



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10390/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 11 October 2013

Determination Sent
On 8 November 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

RAFEE MOHD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel, instructed by Thompson and Company
Solicitors
For the Respondent: Mr S Spence, HOPO

DETERMINATION AND REASONS

1. This is the appellant's appeal against the decision of Judge Hague made following a hearing at Bradford on 1 July 2013.

Background

2. The appellant is a citizen of Afghanistan born on 1 June 1980. He arrived in the UK on 19 February 2012 with a business visit visa.
3. He came to the UK, he said, because he wished to attend a two week management development course. He paid the course fee for himself but did not attend. He said that the interpreter that he had arranged did not turn up and a man told him that he would be able to get accommodation elsewhere. He did not return home when the course finished on 2 March 2012, regarding it as a holiday. He claimed asylum on 3 September 2012 and was refused on 31 October 2012.
4. His claim is that he fears returning to Afghanistan because, in the latter half of 2011 when travelling on official business he had been kidnapped by the Taliban and held for thirteen days. He was released because of his father's connections with the Ministry of Defence but spent twenty days in hospital being treated for his injuries. In September 2011 he agreed to meet the Taliban but told his father who informed the police. At the meeting place he met a man who was with a car packed with explosives. The appellant was told to drive the car bomb into the Ministry building but the police arrived and the man was arrested. After he had arrived in the UK the Taliban left a threatening letter at the family home stating that he was a traitor. On 1 July 2012 the Taliban killed his four brothers and a sister, although his parents and another sister survived.
5. The respondent rejected the appellant's claim in its entirety. There were a number of discrepancies in his account both in relation to the kidnap, his alleged involvement in a car bomb attack, and the killing of his family.
6. The appellant relied upon the report of Dr Huws who described the appellant as having a depressive illness of moderate severity with symptoms of unresolved grief over the death of his siblings. Dr Huws suggested that his condition could cause difficulty in concentrating and focusing and might result in confusion with historic dates. Dr Huws stated that questioning about the story could act as a distressing trigger leading to periods of dissociation when the appellant would not be in touch with reality and his ability to give a coherent response would be compromised.
7. The judge stated that he had paid considerable attention to the opinion of Dr Huws but nevertheless agreed with the respondent that the appellant had not given a credible account of events. He said that the appellant had failed to attend the course for which he came to the UK without a satisfactory explanation and had not returned a fortnight later. The threatening letters from the Taliban began some time afterwards and could have played no part in his decision. He analysed the discrepancies relied upon by the respondent and said that he bore in mind the potential for error in translating dates between the Arabic and Gregorian calendars. Nonetheless he found that the inconsistencies could only be explained by the appellant having no genuine memories to refer to. He considered all of the

documents which he found to be incongruous and contrived, and concluded that the account was a fabrication.

The Grounds of Application

8. The appellant sought permission to appeal on the grounds that the judge had erred in law in his approach to the appellant's evidence, particularly his consideration of the report from Dr Huws. The judge had not considered the objective evidence before reaching his conclusions with respect to Afghan criminal procedures and had speculated in relation to whether the appellant was in fact in touch with his family. Finally, he had failed to apply anxious scrutiny to the documents before him.
9. Permission to appeal was granted by Judge Gibb on 5 August 2013, who stated that they merited further consideration. No response was served by the Secretary of State.

Submissions

10. Mr Khan made no submissions save for in relation to ground 1. He relied on his grounds and submitted that the judge had not adequately addressed the psychiatric report.
11. Mr Spence defended the determination and submitted that the findings were open to the judge on the basis of the evidence before him.

Findings and Conclusions

12. There is no error in this determination.
13. Dr Huws's diagnosis of moderately severe depression, which could lead to confusion with historic dates and difficulties in giving a coherent account, was taken into account by the judge. The judge observed that the opinions expressed were implicitly founded on the premise that the account was true. In IL (medical reports – credibility) China [2013] UKUT 00145 the Tribunal gave guidance on the judicial approach to medical reports and stated that ultimately, whether an appellant's account of the underlying events is credible and plausible, is a question of legal appraisal and a matter for the Tribunal judge. There is therefore no error in the judge stating that the weight to be attached to the report was a matter for him.
14. Dr Huws stated that minor discrepancies, when the appellant is suffering from depression in a long interview, could be expected. However these were not minor discrepancies. The judge was entitled to take into account the fact that the dates given by the appellant were wildly discrepant. He claimed to have been kidnapped by the Taliban, when he was interviewed, in July 2011 but the documents he provided put the date as October. The October date, however, could not be correct because it post-dated the arrest of the man who had tried to persuade him to drive a car bomb.

15. It was plainly open to the judge to find it not credible that the appellant had not been asked to make a statement to the police or been called upon to give evidence in relation to the car bomb incident and the arrest of the man who had asked him to drive the car.
16. The remaining grounds amount to a disagreement with the decision. There is no merit in the assertion that the documents were not properly assessed. In any event, no reference is made in the grounds to the respondent's position that, even if the Taliban had any ongoing interest in the appellant, there would be a sufficiency of protection available to him given his father is currently said to be a member of the Afghan security force.

Decision

The original judge did not err in law and the decision stands.

The appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor