



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

PA/08292/2019

THE IMMIGRATION ACTS

**Heard at Manchester on
On the 07 February 2022**

**Decision and Reasons
Promulgated
On the 09 March 2022**

Before

**Upper Tribunal Judge Bruce
Deputy Upper Tribunal Judge Sills**

Between

**OR
(Anonymity Direction Made)**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW DECISION

Representation:

For the Appellant: Mr Islam instructed by Fountain Solicitors

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Introduction

1. The Appellant (A) appeals against the Decision and Reasons of First-tier Tribunal Judge Jepson (the FTT Judge) dated 13 October 2019 dismissing his appeal against the refusal of his protection claim.

Factual Background

2. A is a citizen Afghanistan, born on 1 January 1987. A entered the UK on 28 December 2018 and claimed asylum on 31 December 2018. The basis of his asylum claim is as follows. A states that he is from Logar Province and that he applied to join the National Directorate of Security(NDS) in 2018. A went to Kabul to make the application and the process took around 2 weeks. The day after A was offered the job, his family received a threatening letter from the Taliban who had found out about A's job. The Taliban then returned and assaulted A's father, A's brother intervened and the Taliban killed him. As a result, A fled from Afghanistan.
3. The Respondent (R) refused A's claim on the basis that the claim was not credible and that A could safely return to Afghanistan. A appealed. The FTT Judge dismissed A's appeal for the following reasons. After some discussion of various aspects of the evidence at paras 40-63, the material part of the determination is at paras 64-70. The FTT Judge acknowledged both parties had meritorious points and that the exercise was quite finely balanced, but found that he was not persuaded that A was telling the truth. The FTT Judge was unclear about aspects of A's job application. He found it hard to accept that the Taliban threat came so soon after the job offer and that the letter was thrown over the wall rather than delivered in person. It was astonishing that A's family retained documents showing A had been offered the job as that would put them at risk. A had also failed to claim asylum on his journey to the UK. Even if the account were true, no evidence had been presented that A could not relocate to another area. A's appeal on asylum and human rights grounds was dismissed.
4. A applied for permission to appeal arguing that the decision and reasons:
 - a. were irrational and inadequately reasoned;
 - b. failed to make any findings on whether A would be at risk of forced recruitment as a man of fighting age;
 - c. made a series of errors in relation to A's claim that he would be at risk from indiscriminate violence;
 - d. failed to consider the medical evidence in relation to internal relocation;
 - e. failed to adequately consider A's human rights appeal.
5. FTT Judge Keane granted permission to appeal on 17 January 2020. The Judge highlighted paras 54 and 56 of the Decision and Reasons, not raised in the grounds, as examples of the FTT Judge substituting his own knowledge in arriving at findings of fact.
6. There was then a significant delay before the error of law hearing was listed for 7 February 2022. During that period there was a major change of circumstances in Afghanistan with the Taliban coming to power in 2021. In the light of that, shortly before the hearing, R informed A that he would be granted humanitarian protection. A

continued to pursue the appeal against the dismissal of his appeal on asylum grounds.

The Hearing

7. Mr Islam confirmed at the hearing that in light of R's decision to grant A humanitarian protection, the only ground pursued was the first ground. He argued that the reasons were inadequate, and only based on the plausibility of the account. Mr Islam pointed out that at para 64 the FTT Judge noted that the appeal was finely balanced. In relation to para 66, the FTT Judge failed to consider A's witness statement and failed to make credibility findings in relation to the core of the claim. Mr McVeety argued that the FTT Judge had been entitled to take the points taken. There were legitimate plausibility issues about the claim. We reserved our decision.

Findings

8. In the grant of permission, FTT Judge Kean identifies two paragraphs as giving rise to arguable errors of law, paras 54 and 56. Para 54 relates to A's evidence about the format of telephone numbers in Afghanistan. The final sentence of this paragraph makes clear that the FTT Judge made no adverse findings against A on this issue. In relation to paragraph 56, the FTT Judge observed that it was strange that the sender of the envelope, which contained the evidence from Afghanistan that A submitted in support of his claim, wrote his personal details on the outside of the envelope given its contents and a possibility that the envelope could be intercepted. The FTT Judge was entitled to make this observation. The matters raised in the grant of permission do not identify any error of law.
9. The FTT Judge's core findings are at paras 64-60. At para 64 the Judge acknowledges that the case was quite finely balanced. At para 65 he finds the account not credible and gives his reasons at para 66-69. Para 66 is problematic. The Judge finds that there are 'too many unexplained aspects of the account given'. The Judge states that he is 'still unclear' as to whether A expected to work in plain clothes because he saw it in a film, or simply through sheer optimism. The problem with this statement is that there is no discussion of the evidence on this point. For instance, in A's witness statement at para 9, A states that while the adverts did not include plain clothed roles, he knew that there were plain clothes roles available through his family and community. He was also aware that plain clothes roles were available through films he had seen. So, A did provide a reasonably clear explanation as to why he thought he would be able to work in a plain clothes role on at least one occasion. The Judge was not required to accept this explanation, but it cannot be said that A had failed to provide an explanation. Given that A had provided an explanation, it was incumbent upon the FTT Judge to consider this explanation and give reasons for rejecting it if indeed he did. The FTT Judge's failure to consider A's explanation means that the FTT Judge's reasons do not

demonstrate that he considered A's evidence in his witness statement on this issue.

