



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03558/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 24th October 2017

**Decision & Reasons
Promulgated**

On 21st November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

AA

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Nizami, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Coutts in relation to his protection claim. Aligned to that was the Appellant's appeal under the Immigration Rules and in respect of Article 8 of the European Convention on Human Rights.
2. There is a detailed background to this matter which includes a previous hearing at the Upper Tribunal in 2011. When considering the grounds of

appeal which were filed and served by the Appellant, First-tier Tribunal Judge P J M Hollingworth said as follows:-

- “1. It is arguable that the Judge should have dealt with the question of the degree of westernisation of the Appellant in the context of risk on return given the submissions in this context.
 2. In relation to the issue of human rights it is arguable that the Judge should have dealt with the application of paragraph 276ADE(vi) on a fuller basis given the arguments submitted in this context on the Appellant’s behalf. The judge at paragraph 51 has stated that there was no assertion by the Appellant that he met any of these requirements, the Judge referring in this context to paragraph 276ADE and Appendix FM. The skeleton argument submitted on behalf of the Appellant specifically dealt extensively with the factors relevant to the application of paragraph 276ADE(vi). Given the reference by the Judge at paragraph 51 and given the extent of the analysis of the Judge it is arguable that that analysis has been insufficient.
 3. It is further arguable that additional findings should have been made in respect of the Appellant being able to find his family taking all the available evidence into account.”
3. This morning before me Ms Nizami on behalf of the Appellant has dealt in detail with the grounds which had been submitted which themselves comprehensively explained why it was being argued that there was a material error of law in the decision of First-tier Tribunal Judge Coutts. Ms Nizami said that in reality there were several issues that show there were fundamental errors with the decision. Now if I take the grounds of appeal as drafted as a base for Ms Nizami’s submissions they really come to this: Here was an Appellant who had been in the United Kingdom since the age of 10 and that he had only very recently turned 18 (March 2017) and that although there had been a previous adverse finding against him, on that occasion when he was very young and so he did not actually give evidence. It is said in the grounds of appeal in the subheadings as follows:-

That the First-tier Tribunal Judge materially erred in its assessment of risk on return in relation to:-

- (a) the Appellant’s position on return in respect of family support; and
 - (b) in respect of the risks he would face as being a westernised person.
4. Firstly it is said that the decision of the Upper Tribunal in 2011 had made a finding that the Appellant was not without family in Afghanistan and it was submitted before Judge Coutts at this instant hearing that there was new documentary evidence from the Red Cross as indicated within the Appellant’s bundle at pages 227 to 234. The attempts by the Red Cross to

find the Appellant's mother and the Appellant's brother, showed that they could not be found. The error which it is submitted was fundamental because it was accepted, it appears, that the Appellant was not in touch with his family and that thereby the Appellant would be returning without family support, but that somehow once in Afghanistan the Appellant would be able to trace his family. It was submitted in the grounds and forcefully submitted today that that was a speculative finding, especially since this would be a "westernised" 18-year-old returning to Kabul.

5. In addition there was significant reliance on background material and that background material has been provided to me as well following a direction of the Upper Tribunal. There is particular reliance on two documents, firstly the UNHCR Eligibility Guidelines for Assessing the International Protection and Needs of Asylum seekers from Afghanistan which appears in report form for 19th April 2016. Additionally the grounds rely on a skeleton argument which was provided to the judge which was a detailed document and that refers to further background material and in particular to a document from April 2016 published by the Refugee Support Network entitled "After Return documenting the experiences of young people forcibly removed to Afghanistan". It was said at section 6 of the report:-

"When young people return to Afghanistan, there is often the expectation that they will reconnect with their families there and be supported by them. However, many have lost contact with their family, and, despite extensive searching, in seven cases have not been able to do so".

