



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/01814/2021
[PA/50780/2021]**

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2022**

**Decision & Reasons Promulgated
On 27 January 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**SHABEER AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel, instructed by J McCarthy Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against a decision of First-tier Tribunal Judge Lloyd-Lawrie (“the judge”), promulgated on 14 June 2021, by which he dismissed the Appellant’s appeal against the Respondent’s refusal of his protection and human rights claims.
2. The Appellant, a citizen of Afghanistan born in 1989, came to the United Kingdom in 2011 as a student and had leave in that category until 2014.

He has been an overstayer ever since. On 5 May 2020 the protection and human rights claims were made. These were put forward on the basis that the Appellant would be at risk of being targeted by the Taliban because he had been given what was described as a “westernised education” by his father and due to the length of time spent away from Afghanistan would on return be perceived as a westernised individual. Following the refusal of those claims by a decision dated 3 February 2021, the Appellant appealed to the First-tier Tribunal.

The decision of the First-tier Tribunal

3. For reasons set out in paragraphs 26 and 27 of his decision, the judge rejected the core element of the Appellant’s claim to have been given a westernised education. It was said that there was a fundamental inconsistency in the evidence, contained in a letter from previous representatives and an educational certificate, such that the Appellant’s account was “catastrophically” undermined. The judge found that the solicitors’ letter had stated that the Appellant had been a student of Islamic studies, whereas the educational certificate listed a large number of broader and what might possibly be described as a more liberal range of subjects. The judge also found that the Appellant had not in fact lost contact with family members in Afghanistan. There was said to be no risk from the Taliban.
4. The judge went on to consider the question of humanitarian protection and whether the Appellant could reside in Kabul. A detailed medical report had been provided on behalf of the Appellant, indicating that he suffered from significant mental health problems. The judge accepted the fact of mental health problems, using the word “some” to describe their nature and severity, but went on to find that they were “not out of the ordinary of that which is seen, sadly, with many people outside of their country of origin and are not so severe in nature, as to stop the Appellant being able to mix with friends and family.” The humanitarian protection claim was rejected on the basis that the Appellant could adequately re-integrate into Afghan society.
5. Article 8 was then dealt with and rejected. This aspect of the Appellant’s case has not been pursued on appeal.

The grounds of appeal

6. Three grounds of appeal were put forward by the Appellant: first, that the judge’s assessment of the evidence relating to the Appellant’s education was irrational; second, that in any event the judge had acted unfairly by failing to raise this issue with the Appellant at the hearing (it not having

been raised by the Respondent at any stage); and third, the judge had failed to adequately address the medical report.

7. The First-tier Tribunal granted permission on limited grounds (this was stated above the horizontal line in the decision notice: see Safi (permission to appeal decisions) [2018]). 388 (IAC)).
8. Permission was granted only on the second ground of appeal.

Discussion on the error of law issue

9. At the outset of the hearing Mr Tufan confirmed that he accepted the existence of a material error of law in the judge's decision, namely that there had been a failure to adequately address, and provide reasons in respect of, the medical report. I indicated that this corresponded with my preliminary view. Mr Tufan's stated concession was, I find, properly made.
10. Whilst the judge had noted the existence of the medical report at paragraph 18 of his decision, it was not referred to at all during the substantive consideration of the humanitarian protection claim at paragraph 31. Beyond the failure to mention the report itself, there was no engagement with its content, the severity of the conditions diagnosed, and the potential relevance of this evidence to the issues at hand. If any aspect of the medical report was being rejected, no reasons were provided for this.
11. It is of course the case that not every item of evidence needs to be addressed by a judge and there was no requirement to provide reasons for reasons. However, where an item of evidence forms a central plank of an individual's case and where that evidence is, on its face, capable of attracting significant weight, the analysis and reasoning provided must be adequate in that context. In other words, the greater the significance of the evidence, the more cogent the analysis and reasoning must be.
12. Here, what was said in paragraph 31 was inadequate. It failed to provide a sufficient analysis of what the report said and/or failed to provide sufficient reasons as to why any aspect of the report was either being rejected or why less weight was being placed upon it than otherwise might be the case.
13. In light of the foregoing, I set the judge's decision aside. It follows that I do not need to address the issue of whether ground 1 is a live issue in light of the permission to appeal decision. For what it is worth, I saw a good deal of merit in that ground as well.

Re-making the decision

14. Having found a material error of law to exist and having set aside the judge's decision, Mr Tufan then confirmed that the Respondent would be conceding the re-making decision as well. In light of the medical evidence and the Appellant's circumstances as a whole and given the contents of the Respondent's CPIN on Afghanistan, Mr Tufan confirmed that the appeal should be allowed on Article 3 ECHR grounds and on the basis of Article 15(b) of the Qualification Directive (humanitarian protection grounds). Mr Collins was content with this outcome and accepted that the Appellant was not, as matters currently stand, a refugee.
15. Therefore, I go on to re-make the decision in the Appellant's appeal and allow it on human rights and humanitarian protection grounds.

Anonymity

16. An anonymity direction has been in place throughout these proceedings. In light of the basis upon which the appeal has been allowed, together with the importance of the public interest in open justice, I see no need to maintain that direction.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by allowing the appeal on human rights grounds (Article 3 ECHR) and humanitarian protection grounds (Article 15(b) of the Qualification Directive).

Signed H Norton-Taylor

Date: 13 January 2022

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed H Norton-Taylor

Date: 13 January 2022

Upper Tribunal Judge Norton-Taylor