Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10046/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Sent**
(via video link)	**On 9 June 2014**
On 22 May 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR KHOJA AGHA SAFIZADA

Respondent

Representation:

For the Appellant/Secretary of State: Mr N Smart, Home Office Presenting Officer
For the Respondent/Claimant: Mr S Vokes, Coventry Law Centre

DETERMINATION AND REASONS

1. The claimant (whom I shall call the appellant as he was before the First-tier Tribunal (hereinafter "the FtT") is a citizen of Afghanistan and his date of birth is 1st January 1987.

2. The appellant was encountered by UK police on 10 October 2008 and arrested for being an illegal entrant. He made a claim for asylum on the same day. The details of his claim can be summarised. He is from Kapisa province. Members of his family had been involved with the Taliban. The Taliban had demanded that the appellant join them and he feared being taken by force.

3. The Secretary of State refused the application for various reasons in a decision of 22 October 2013. The appellant appealed against the decision and his appeal was allowed by Judge of the FtT Landes, in a determination dated 14 March 2014, following a hearing on 5 March 2014. The Secretary of State made an application for permission to appeal which was granted by FtT Judge Davidge in a decision of 3 April 2014. Thus the matter came before me.

The Decision of the FtT

4. Findings of the FtT are found between [32]-[54] of the determination and can be summarised as follows:

   (i) There are significant inconsistencies in the appellant's account.

   (ii) The appellant's failure to apply for asylum in Greece does not significantly damage his credibility.

   (iii) It was not accepted that the Taliban had attempted to take the appellant by force or that his father was forcibly recruited by them. It was accepted that the appellant's father was deceased but the evidence about how this came about was not accepted.

   (iv) It was not accepted that the appellant's brother or uncle had been in the Taliban.

   (v) The appellant was not a credible witness and nor was the witness Mr Noori. The Judge was not satisfied that the appellant's father's stepbrother had been killed or that the family home had been set on fire.

   (vi) There is no reason why the Afghan authorities would have an adverse interest in the appellant.

   (vii) The appellant would not be at risk from the Taliban on return to his home area on the basis that he had escaped forced recruitment from them. He would not be at risk of forced recruitment on return (the Judge noted that the appellant as a result of an injury was unable to walk without crutches).

(viii) The background evidence established that the Taliban are in control over at least part of the district in which the appellant lived and that control is being extended. The Judge found at [46],

> "I have no direct evidence about the attitude the Taliban take to those who return to their home area having claimed asylum abroad, but their intense opposition to what they perceive as western influences and their adverse treatment of those whom they suspect of collaborating with the government or working with international forces is well-known (see in particular the material quoted in the UNHCR Report including a reference at P70 appellant's bundle to a Taliban court in Kapisa Province convicting and executing a man on charges of spying). I consider that such evidence justifies the conclusion that if the Taliban become aware that there is a person in an area under their control who has recently returned from Europe they are likely to take an adverse interest in that person and subject him at the very least to ill-treatment contrary to Article 3 ECHR. The appellant would not be able simply to disappear into the background on return to his home area because he cannot walk well and is on crutches. People would know he had returned. Given that the background material indicates that the Taliban are either in actual control of the appellant's home village or it is in an area which is contested and the Taliban are therefore from time to time in control, I find that there is a real risk that the appellant would be persecuted and suffer ill-treatment contrary to Article 3 ECHR on account of his imputed political opinion were he to return to his home village. Even if he were not killed as a spy, I find there is a real risk given the Taliban's methods that he will suffer serious harm when they seek to find out what he knows. On my findings, this is not due to anything which has happened to him in the past in Afghanistan but simply because of his association with the west."

(ix) The appellant would not be at risk of persecution on return to Kabul, but relocation would be unreasonable and unduly harsh. The Judge took into account the appellant's disability as a result of an injury in 2012. In relation to the assistance of a relocation grant he found that the appellant's difficulties would not be solved by giving him money to start in business because there is nothing to suggest that he has particular skills or experience in any area other than farming or unskilled work. He is not able to work and would not be able to put in the necessary effort to run a business in an unfamiliar area of the country where he has no relatives to help him. The appellant needs help when travelling or shopping and is unable to carry heavy bags. The appellant's mother would not be able to travel to Kabul in order to assist him.

The Grounds seeking Permission to Appeal and Submissions

5. Mr Smart made submissions in the context of the grounds seeking permission to appeal. It was argued that the Judge made a material misdirection in law in speculating about the attitude of the Taliban in the appellant's home area (at [46]). The FtT failed to reason why the appellant would be perceived to be a spy. The appellant has relatives in his home area and is still in contact with his mother. The consideration of risk on return to the appellant's home area is flawed. There is no evidence that a failed asylum seeker would be perceived as a spy and therefore at risk.

6. Mr Vokes made oral submissions which can be summarised. The determination is full and detailed. The Judge considered the background evidence in relation to the claimant's home area (at [36] and [37]) and found that the province was dominated by the Taliban. She took into account the UNHCR Report and was entitled to conclude that there was a real risk to the appellant as a result of his imputed political opinion. It is accepted that the Taliban are hostile to western influences and the finding is not in conflict with any country guidance case. The decision is not irrational or perverse. The findings and reasons are sourced from the background evidence.