6. In short it is said that the judge had failed to consider these important issues in relation to the support, or lack of support, from family members and the speculative findings show that there was a material error of law. It is submitted that the decision shows a failure to consider the highly relevant background material and that the assessment of risk was thereby flawed.
7. Insofar as the issue of the Appellant being westernised is concerned, it was said that the Appellant had said in various places within his skeleton argument, for example at paragraph 28 as follows:-

"The Appellant also relies on page 84 of the UNHCR Eligibility Guidelines which make clear presence of family networks in the proposed area of internal relocation has to be considered in light of the reported stigma and discrimination against those who return to Afghanistan after spending time abroad: see also footnote 545 on page 84. Please also see the UNHCR Guidelines at pp 44-47, in particular at 332 - 'Persons who resist recruitment are reportedly at risk of being killed or punished'; also at regarding the risks associated witnesses 'westernization'".

It is said in relation to this aspect of the grounds that the judge failed to make any findings on this evidence which was key to the Appellant's case who had been here in the UK since the age of 10. There is then reference

to Article 8 and to paragraph 276ADE. It is submitted that the judge had proceeded on a mistaken basis and again the skeleton argument is referred to and that at paragraph 43 stated as follows:-

“The following factors are relevant to considering whether there would be significant obstacles to the Appellant’s integration: the Appellant has been out of Afghanistan since 2009, he has not been back to Afghanistan and he has developed a family life with his girlfriend (notwithstanding the fact (sic) they don’t (sic) live together) and a private life. He is not in contact with any of his family back in Afghanistan: see Red Cross correspondence in support of this. He has obtained a number of educational qualifications. In the event the FTT were to find that the Appellant’s asylum claim is not made out this would not necessarily mean that he would not face significant obstacles to his integration. The Appellant also relies on page 41 of the UNHCR Eligibility Guidelines which states that anti-government elements target individuals perceived to have adopted values and/or appearances associated with Western countries due to their imputed support for the Government and the international community. The Appellant also relies on the problems identified in the ‘After Return’ report”

and of course it is said in the grounds the First-tier has simply failed to engage with this part of the Appellant’s case and the grounds relied on previously detected the approach to what very significant obstacles to integration in Afghanistan might mean.

8. In her submissions today Ms Nizami eloquently set out those grounds of appeal, she developed them and she assisted me further by explaining them in greater detail. She also referred to the fact that this was an Appellant who was not able to avail himself of different parts of paragraph 276ADE because by the time the Secretary of State’s decision was made he was aged 19 days or so over his minority, and as a consequence the delay in the decision making was a factor that should have been taken into account in assessing proportionality and that was an issue raised again in the skeleton argument submitted by Counsel at the First-tier Tribunal hearing.
9. Mr McVeety in his helpful and concise submission said that although the judge’s decision was not the most detailed, this was against a backdrop of the Appellant not having been found credible in relation to his account, and regardless to issues in relation to the Red Cross, none of that went to the adverse credibility findings which had been made.
10. Insofar as issues relating to westernisation are concerned, this was a problematic turn and whilst the Appellant had been away from Afghanistan for some period of time, the issue was whether or not the cursory manner in which the judge may have dealt with this aspect did not mean it was necessarily one which showed a material error of law. Indeed it would be speculation to assume that this was an Appellant who was westernised and that he would not be able to integrate. The more

speculative finding would be that he, the Appellant, would be stigmatised by his family. In short, what Mr McVeety said was what was it about this Appellant, other than he had been away from Afghanistan since 2009 that would put him into the category of being seen as westernised? Again, Mr McVeety said he acknowledged the decision of the judge was brief, but the history of the Appellant's claims was the reason for that briefness.

