



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

Appeal Number: AA/01848/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 4 November 2014

Determination

Promulgated

On 14 November 2014

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

Ghulam Haydar Nuri

Appellant

and

The Secretary Of State For The Home Department

Respondent

Representation:

For the Appellant: Mr G. Brown, Counsel instructed by Legal Justice Solicitors

For the Respondent: Mrs P. Petterson, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Afghanistan who was born on 2 January 1946. He is 68 years old. He appeals against the determination of First-tier Tribunal Judge Phillips QC promulgated after a hearing on 5 June 2014 dismissing the appellant's appeal against the decision of the respondent dated 7 March 2014 refusing his asylum claim and issuing directions for his removal.

2. The basis of the appellant's asylum claim was outlined by the appellant in the answers he provided in interview. The claim arises in the context of the successful claim of his cousin, Mr Amiri, who it is accepted was kidnapped in Afghanistan in late 2012 and released, after spending 19 days in captivity, upon payment of a ransom. Mr Amiri successfully sought asylum in the United Kingdom as a result of the risk he faced from kidnapers. The appellant was involved in the payment of a ransom on behalf of his cousin, Mr Amiri.
3. The appellant's son is settled in the United Kingdom and on 8 May 2013 the appellant visited the United Kingdom on a family visit. He returned to Afghanistan. He re-entered the United Kingdom on 1 July 2013 on the strength of a family visit visa permitting entry for himself and their son Noorlah Nuri born on 1 April 2004. The claim was made on 8 July 2013. In his interview the appellant described how, on the way to his shop in Kandahar, he was approached by three individuals who abducted him.
4. The events surrounding his cousin's kidnap are an integral element of the appellant's claim. The appellant told his interviewer that he had no idea of the identity of those who kidnapped his cousin. He described how some people were saying that he was taken by the Taliban whilst others that it was kidnapers. He said, 'I investigated, I found out that he was taken by the kidnapers.' He then described how money was taken to them in order to secure his cousin's release. In answer to question [45] he told the interviewer that he had been informed there were no Taliban in the area. He repeated that it was kidnapers who are responsible, and not the Taliban [46].
5. Then, dealing with his own kidnap, he described how he was held for several hours until a person came and told him that he knew him.

"... A person came and told me that he knew me. He said that you are innocent, we talked later. I open your handcuffs and I won't open your blindfold. You just go straight ahead, there is a road. When I walked I open my eye cover, it was a night time when I took myself to the road. I sat there for one or two hours and I realised that it was getting light. ..
6. Upon arrival home in Kandahar, the appellant and his family immediately left for Kabul where they stayed for two or three days [83], [85]. Whilst in Kabul they stayed with family members [87]. He explained that he could not return to Kabul because he had been under so much pressure and, even recollecting the events, was upsetting to him. Since arriving in the United Kingdom he had sold his shop in Kandahar.
7. There are obvious question marks over the appellant's account. The identity of his kidnapers was not provided at interview. In particular, the identity of the man who entered the room, apparently stating that he knew the appellant (although the appellant did not know him) and

then making arrangements for his release. The curious comment of this individual that the appellant was '*innocent*' as if questions of innocence and guilt have much bearing upon the activities of kidnappers. The intervention of this *deus ex machina* able to effect his release without payment or any adverse consequences to the appellant obviously affects the assessment of risk and whether that such an incident would re-occur or, if it did, whether it would have the same outcome.

8. In support of his claim, the appellant provided statements from his wife and son in the United Kingdom and from Mr Amiri. His wife said in paragraph 4 that she did not know for certain that it was the Taliban who kidnapped her husband or Mr Amiri. The appellant himself disclaimed a suggestion that the Taliban had been involved or, indeed, even had a presence in the area, Kandahar, a matter about which the appellant was likely to have some knowledge as he lived and traded there.
9. During the period of the appellant's absence, his wife carried out checks to ascertain her husband's whereabouts. She described that, on return, he was dirty and dishevelled and said the family could not stay at home anymore and would have to leave because he had been kidnapped and his kidnappers may come back. On the basis of this, the family immediately packed their bags and left. The appellant's son in the United Kingdom is only able to state that, on arrival in the United Kingdom, the appellant told him that he had been kidnapped. He stated that his father still had nightmares and '*is a changed person*'. Mr Amiri gave evidence as to the circumstances of his own kidnap and describes how, when the family arrived in the United Kingdom, they were tired and the appellant was upset and '*looked like he had been through a lot*'
10. These witnesses gave evidence to the Judge. In his determination, the Judge considered the appellant's claim that, after his visit to the United Kingdom in June 2013, the appellant had been kidnapped on his return to Afghanistan for a day and released and this had prompted him to make to take immediate - and life-changing - steps to leave for good. Whilst it was not in dispute that Mr Amiri had been kidnapped (and this formed the basis for his successful claim to remain in the United Kingdom) the Judge pointed out that Mr Amiri's account of his own kidnap did not prove that the appellant himself had been kidnapped, [31]. The Judge set out what he described as a number of inconsistencies. Although he does not identify these inconsistencies in the same sentence, he noted that the appellant attributed these two problems with the interpreter although this had not previously been raised. This was clearly a matter the Judge was entitled to put in the balance as he assessed the evidence.
11. He expressly stated that his kidnappers were the same kidnappers as those who kidnapped his cousin. He sought to make good this point by