10. The Judge goes on to state that it is extremely unlikely that A, on seeing this job advertised, and at the same time witnessing NDS personnel being killed, would apply for the position; regard is had to A's description of Logar Province which is not entirely supported by the objective evidence; the Judge concludes the paragraph with the statement 'why take the risk?' The first problem with this passage is that there is no clear statement as to what A's evidence was about witnessing NDS personnel being killed. Second, again, the Judge explains neither what A's description of the situation in Logar Province was, nor the 'objective evidence', nor how the latter did not fully support the former. There is simply no reference to the evidential basis for this statement. Third, by concluding with a question, 'why take the risk?' the Judge implies this is something that A had not addressed, another 'unexplained' element of A's account. However, this issue is dealt with at length in A's witness statement at paras 6-16. The reasons he gives for applying to join the NDS include that the adverts made the work look attractive and heroic, financial reasons, his opposition to the Taliban, and his family supporting the idea. The Judge could have found these reasons unsatisfactory in the circumstances, but he was required to actually consider A's account in analysing this issue and the reasons do not demonstrate he has done so. Once again, the FTT Judge's reasons do not demonstrate that he considered A's evidence in his detailed witness statement on this issue.
11. Further, I note that while this discussion takes place in what might be considered the Judge's conclusions section, where he explains why he finds against A in a 'quite finely-balanced exercise', there is no prior or fuller discussion of these matters in the Judge's analysis. This is not a summary of a matter previously discussed. This is the consideration of the matter in its entirety. For all these reasons, the reasoning at para 66 is inadequate.
12. We have considered the leading authorities on the adequacy of reasons. An appellate tribunal should be slow to set aside a decision on the grounds of inadequacy of reasoning. In considering whether this amounts to an error, it is necessary to consider the significance of the issue on which the reasoning is inadequate (see e.g., VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC)). The matters considered at para 66 are a material part of the Judge's conclusions on credibility. While the Judge does give other reasons for rejecting A's account at paras 67-69, para 66 gives some of the main reasons for rejecting the account. The inadequate reasoning concerns a central, not peripheral, matter. Having considered Pigłowska v Pigłowski [1999] 1 WLR 1360 we are satisfied that the above matters do not amount to a narrow textual analysis. The reasons do not demonstrate that the Judge had regard to material evidence on the issues considered. Finally, in MD Turkey [2017] EWCA Civ 1958 the Court of Appeal stated:

'26 The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost.'

In this appeal, the FTT Judge's reasons do not enable A to know why the explanations provided in relation to the matters discussed at para 66 were not accepted, nor how the objective evidence on Logar Province did not support his account. Proceeding with due caution, for the above reasons we find that the FTT Judge's reasons at para 66 are inadequate and that this amounts to an error of law.

13. The final matter to consider is para 71 of the Decision and Reasons where the FTT Judge states that 'nothing has been presented to show the Appellant (even if he were telling the truth) cannot relocate to another area.' We must consider whether this amounts to an alternative sustainable finding that taking A's case at its highest, A could safely and reasonably relocate. We find that it is not. It is unclear that the FTT Judge has considered both the safety and reasonableness of relocation. In relation to safety, there is no consideration of the risk that A would face outside his home area (the FTT Judge does not specify any particular place of relocation) as someone who had been offered a post by the NDS. There is no consideration of how interested the Taliban would be in A. In relation to the reasonableness of relocating, the evidence in relation to A's mental health and the diagnosis of PTSD referred to at para 27 of the Decision and Reasons were plainly relevant but not considered. Therefore, the FTT Judge's consideration of internal relocation also contains errors of law and is not sustainable. It follows that we find that the FTT Judge's Decision and Reasons contain a material error of law in that they are inadequately reasoned. We set aside that determination.
14. We have had regard to para 7 of the 2014 Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal. While the grant of humanitarian protection to A by R narrows the issues in this appeal, there still needs to be a fresh assessment of the credibility of A's account. Given the extent of the fact finding, it is appropriate that this is carried out in the First-tier Tribunal. We therefore remit this appeal to the First-tier Tribunal for a fresh consideration of the appeal on asylum grounds only.

Notice of Decision

The Decision and Reasons of the First-tier Tribunal contain a material error of law and are set aside.

The appeal on asylum grounds only is remitted to the First-tier Tribunal sitting at Manchester to be considered afresh (de novo) by a judge other than First-tier Tribunal Judge Jepson.

Signed

Date 15



February 2022

Deputy Upper Tribunal Judge Sills

Direction regarding anonymity - Rule 14 of the Upper Tribunal Rules

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

Signed

Date 15



February 2022

Deputy Upper Tribunal Judge Sills