11. Insofar as Article 8 and paragraph 276ADE was concerned, Mr McVeety agreed that the judge did err by not saying that the issues were not raised, but the judge did actually go on to consider both 276ADE and Article 8. Again, this was in a reasonably brief manner, but sufficiently, for example in relation to the Appellant having a partner in the UK, where ultimately did this get the Appellant? The judge had considered the facts, he had considered the obstacles to return and issues in respect of integration, language and the like.
12. The nineteen days point, i.e. the decision being made after the Appellant's minority, was a near-miss argument and the Tribunal would be well-aware of what the stance of the higher courts is, is the way in which I understood Mr McVeety's submissions. There would still, even in those sorts of cases, have to be the requirement to meet a reasonable test, and although it was different it was not, as I understood Mr McVeety to say, not an automatic grant just because somebody had been able to show they had been in the UK for seven years or longer.
13. Again, Mr McVeety said he was not submitting that this was a determination of the strongest of events, but it was because of the history of the Appellant. The risk from the Taliban had not been found to be there. He said that the decision just about stood up but that he acknowledged it was brief. He said that if I was to find an error of law then the case ought to be remitted to the First-tier Tribunal.
14. Ms Nizami in her reply took me to what she said was the starting point with the Upper Tribunal's decision, but since then, as I understood her submissions, there was considerable "water under the bridge". She took me to the UNHCR Guidelines and she took me to what might happen in practice according to those Guidelines. In the end she said that the issues had not been properly considered by the judge.
15. Looking at the judge's decision as a whole, it has been fairly and properly said by Mr McVeety that considering the number of issues that the judge had to deal with, this was a relatively brief decision. That of itself is not necessarily indicative of whether or not there is a material error of law. Indeed brevity is to be encouraged. However, in my judgment there were very significant issues that the judge had to deal with in terms of the risk on return, and although the 2011 decision of the Upper Tribunal was indeed a starting point, there was now very considerable evidence before the First-tier Tribunal Judge which needed to be evaluated against the background material which had also been submitted, and in my judgment the fact that the skeleton argument had highlighted significant particular aspects, it was necessary for the judge to deal with them.

16. I have some sympathy for the experienced judge because it appears to be accepted that the detailed skeleton argument was submitted only on the morning of the hearing, but nonetheless, the fact that those issues and those matters were before the judge meant that they had to be dealt with in a way which showed that the most anxious scrutiny had been applied to the Appellant's protection claim.
17. In my judgment the grounds are made out in respect of the failure to consider the "westernisation" aspect of the case and the failure to consider whether or not this Appellant would require there to be a family member or family members to assist him if he was to be returned. It does indeed appear that on the face of it, the British Red Cross documentation which was within the Appellant's bundle before the First-tier Tribunal Judge did indeed suggest that there would not be the necessary support from family members. It was against that background that the judge had to consider the material which was relied upon and which was cited within the grounds of appeal and skeleton argument.
18. Similarly, in relation to paragraph 276ADE and Article 8, although Mr McVeety is right that the judge erred at paragraph 51 when he said that there was no assertion by the Appellant that he met any of the requirements of 276ADE, and although the judge went on to deal briefly with those matters, he did not do so against the proper factual matrix which was presented to him. Whether within the skeleton argument, and the witness statements or the background material. Nor did the Judge then undertake that analysis against the background of the Secretary of State's decision having been made very shortly after the Appellant had reached his majority. I make it clear that the fact that the Appellant was 19 days into his majority would not of itself usually lead to the Appellant's appeal succeeding, but not making a decision in respect of it at all does not show that the proper exercise of considering proportionality was undertaken by the Judge and therefore it shows that the decision making was flawed relating to Paragraph 276ADE and Article 8 too.
19. Taken as a whole, although in many instances brevity in decisions of the First-tier Tribunal are to be commended, in this instance, in view of the voluminous documents and matters raised in the skeleton argument, it was essential to assess the case in a much more detailed and comprehensive way and therefore I conclude that Mr McVeety is right that the decision is brief, but I also conclude that the decision contains material errors of law.

Notice of Decision

20. In the circumstances, I conclude that the appropriate step is to remit the matter to the First-tier Tribunal so that all issues can be properly assessed. There will be a complete re-hearing.

There was an error of law in the First-tier Tribunal's decision and I set it aside. There shall be a re-hearing at the First-tier Tribunal.

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 his 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: A Mahmood

Date: 24th October 2017

Deputy Upper Tribunal Judge Mahmood