asserting that his cousin knew one of the group, although he was not able to say what group these people belonged to. There was clear evidence from Mr Amiri that the persons involved in his kidnapping were extortionists intent upon making a financial gain but who were not associated with the Taliban and whose purpose was simply to extract a ransom. Later, however, the appellant changed his account to the extent that he identified his kidnappers as members of the Taliban. Clearly this is of some significance in an asylum claim in that it might suggest that his kidnappers have a greater geographical influence than merely a criminal group of three responsible for his - and his cousin's - abduction. At least in the popular imagination, the Taliban have organisational skills and power which exceeds those of individual extortionists. In advancing a claim that the Taliban were responsible, it must be obvious that the threat they pose might extend beyond the appellant's locality, hence significantly increasing the risk. The change from criminal kidnappers to Taliban, if accepted, enhanced the appellant's prospects of a successful asylum claim. The change was not therefore a change in detail that had no, or no material, impact on the assessment. It was an inconsistency, at least in the sense that it amounted to an alteration in what had been a clear and intelligible identification of his abductors.

12. The Judge was naturally concerned to see how this alteration came about. The appellant himself described it as the result of a conversation he had with a contact in Afghanistan mentioned by the Judge in paragraph 31 of the determination and clearly a reference to paragraph 19 on his statement of 10 April 2014:

"At the time of the interview I said I did not know who the kidnappers were. However, I confirmed that since the interview Habibullah was kidnapped and his son has confirmed it is the Taliban. I can only assume the gang that kidnapped me and [Amiri] was also Taliban. They operate in gangs. Some Taliban have guns and some operate collecting information. Taliban live amongst us and in hiding."

13. This material poses as many problems as it purports to answer. It is to be recalled that in his interview, the following exchange took place:

Q: You said that you investigated and found out that your cousin had been taken by kidnappers and not the Taliban and, what do you mean when you say that you investigated?

A: They told me that there were no Talibans in that area.

The identity of the kidnappers was a central plank of the claim. Mr Amiri's claim was advanced on the basis that the Taliban were not involved. Indeed, there were no members of the Taliban in the area. The passage I have extracted from the appellant's April statement and quoted in paragraph 12 above paints a radically different picture, suggesting that the Taliban lived as part of the community and went

about in gangs. If this later account is correct, Mr Amari was clearly mistaken in what he had to say.

14. The evidence of the appellant's witnesses may have overcome these uncertainties about the appellant's evidence. There is no doubt that the appellant took the evidence of the witnesses into account. They were not, of course, impartial in the sense that all were probably keenly interested in securing the success of the appellant's asylum claim: the appellant's son settled in the United Kingdom because, no doubt, he was interested in having his father and mother join him in the United Kingdom; Mr Amiri, his cousin, because he might be able to secure for the appellant what he had legitimately secured for himself and his wife for even more obvious reasons. Moreover, their evidence was very limited. In the course of argument it was described as being evidence of 'demeanour'; impossible to dismiss as implausible or obviously incredible but, in substance, adding little to substantiate the appellant's claim.
15. This does not mean that their evidence should be dismissed out of hand and it was certainly capable of allaying the anxieties the Judge felt about some elements of the claim. However, that was a matter for the Judge to assess in the overall consideration of the claim. No single piece of evidence had the right to be called determinative. Nor was the assessment a numerical one - three witnesses giving oral evidence equates with - or trumps - one inconsistency in the appellant's account. The most that the Judge could reasonably do was to satisfy the reader that he had taken into account the various sources of evidence and that the entire body of material had played its part in the assessment.
16. This is what the appellant said in paragraph 31 of the determination:

"The validity of the witness Mr Amiri's account of his own kidnap does not connote that the appellant must also have been kidnapped. The appellant previously associated himself closely with Mr Amiri's kidnap, in the sense that he said that their kidnapers were the same individuals or group. In oral evidence, however, the appellant stated that he did not know who kidnapped him. The appellant's account contains a number of inconsistencies. The appellant has sought to attribute these to problems with interpretation in the screening and asylum interviews. This interpretation issue has not previously been raised. The appellant has expressly stated that his kidnapers were the same kidnapers as his cousin's kidnapers. He claims that he learnt this because one of them knew him. He was not able to say what group these people belong to. He claims that he has since learned via a contact in Afghanistan that it was the Taliban who kidnapped him. It is not credible that the appellant should have obtained such information, whilst his cousin who was subjected to a verified kidnap, and who states that he knows that two of his kidnapers have been arrested and released, and who communicates with others in Afghanistan, remains in ignorance as to the nature of the persons who kidnapped him. The appellant has produced no evidence that might substantiate this claim, other than the fact of having told the story to his family members and when

claiming asylum, and I note that his wife had no information to offer as to who might have been involved in the alleged kidnap of her husband. The appellant's witnesses were not able to substantiate a basis for their support of the appellant in relation to his claim to have been kidnapped. The inconsistencies in the appellant's account regarding his alleged one-day kidnap are such that I have come to the conclusion that there is no basis of truth in this claim."

