Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA102372014

THE IMMIGRATION ACTS

Heard at : IAC Manchester	**Decision & Reasons Promulgated**
On : 23 May 2016	**On: 25 May 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mair, instructed by Greater Manchester Immigration Aid Unit
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Afghan national born on [ ] 1995, claims to have arrived in the United Kingdom in June 2009. He claimed asylum on 30 June 2009, after being apprehended by the police and referred to Trafford Social Services. His claim was refused on 24 November 2009 but he was granted Discretionary Leave until 23 November 2012, as an unaccompanied minor. He appealed against the decision but his appeal was dismissed by the First-tier Tribunal on 1 February 2010, and subsequently by the Upper Tribunal on 7 December 2010. Following an unsuccessful application for permission to appeal to the Court of Appeal, he became appeal rights exhausted on 7 July 2011.

2. On 23 November 2012 the appellant made an application for further leave to remain, but that was refused on 6 November 2014. On 7 November 2014 a decision was made to refuse to vary his leave and to remove him from the UK. The appellant appealed against that decision. His appeal was dismissed in the First-tier Tribunal. Permission has been granted to appeal to the Upper Tribunal.

The Appellant's Case

3. The appellant is from [D] in Nangarhar Province in Afghanistan and claims to be at risk of persecution in Afghanistan as a result of his father's previous involvement with the Hezb-e-Islami and from members of the same family who had killed his father. He claims that his father worked for a Hezb-e-Islami commander and was killed by the Taliban a long time ago when he was a child. He lived with his maternal grandparents, with his mother, older brother and three sisters. His mother used to travel between [D] and Khyber Agency on the border of Afghanistan and Pakistan where his uncles lived and his brother spent a lot of time living with his uncles because he was at risk as the eldest son of their father. The appellant said that he spent a year living with his uncles in Khyber Agency, before returning to Afghanistan for a year prior to his departure from the country. Five days before he left Afghanistan his brother was shot in the leg. His mother told him that the people responsible for the shooting were the same as those who had killed his father. His brother returned to Pakistan and he (the appellant) was sent to the UK for his safety. He would be killed by the Taliban if he returned to Afghanistan.

4. The respondent, in refusing the appellant's claim on 24 November 2009, accepted that his father was killed in the fighting between the Taliban and the Hezb-e-Islami but noted that the parties had since formed an alliance and, as a result, did not accept that the Taliban were looking to kill the appellant and his brother. The fact that the Taliban took no action against the appellant's family when they had the opportunity to do so indicated that they were not interested in him. The respondent noted the appellant's claim that his brother belonged to the Lashker-e-Islami, which was led by a Pakistani Islamic militant and which shared the same ideology as the Taliban, and therefore did not accept that the appellant or his brother would be targeted by the Taliban. The respondent considered that the appellant could return to Kabul where there was a sufficiency of protection available to him and did not accept that he was at risk on return.

5. In dismissing the appellant's appeal in February 2010, the First-tier Tribunal noted that he was claiming that his father had been killed by a member of a family from his father's home village in [K] who supported the Taliban and that his brother had been shot by members of the same family in order to stop him seeking to avenge their father's killing. The First-tier Tribunal rejected that claim as lacking in credibility and found that if his brother had been injured, it was in a fight with armed men rather than as a result of being specifically targeted, and concluded that the appellant was not at any risk on return to Afghanistan.

6. Those findings were maintained in December 2010 by the Upper Tribunal which went on to consider whether the appellant would be at risk as a street child in Kabul. The Upper Tribunal considered the appellant's claim to have lost contact with his family in Afghanistan and took into account two letters from Dr Ruth Goldwyn who had had contact with him through the Trafford Children and Young People's Services and who had diagnosed him as suffering from post-traumatic stress disorder (PTSD). The Tribunal did not find the appellant's evidence to be credible and, referring in particular to his ability to recall from memory the telephone number of his uncle in Afghanistan, concluded that he had not told the truth about his inability to contact his family in Afghanistan. The Tribunal found that the appellant remained in contact with his family in Afghanistan and that they still lived in their home village and that, accordingly, he would not become a street child in Kabul or elsewhere if he returned to Afghanistan.

7. In his application dated 22 November 2012 for further leave to remain, the appellant acknowledged the previous adverse credibility findings made about his claim and his account of his family in Afghanistan but relied on further evidence which he said required his credibility to be reassessed. He relied in particular upon a report from Dr Ruth Goldwyn, a clinical psychologist who had been treating him for over three years, and a report from his consultant psychiatrist Dr Kishan Sharma, both of which he claimed explained his shortcomings as a witness in his previous appeal and showed him to have memory problems. In addition he relied upon reports from his social worker and support worker, together with the psychologist report, in support of his claim to have lost contact with his family in Afghanistan. The appellant claimed that he would be at risk on return to Afghanistan, both from the Taliban and as a lone child who would end up on the streets in Kabul. Reliance was also placed by the appellant upon several medical and other reports, and the diagnosis of PTSD, in claiming that his removal would breach his Article 8 human rights.

