to the judge on the evidence and were made after consideration of the evidence in the round.
16. The respondent's submissions very fairly point out that at [33] of the decision the First-tier Tribunal Judge erroneously applied the Country Guidance issued by the Upper Tribunal in AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118, when the decision had been overturned and remitted by the Court of Appeal. However, the error of the Upper Tribunal related to a numerical miscalculation of risk under article 15(c) in Kabul. The First-tier Tribunal Judge should have been aware of this. Whilst the error is not relied on in the grounds, it is not material on the facts and findings of this case, as the primary finding is that the appellant can return to his family home. It was only in the alternative that, at [35] of the decision, the judge found relocation to Kabul not unreasonable or unduly harsh. In the circumstances, the error identified by the respondent makes no difference to the outcome of the appeal.
17. In all the circumstances, I find no material error of law in the decision of the First-tier Tribunal and the appeal must stand as made.

DECISION

18. The appellant's appeal against the decision of the First-tier Tribunal is dismissed.
19. The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.
20. I make no order as to costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 17 June 2020

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 17 June 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, the **appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email