



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/05038/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at : Field House**

**Decision & Reasons**

**Promulgated**

**On : 12 October 2017**

**On : 13 October 2017**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**PN**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms L Turnbull, instructed by Malik Law Chambers  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his protection and human rights claim.

2. The appellant is a citizen of Afghanistan whose date of birth is recorded as 1 January 2001. He arrived in the UK on 28 November 2016, having left Afghanistan in February 2016 and travelled to Iran and Greece. His journey to the UK from Greece was facilitated by the Home Office pursuant to the Dublin III Regulation and he claimed asylum upon arrival. His claim was refused on 10 May 2017. He appealed that decision and his appeal was heard in the First-tier

Tribunal on 28 June 2017 and was dismissed in a decision promulgated on 28 July 2017.

### **The Appellant's Case**

3. The appellant claimed that his father had worked for the government of Afghanistan, as a bodyguard for Commander Rajub Khan, and that he was killed by a landmine whilst at work in approximately 2010 (or killed by the Taliban in 2009). The appellant's uncle learned that the Taliban was going to forcibly take him away to become a suicide bomber and his mother therefore sent him away to stay with relatives. He left Afghanistan with another family who were his neighbours. He feared being captured and killed by the Taliban due to his father's work for the Afghan government.

4. It was noted, in refusing the appellant's claim, that his journey to the UK had been facilitated by the Home Office based on his relationship with his uncle GG who was residing in the UK. The respondent did not accept the appellant's account of the Taliban attempting to locate him to recruit him and rejected his claim to be at risk on return to Afghanistan. The respondent noted that the appellant was in contact with his family in Afghanistan and had provided contact details and considered it reasonable, therefore, to expect him to arrange to contact them and to arrange his return to Afghanistan. It was considered that adequate reception arrangements were in place at his family home and that the Home Office's tracing obligations had been met. It was not accepted, therefore, that the appellant's removal to Afghanistan would breach his human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Oliver. The judge noted the appellant's claim to have been living with his uncle and his family since arriving in the UK. He heard oral evidence from the appellant and his uncle. The judge considered there to be no reason to believe that the appellant's father was personally targeted by the Taliban and he did not accept that the appellant was being sought by the Taliban. He found that the appellant had failed to substantiate his claim and had not demonstrated that he would be at any risk on return to Afghanistan. He concluded that the public interest outweighed the appellant's interests in relation to family and private life. He accordingly dismissed the appeal on all grounds.

6. The appellant sought permission to appeal Judge Oliver's decision to the Upper Tribunal, but only in relation to his human rights claim. It was asserted in the grounds that the judge had erred by failing to consider that there were compelling circumstances outside the immigration rules.

7. Permission to appeal was granted by the First-tier Tribunal on 17 August 2017 on the grounds of inadequate reasoning in relation to proportionality under Article 8.

### **Appeal hearing and submissions**

8. The appellant was present at the hearing before me, together with his uncle GG and another family member who spoke English. Ms Turnbull advised me that the appellant and his uncle were fully aware of the nature of the proceedings and that she was able to explain everything to the appellant following the hearing. I was satisfied that there were no particular adjustments to be made on account of the appellant's youth and that he was adequately assisted by his legal representative.

9. Both parties made submissions. Ms Turnbull submitted that the two lines at [23] of the judge's decision relating to Article 8 was totally inadequate in terms of reasoning. The judge had failed to consider Article 8 within the immigration rules and outside the rules and had not considered discretionary leave. The judge had mentioned Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27 but had not demonstrated that he had conducted a balancing exercise, which was of particular concern given that the appellant was only 16 years of age. His findings on Article 8 could not be allowed to stand and had to be set aside.

10. Mr Nath submitted that the judge had referred to Razgar and to the respondent's findings on Article 8 and had then gone on to consider Article 8 at [23] taking into consideration the reasons given by the respondent in that regard in the refusal letter. The judge had considered the limited time spent by the appellant in the UK and his family ties here. What he said at [23] was sufficient. It was important to consider what evidence and information the judge had before him. No further evidence had been produced today in accordance with the directions issued with the grant of permission. There was no error of law in the judge's decision.

11. In response, Ms Turnbull reiterated the points previously made.

### **Consideration and findings.**

12. It is undeniably the case that the judge's findings and reasoning in relation to the appellant's Article 8 claim are brief and that all parties would have been assisted by a more detailed analysis of the evidence. The judge's decision is certainly lacking in that regard and that is of particular concern where the appellant is a child.