8. The respondent refused the appellant's application on 6 November 2014 and maintained the previous decision that he would be at no risk on return to Afghanistan. The respondent considered that she had discharged her duties in regard to family tracing under KA (Afghanistan) & Ors v Secretary of State for the Home Department [2012] EWCA Civ 1014 and noted that in any event the appellant was no longer a minor. It was not accepted that he had no family in

Afghanistan and it was considered that he would not be at risk on return or that his removal would breach his human rights.

9. The appellant's appeal against that decision was heard by Judge Brookfield in the First-tier Tribunal on 28 April 2015 and was dismissed in a decision promulgated on 13 May 2015. Judge Brookfield referred to the new evidence that was before her which had not previously been before the Tribunal and which included medical evidence referring in particular to the appellant's memory, as well as an expert report from Dr Guistozzi dated 19 April 2015. The medical evidence consisted of a report dated 16 November 2012 from Dr Goldwyn, the clinical psychologist who had treated the appellant during his minority, and a report dated 16 April 2015 from Dr Chari, a psychiatrist. The judge found that the findings of fact made by the Tribunal in the appellant's previous appeal were not undermined by the reports from Dr Goldwyn or Dr Chari. The judge noted that Dr Guistozzi's report was based on the appellant's family being involved in a blood feud, but she did not accept that there was such a blood feud and considered in any event that the appellant would not be at risk on such a basis. The judge went on to consider the appellant's claim in regard to the loss of contact with his family in Afghanistan and considered the letters he relied upon in support of that claim, but rejected his claim. She found that the appellant could safely and reasonably relocate to Kabul and that he could access appropriate mental health treatment in Afghanistan. The judge found, further that the appellant's removal to Kabul would not breach his human rights.

10. Permission was sought on behalf of the appellant to appeal to the Upper Tribunal, on several grounds: that the judge had failed to consider the evidence in the round; that the judge's approach to the medical evidence was flawed; that the judge's findings on family contact were flawed; that the judge's findings on risk on return and the blood feud were flawed; and that her findings on internal relocation to Kabul and Article 8 were flawed.

11. Permission to appeal to the Upper Tribunal was granted on 8 June 2015.

12. Ms Mair, in her submissions, relied and expanded upon the grounds of appeal, asserting that the judge had considered the medical and expert evidence in a piecemeal fashion rather than considering it cumulatively and had erred in her approach to the medical evidence and failed to give it the appropriate weight. She submitted that the judge's approach to the expert evidence of Dr Guistozzi was perverse and that she had failed to give proper consideration to the medical evidence in considering internal relocation and Article 8.

13. Mr Harrison submitted that the judge had considered the medical and expert evidence and had been entitled to place the weight that she did upon it.

14. Ms Mair, in response, reiterated the points made previously.

Consideration and findings.

15. The appellant's grounds seeking permission, and Ms Mair's submissions, are detailed and lengthy, but I do not consider that they disclose any errors of law in the judge's decision. Whilst the grounds criticise the judge's approach to the medical and expert evidence, it is plain that she undertook a very careful and thorough assessment of that evidence. There is nothing in her clear and cogent reasoning to suggest that she failed to consider the evidence cumulatively. The fact that she dealt with each report in turn does not in any way suggest that each piece of evidence was considered in isolation.

16. Ms Mair criticised the judge's approach to the evidence from Dr Goldwyn, submitting that she focussed on only one part of the doctor's evidence. However it is clear that Dr Goldwyn's report of 16 November 2012 was the most recent detailed report written prior to the appellant's discharge from CAMHS and was the most recent comprehensive summary of the assessments undertaken and treatment offered over the relevant period of time. It was in that report that Dr Goldwyn referred to the four psychometric tests conducted in relation to the concerns about the appellant's memory and attention. The grounds suggest that the judge, in referring to the appellant's ability to achieve a grade D in his English GCSE, was attempting to substitute her knowledge for that of a trained expert, but it is clear that that was not the case. On the contrary, at [10(iii)], the judge accepted Dr Goldwyn's conclusion that the appellant had some memory, attention and concentration problems. What she did not accept was that the appellant's memory problems were such that they prevented him from functioning to the extent that that had a significant impact on his claim, either as regards his account of events that had occurred and the risks that he faced on return or in regard to his ability to reintegrate into Kabul on return there. In that respect the judge was entitled to make the observations that she did and to place the weight that she did upon the report. Likewise with respect to the psychiatric report of Dr Chari the judge gave detailed reasons for placing the limited weight that she did upon the report and was perfectly entitled to do so.