Conclusions

7. In the Reasons for Refusal Letter the Secretary of State referred to the Country of Origin Information Service and the Country of Origin Information Report. The Secretary of State concluded that this established that there was no evidence of forced recruitment in Kapisa and that forced recruitment by the Taliban was rare. At The Judge took into account the UNHCR Report of 2013 (page 8 of the appellant's bundle). The Judge noted at [36] that there are no specific reports of forced recruitment in Kapisa but the UNAMA Annual Report of 2012 indicated that specific districts in the province of Kapisa were one of the areas which was almost completely controlled by anti-government elements (reference was made to page 48 of the UNHCR 2013 Report). The Judge found (at[37]) that Kapisa province has served as an insurgent bastion for several years, hosted criminal and terrorist networks and had been used as a staging area for attacks into Kabul. However, the Judge found at [38] that the background material is "equivocal" and that Kapisa is not named as a province in which there has been forced recruitment to the Taliban, but activity by insurgents has become more intense since 2012. The FtT went on to find that it was "certainly possible" that the Taliban have used forced recruitment in Kapisa Province, but that the appellant would not be at risk of forced recruitment.

8. The FtT was of the view that because of the Taliban's opposition to western influences and their adverse treatment of those whom they suspect of collaborating with the government or working with international forces the claimant would be at risk. In reaching this conclusion the FtT

referred to page 70 of the UNHCR report of 2013 which refers to an incident in Badghis Province where a Taliban court reportedly convicted a local teenager on charges of spying for ANSF and cut his ear off in punishment on 1 February 2012. In December 2011 a Taliban court in Kapisa Province reportedly convicted a man on charges of spying for the IMF and executed him. In September 2011, the AGEs in Nangarhar Province reported they executed a man on the basis of suspicions that he delivered fuel to pro-government forces. The victim's eyes were reported to have been removed post-mortem.

9. There is no country guidance case that supports the conclusion that a failed asylum seeker would be at risk on return to Afghanistan to an area, which is at least in part, Taliban controlled. The appellant's evidence was rejected by the FtT. He is not at risk of recruitment and he has had no previous involvement with the Taliban. The issue is whether the Judge was entitled to conclude that he would be at risk on return to his home area (which the Judge found was likely to be at least in part a Taliban controlled area) as a result of the Taliban's intense opposition to western influences.

10. There is no country guidance case that supports the conclusion that a failed asylum seeker with no profile would be at risk on return to his home area. Having considered the background evidence contained in the UNHCR report, to which the Judge attached significant weight, in reaching her conclusions, in my view it does not establish that the appellant would be at risk. The Judge drew an inference from the evidence that was speculative. It establishes that those suspected of spying are at risk of persecution, but it cannot be inferred from this that the appellant would be perceived a spy. The conclusion was not open to the FtT and it is irrational.

11. The Judge materially erred and I set aside the decision pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Both parties agreed that the decision could be remade pursuant to section 12 (2) (b) (ii) of the 2007 Act. Neither party submitted further evidence in accordance with Rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

12. I gave both parties the opportunity to make submissions. Mr Smart submitted that the evidence does not establish that the appellant would be questioned by the Taliban and, if he were, and he told them the truth, nothing he would say would put him at risk. Mr Vokes submitted that Mr Smart's view was based on the Taliban behaving rationally. The appellant would be at risk on return to Afghanistan given that he is a conspicuous figure (he is disabled and uses crutches). He will be investigated by the Taliban and this will put him at real risk of serious harm when they try to find out where he has been.

13. There is no country guidance case or reported decision that supports Mr Vokes' submissions. The background evidence relied on by the appellant

does not support his assertion that he would be at risk on return. In these circumstances the appellant has not established on the low standard of proof that he would be at risk on return to Afghanistan and therefore this appeal is dismissed on asylum grounds.

14. The FtT considered the appellant's appeal under Article 8 at [54] and [55]. Despite having allowed the appeal on asylum grounds the Judge went on to dismiss the appeal under Article 8. Mr Vokes did not address me on this. In any event, the appellant has been in the UK since 2008 and he has a cousin here, Mr Noori. The appellant had an injury whilst in the UK and walks with the aid of crutches. He has not sought to submit any further evidence in relation to his asylum appeal or his appeal under Article 8. In his witness statement on 29 November 2013 his evidence is that he was having monthly physiotherapy and he has friends here. His mother would not be able to support him should he return to Afghanistan and there is no access to medical treatment without funds.

15. The appellant has a private life here and there would be an interference with this should he be removed. However, the interference is in accordance with the law. The decision is necessary for the economic well-being of the country through the maintenance of immigration control and the decision is proportionate. I have taken into account that the appellant has an injury and mobility is a problem for him; however, the extent of this disability is not such that would render removal disproportionate. I have taken into account the evidence from his GP, Dr Galloway, and note that he was taking strong painkillers and according to the letter from his GP of 23 July 2013, he had become depressed and was taking antidepressants. It appears from the correspondence that the depression was as a result of the accident and his state of mind had improved since then. I have also taken into account the assertions made by the appellant in his witness statement at [17] in which he intimates suicidal thoughts. However, there is no detailed medical evidence about his mental health and there is no up to date evidence relating to the appellant's health generally. He has family in his home area including his mother and two younger brothers. His mother is reliant on income from land. The decision to remove him is proportionate.

Decision

16. The appeal is dismissed on asylum grounds.

17. The appeal for humanitarian protection is dismissed.

18. The appeal is dismissed under Articles 2 and 3 of the European Convention on Human Rights.

19. The appeal is dismissed under Article 8 of the European Convention on Human Rights.

Signed Joanna McWilliam Date 4 June 2014

Deputy Upper Tribunal Judge McWilliam