



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01915/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 19 May 2016

**Decision & Reasons
Promulgated
On 6 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AS

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. G. Davison of Counsel, instructed by Aston Bond Law Firm

For the Respondent: Mr. S. Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Quinn promulgated on 21 March 2016 in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum case I have made an anonymity direction.

3. Permission to appeal was granted as follows:

“The grounds of application contend that the judge did not detail in the decision why the appellant’s explanations on a number of points were not accepted. In particular the appellant had explained why he did not claim asylum in other countries as he was under the strict control of an agent. He had explained that the work carried out by him for the military base did not generate paperwork. In addition the judge had speculated that the Taliban might have secured the rear of the premises, ignoring the fact that the incident occurred at night and hence his ability to flee over the roof tops. Other points are taken.

Plainly the judge was bound to have regard to all the explanations put forward by the appellant and if he wished to reject that evidence to give reasons for doing so. From information given in the grounds, it is arguable that he did not do so and on that basis there is an arguable error of law and permission to appeal is granted.”

4. The Appellant attended the hearing. I heard submissions from both representatives following which I announced that I found that the decision involved the making of a material error of law, and that my full reasons would follow.

Submissions

5. Mr. Davison relied on the grounds of appeal. He referred me to the findings of credibility and fact, paragraphs [24] onwards of the decision. In paragraph [24] the judge had found that the Appellant had not suggested that he was at risk of harm from the Taliban in Afghanistan or Pakistan when he applied to enter the United Kingdom on 7 February 2014. I was then referred to paragraph [40] where the judge states: “The Appellant states that the first threat he received was on 6th September 2014.” It was submitted that the judge had on the one hand found against the Appellant for failing to mention in an earlier application that he was at any risk of harm, yet the judge acknowledges that the first threat the Appellant claimed to have received was some eight months after the application. These findings were not coherent or logical.

6. In paragraph [25] the judge referred to the fact that the Appellant had passed through a number of safe countries. The judge then states: “I could take account of the fact that he had passed through safe countries”, but he does not state whether or not he is finding against the Appellant for this. It was unclear whether the section 8 credibility point had been considered.

7. I was referred to paragraph [28]. The Appellant had explained the difficulty in obtaining documents, but no account had been taken of this. In paragraph [30] the judge accepted that there would be difficulties for the Appellant in verifying some of the information and found that the Respondent would have slightly better success in so doing. However the judge then threw it back onto the Appellant, stating that the onus was on

him to establish his case, and holding it against him that he had not obtained this information.

8. I was referred to paragraphs [33] and [34] regarding the Appellant's job title. Submissions had been made at the hearing regarding the Appellant's job. The Appellant's work of procurement had involved interpretation as it involved him speaking to the local people as his American colleagues were unable to speak to them. Although he was not an interpreter, and his employment contract did not state "interpreter", his job involved a level of interpreting. There was no reference to this in the decision.
9. I was referred to paragraph [39] where the judge states that it was "possible" that the Taliban did know where the Appellant was working. He submitted that if it was possible then there was a reasonable likelihood. I was referred to paragraph [43] where the judge said that the letters could have been produced on the internet, but made no finding as to whether or not they had been. He submitted that this was an example of an issue which had been left hanging.
10. In summary Mr. Davison submitted that there were many contradictions in the decision. Very rarely had the judge come down on one side or the other with any degree of certainty. There was no logical thread to the decision, and inadequate reasons had been given for rejecting the Appellant's explanations.
11. In response Mr. Kandola relied on the Rule 24 response. The judge had doubted the Appellant's credibility for the reasons given. He did not need to consider relocation at all as he had not found the Appellant to be credible. He accepted that the Rule 24 response was wrong insofar as it was not accepted or maintained by the Respondent that the Appellant would be returned to Pakistan.
12. In relation to internal relocation Mr. Davison submitted that, if the Appellant had been accepted as working as an interpreter, the case law on interpreters would be relevant. His job title stated "procurement officer" but the actual role that he took on was very much like that of an interpreter. The Respondent had accepted that he had been a procurement officer and what this entailed had been glossed over in the determination by the judge. It would become hard for the Respondent to argue that internal relocation was possible if the Appellant were found to have been an interpreter.

Error of Law

13. The judge's findings of credibility and fact start at paragraph [24]. Findings regarding the documentary evidence are at paragraphs [43] to [53]. I have carefully considered these paragraphs, and I find that the decision is not logically coherent, nor is it clear from the decision what the judge's findings are. I was referred to various examples of this lack of clarity by Mr. Davison (see above). For example, in paragraph [24] the

judge finds that the Appellant had not mentioned in an earlier application that he was at any risk of harm. However, it is clear from paragraph [40] that the application was made eight months prior to the first threat that the Appellant claimed to have received. The judge appears to have taken against the Appellant for his failure to mention earlier that he was at risk, but in fact the Appellant's claim was that the problems had not started at this point.

14. The findings in relation to where the Appellant was living are working are not at all clear. In paragraph [31] the judge states that the Respondent had accepted that the Appellant had worked for a number of international funded projects in Afghanistan. He finds that, given that the Respondent accepted this, it was not likely that the Appellant had been living in Pakistan since 2006. In paragraph [49] the judge states that the Appellant had been inconsistent regarding his addresses. In paragraph [50] he states that the Appellant had not stated that he was living in Afghanistan, but that he would have had to have been living there to be working there. He states "This cast doubt upon whether he was actually working as he said".
15. Despite these statements regarding alleged inconsistencies, there is no clear finding as to when and where the Appellant was living and, given that the judge states that the Respondent accepted that the Appellant was working for the international funded projects, it is unclear why the judge finds in paragraph [50] that there is doubt cast on the Appellant's claim to have been working as he said. The judge has made no findings as to what the Appellant was actually doing, or where he was living, and when. The findings on these central issues of the Appellant's location and employment are inadequate and unclear.
16. Further, as submitted by Mr. Davison, there is no reference to the explanation given by the Appellant for the fact that there were no letters from "US Aid" and "US Army Kitchen". The failure to acknowledge that the Appellant had explained in some detail why there would be no such letters, and the failure to give reasons for why this failure to provide documents was taken against him, is an error of law. This is especially the case given the judge's acknowledgement that there would be difficulties for the Appellant in verifying this information, and that it would have been easier for the Respondent to do so.
17. Taking the decision as a whole, it is very difficult to establish what the judge's findings are in relation to issues which go to the core of the Appellant's claim. The issue of whether or not he was an interpreter is addressed in paragraphs [32] to [35], yet there is no clear finding as to what his role involved. There is no acknowledgement of the submissions made before the judge that the Appellant's procurement officer role took on the appearance of an interpreter. I find that, given the significance of whether or not the Appellant worked as an interpreter, the reasoning in paragraphs [32] to [35] is inadequate.

18. Throughout the decision the judge uses phrases such as “I did not think that he was”, “it is possible that”, and “I could take account of the fact that he had passed through various countries”. I find that these phrases are indicative of a lack of clear and reasoned findings.
19. I find that the judge has failed to give adequate reasons for why he rejected the Appellant’s explanations. He has failed to make clear and adequate findings on core issues of the Appellant’s claim. The appeal rested on the Appellant’s credibility, but the credibility findings are inadequately reasoned. I find that this amounts to a material error of law.
20. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

21. I find that the decision involves the making of a material error of law and I set the decision aside.
22. The appeal is remitted to the First-tier Tribunal for re-hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed

Date 6 June 2016

Deputy Upper Tribunal Judge Chamberlain