17. In any event, the grounds, even if made out (which I do not find they are) do not take the appellant's case anywhere, given that the adverse credibility findings previously made by the First-tier and Upper Tribunal were not so much based upon inconsistent evidence which could be attributed to difficulties with memory, but rather were findings on the lack of credibility in the appellant's account as stated. That was precisely the point made by Judge Brookfield at [10(vi)], where she set out in some detail the reasons why both Tribunals had rejected the appellant's claim that he and his brother were specifically targeted by the Taliban and that he remained of interest to elements of the Taliban. Furthermore, with regard to the question of family contact, Judge Brookfield properly observed at [10(xii)] that it was the appellant's ability to remember his uncle's mobile telephone number, rather than his inability to recall details, that led the Upper Tribunal to conclude that he was not being truthful in his claim to have no contact with his family.

18. The grounds make a further challenge to the judge's findings on family contact, asserting that she had failed to explain why she had rejected the letters from various professionals who had all agreed that the appellant had had no contact with his family. However the judge considered the letters at [10(xii)] and, contrary to the assertion in the grounds, gave full reasons for concluding that the evidence was not sufficient for her to depart from the previous findings of the Upper Tribunal, noting that the appellant had failed to address the Upper Tribunal's concerns and had failed to explain why he was able to remember his uncle's mobile telephone number. There was no requirement upon the judge to accept the opinions of the various professionals as establishing the appellant's claim to have no contact with his family, particularly bearing in mind that the significance of a loss of family contact to the outcome of his claim would have been readily apparent to the appellant. The judge, having clearly had regard to the evidence from the professionals providing support to the appellant, was entitled to place the weight that she did upon that evidence. In any event, the issue of family ties and contact was plainly not as material and relevant a consideration as it was in the appellant's appeal before the First-tier Tribunal and the Upper Tribunal, when the appellant was a minor. It is clear from the judge's findings at [10(xiii)] to [10(xvi)] that she did not consider the appellant's family ties as being a relevant factor in concluding that internal relocation to Kabul was a viable option.

19. The grounds also criticise the judge's findings on the expert reports from Dr Guistozzi, asserting that she wrongly rejected his opinion by reason of him having characterised the events in the appellant's claim as a blood feud. However, whilst the appellant, in his statements, referred to his father having been killed at the hands of the leader of a particular Taliban family and to the attack on his brother having been intended to prevent attempts to avenge their father's death, it is clear that he had never suggested that the circumstances amounted to a blood feud. That was the point made by the judge. She referred in particular, at [10(ix)], to the appellant's own description in his web page at page 121 of his appeal bundle, which suggested that the risk arose because of his father's links to the Hezb-e-Islami. The judge went on to give further reasons for rejecting the expert's opinion that the appellant was at risk as a result of a blood feud, noting that the expert's conclusions were based upon the appellant's account of the ongoing interest by the Taliban family being true, whereas proper reasons had been given for not accepting the credibility of that account. She noted further, at [10(viii)], that the existence of a blood feud was inconsistent with the circumstances described by the appellant, including his brother's freedom in travelling and his frequent journeys between [D] and the Khyber Agency. The judge also gave careful consideration to other background information about blood feuds which she found undermined the conclusions reached by the expert. Ms Mair submitted that the judge's reliance on that evidence in preference to the expert's opinion was perverse, but I do not agree. Having carefully assessed all the relevant evidence the judge was perfectly entitled to place the weight that she did upon that evidence and to reach the conclusions that she did.

20. Finally, the grounds criticise the judge's findings on internal relocation and Article 8, asserting that she took into account irrelevant matters and failed to take into account material matters. However again I disagree. The judge, in her findings at [10(xiii) to (xvii)] gave very detailed and careful consideration to the appellant's mental health and to the evidence of the support he received in the UK, including the various medical and other reports, as well as to the circumstances to which he would be returning in Kabul, in considering the viability of internal relocation, in terms both of safety and reasonableness. Likewise, she gave careful consideration to those circumstances and to the evidence before her when considering Article 8, at [10(xxii) to (xxx)]. Whilst she may have been wrong, at [10(xxvi)], to have considered there to be a possibility of ongoing support from Mr Critchlow after the appellant's departure from the UK it is clear that that was not a material consideration since she found such support not to be necessary to the enjoyment of private life in Kabul in any event. Contrary to the assertion made by Ms Mair, the judge had full regard to the opinions of the medical experts and was particularly mindful of the submissions made in regard to the appellant's mental health and to the accessibility of treatment in Afghanistan. The findings that she made in response were based upon a careful assessment of all the evidence and were ultimately open to her on the evidence.

21. For all of these reasons I find that the appellant's grounds of appeal do not disclose any errors of law in the judge's decision. The findings that she made, and the conclusions reached, were clearly based upon a full and detailed consideration of all the evidence and are supported by clear and cogent reasoning. The weight to be attached to the evidence was a matter for the judge and she was perfectly entitled to reach the conclusions that she did.

DECISION

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an anonymity order. That order is continued, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2014.

Signed Date 25th May 2016

Upper Tribunal Judge Kebede