13. However it is relevant to note that the focus of the appeal was on the appellant's asylum claim. It is also important not to lose sight of the evidence that the judge had before him in relation to an Article 8 claim and the limited nature of that evidence. Whether or not the appellant is a child, he had the benefit of legal representation in preparing his appeal and at the hearing itself and therefore had a full opportunity to present all relevant evidence to the Tribunal.

14. The judge had before him, from the respondent, the appellant's asylum statement and the record of his interview together with documentary evidence relating to his identity and his father's death. From the appellant's representative he had a bundle of documentary evidence including appeal statements from the appellant and his uncle together with a martyr

identification card for his father, a migrant health assessment and details of his handover from Greece to the UK. That evidence included very little of relevance to an Article 8 claim and made it clear that the appellant had his mother and siblings as well as extended family members in his home area in Afghanistan and was in contact with them, that his mother received money from the government in Afghanistan following his father's death and that the family were well with no particular problems. The only evidence of the appellant's circumstances in the UK was the evidence from himself and his uncle confirming that he had been living with his uncle and his uncle's wife and nine children since his arrival in the UK and that he was financially and emotionally supported by them in the UK. There was no evidence of any studies or other activities in the UK and nothing further to support his Article 8 claim. The oral evidence from the appellant and his uncle, and the submissions made on his behalf, were for the most part related to his asylum claim and barely touched upon any Article 8 issues.

15. In his decision, the judge set out the evidence and summarised the account given in the statements and the appellant's interview, as well as the oral evidence. He found that the appellant was in contact with his family in Afghanistan, that he was of no interest to the Taliban and at no risk from any party and that he could safely return to his home country. His findings in that regard have not been challenged by or on behalf of the appellant.

16. With respect to her submission that the judge had failed to consider Article 8 within the immigration rules, I asked Ms Turnbull if it was being asserted that the evidence before the judge demonstrated that the requirements of the rules could be met. Her response was that she could not say. I note, in fact, that the grounds seeking permission did not even suggest that the requirements of the rules could have been met but only challenged the judge's findings (or lack of findings) outside the rules and permission was granted on that basis only. It seems to me that there was, in any event, nothing in the evidence before the judge to even remotely suggest that the requirements of the immigration rules on family or private life could be met, particularly when considering the unchallenged findings made in regard to the asylum claim and as to the appellant remaining in contact with his family in Afghanistan. Indeed no submissions were made to that effect before the judge. Accordingly I find no merit in Ms Turnbull's submissions in that regard.

17. As regards the actual grounds of challenge and the basis upon which permission was granted, namely the judge's findings and reasoning on Article 8 outside the immigration rules, it seems to me that there was again no evidence before the judge upon which he could possibly have found that there were compelling circumstances justifying a grant of leave outside the immigration rules. The submissions made before the judge did not seek to identify any such circumstances and indeed Ms Turnbull had no instructions that there was any further evidence to be considered if the decision were to be re-made.

18. On the limited evidence that he had before him, the judge made his findings, albeit briefly, at [23]. He was clearly aware of the relevant considerations and caselaw in making his findings, setting out the five stages in Razgar at [10] and [11] and addressing the question of the best interests of the

child at [12], and then referring to the respondent's case in that regard at [15]. At [23] the judge accepted that there was family life between the appellant and his UK family, but also found that his main family life was with his family in Afghanistan. He noted that he had left them only 17 months previously and considered that he had developed a very limited private life in the UK in that short period of time. His reference to the appellant's precarious immigration status was plainly part of the consideration in section 117B of the Nationality, Immigration and Asylum Act 2002. Whilst he made no specific finding on the appellant's best interests, [23] suggests that the judge found those to be with his mother and siblings in Afghanistan, but in any event to be outweighed by the relevant public interest factors. All of those findings were entirely open to the judge on the evidence and were properly made.

19. Accordingly, when considering the judge's overall findings on the evidence, and the nature of the evidence before him, it seems to me that his proportionality assessment at [23], albeit brief, was adequate, and that any arguable error made in terms of the brevity of his reasoning was not in fact material to the outcome of the appeal. Indeed I cannot see how the judge could have reached any other conclusion on the evidence he had before him.

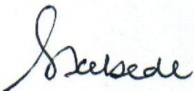
20. For all of these reasons I find no error of law in the judge's decision requiring it to be set aside. I uphold the judge's decision.

## **DECISION**

21. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision to dismiss the appellant's appeal therefore stands.

### **Anonymity**

The First-tier Tribunal made an order for anonymity. I maintain that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed   
Upper Tribunal Judge Kebede  
2017

Dated: 12 October