17. Approaching this crucial passage stage by stage, the Judge was clearly correct in stating the fact that Mr Amiri had been kidnapped did not establish that the appellant's account of being kidnapped was also true. The Judge was also correct in stating that the appellant identified his own kidnappers as being the same as kidnapped Mr Amiri. He claimed that he knew this to be so because one of them knew him. He originally disclaimed any suggestion that he was aware of their identity as a group. The Judge properly contrasted this with his later claim that his kidnappers were members of the Taliban. The appellant had sought to explain this change in stance by reference to his having obtained information which I have set out in paragraph 12 above. It is also in contrast with Mr Amiri's state of knowledge that he knew that two of his kidnappers had been arrested and released. Notwithstanding the fact that Mr Amiri is in contact with those in Afghanistan, Mr Amiri remained in ignorance as to the nature of the persons who kidnapped him.
18. I am entirely satisfied that there were significant inconsistencies both as between the appellant's earlier and later accounts and as between the accounts of Mr Amiri and the appellant. Although the Judge had to be satisfied only to the lower standard, he had to satisfy himself as to which of these various accounts was likely to be true. In particular, he had to be satisfied as to the identity of the kidnappers. It is little wonder, given the state of the evidence, that he was not satisfied. Furthermore, as the passage makes clear, the inconsistencies were put to the appellant who sought to explain them by reference to difficulties being experienced with the interpretation of the screening and asylum interviews. It was, of course, a matter for the Judge to determine whether he accepted that explanation. For my part, the discrepancies that have been identified do not lie comfortably with a difficulty in interpretation. It is plain, however, that the Judge did not accept that as an explanation and, in rejecting it, inevitably treated that as an example of how the appellant was attempting to explain away a discrepancy that could not otherwise be explained.
19. It is apparent that the Judge had well in mind the evidence of the appellant's witnesses which, as we have seen, amounted to a re-hash of what the appellant had told them as well as some insubstantial material about the demeanour to which the Judge was entitled to place such weight as he saw fit and which he understandably treated as being unpersuasive. In particular, the Judge refers to the evidence of the appellant's wife who was unable to advance the claim to any significant degree, if at all.

20. This consideration of the appellant's case was, of course, made in relation to the very singular features of the appellant's account which I have already identified in paragraph 7 above: his original failure to identify the kidnapers, the mystery of the individual who claimed to know the appellant and knew enough about him to describe him as innocent, the machinations to effect his release without payment and free of any adverse consequences by a group who were then thought to be kidnapers whose sole purpose was to extract a ransom. It is quite impossible to make out a claim that the Judge was, as a matter of law, required to accept this account was credible or that he was acting perversely or irrationally in concluding that it was incredible. A challenge on the basis that the Judge has failed to give adequate reasons is manifestly misconceived for the reasons that I have given. Similarly, a claim that the Judge failed to take into account the material evidence of the appellant's witnesses is also wide of the mark. The evidence of the witnesses is referred to in the passage and commented upon. The comments are accurate and made good sense. An examination of the evidence by reference to their statements indicates the little they were able to add to the appellant's claim. It was for the Judge to assess whether they were able to materially advance the claim and, given the nature of their evidence about demeanour, about their reliance upon what they had been told by the appellant himself, about their relationship with him and the likelihood that they could not put themselves forward as entirely independent and objective witnesses of the relevant events combined together to provide little that was capable of shoring up the weaknesses in the appellant's own evidence. There is no viable challenge that he failed properly to assess the evidence of these witnesses.
21. Given the appellant's inability to advance a credible account, his claim to be at risk in his home area failed. However, even if he had succeeded in establishing that he had been kidnapped, he failed to adduce credible evidence as to the identity of his kidnapers or that they had any reach beyond the locality in which he lived. In particular, he failed to establish that they were members of the Taliban or, indeed, if they were, that they had a reach that went beyond Kandahar so that they were able to communicate with their brethren in Kabul in identifying the appellant, identifying him as a target (a matter not established by the appellant's account of a one-day kidnap) such as to place him at risk even if he relocated in Kabul. Accordingly, even if the appellant had been able to establish shortcomings in the Judge's treatment of the events in Kandahar, there was no viable case advanced by the appellant capable of undermining the Judge's conclusion in paragraph 32 of the determination that the appellant had failed to supply *'any evidence that would support a conclusion that he is unable to relocate if he so wished.'*

DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
12 November 2014