



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08333/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29 September 2017**

**Decision & Reasons
Promulgated
On 16 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**Z S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed of Counsel, Malik & Malik Solicitors
For the Respondent: Mr S Walker, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. The appellant is a citizen of Afghanistan who was born on 14 February 1992. He arrived in the UK on 23 November 2016. He claimed asylum on

4 February 2016. He claimed to fear reprisals from the Taliban for having worked with someone who helped American and French military forces. The respondent refused the appellant's claim on 3 August 2016. The respondent did not accept the appellant's account and considered that in any event the appellant would be able to reasonably and safely relocate internally in Afghanistan. The appellant appealed against the respondent's decision to the First-tier Tribunal.

The appeal to the First-tier Tribunal

3. In the decision promulgated on 2 March 2017 First-tier Tribunal Judge O'Brian dismissed the appellant's appeal. The judge did not find the appellant's account to be credible, finding that the appellant's account was an invention. The judge found that the appellant therefore faced no real risk of persecution or serious harm on return to Afghanistan. The judge also found that the appellant would not face any obstacles to reintegration into Afghanistan or that removal would impinge on his private or family life.
4. The appellant applied for permission to appeal to the Upper Tribunal against the First-tier Tribunal's decision. On 21 June 2017 First-tier Tribunal Judge Dineen refused the appellant permission to appeal. The appellant renewed his application for permission to appeal to the Upper Tribunal and on 8 August 2017 Upper Tribunal Judge Black granted the appellant permission to appeal.

The hearing before the Upper Tribunal

5. The first ground of appeal asserts that the judge misdirected himself in law by concluding that the appellant's account was improbable without any reference to the background material. It is submitted that in reaching the findings in this way the judge failed to assess the plausibility of the account by looking through the spectacles provided by the information he has about conditions in the country in question. The judge made no reference to the background material when he reached findings and failed to consider whether the background material was supportive or otherwise of the appellant's account of the Taliban's activity in relation to him and his family. It is asserted that the judge as not entitled to conclude that the appellant's account was so internally illogical or improbable that it is incapable of belief without first informing himself about the manner in which the Taliban was known to operate.
6. Ground 2 asserts that in reaching the conclusion that the appellant's account was an invention, before considering the corroborative evidence upon which reliance had been placed was a material error of law as the kind described in the case of **Mibanga [2005] EWCA Civ 365**. The judge only considered the report of Mr Viyaar after reaching his finding that the appellant's account was an invention. The reasons given by the judge for rejecting Mr Viyaar's report were legally inadequate. It is asserted that it did not suffice to state that the report was a most unimpressive and unprofessional piece of work. Nor was it permissible to suggest that there

was no good reason why Mr Viyaar could not have been called to confirm the truth of his report. It is submitted that there were very good reasons why the expert could not be called to give evidence, firstly he is a foreign lawyer and it would be extremely expensive for him to have attended from Afghanistan and that it is by no means clear that he would have been permitted to enter the UK for that purpose.

7. It is asserted that the judge erred in failing to consider in the round the corroborative evidence before he reached a final conclusion in respect of the appellant's credibility and he failed in giving adequate reasons for rejecting the report of Mr Viyaar.
8. The judge erred in treating the appellant's delay in claiming asylum as "damaging per se". Such behaviour is not damaging per se to an individual's credibility it is only potentially damaging.
9. Mr Ahmed submitted that at paragraph 45 of the First-tier Tribunal's decision the judge rejected the expert report very briefly and gave no reasons as to why he found it to be unimpressive and unprofessional. Mr Viyaar is a lawyer in Afghanistan. It appears that the First-tier Tribunal Judge had failed to consider that Mr Viyaar was in Afghanistan when considering that there was no good reason why he could not have been called to confirm the truth of his report. There was no proper assessment of the expert's report. Whilst it is a matter for the judge as to what weight to place on an expert's report, in this case the judge has not given any reasons at all as to why he has placed no weight on the report and there is no engagement with the report.
10. Mr Walker accepted that the judge seemed to have been unaware that the author of the report, Mr Viyaar, was in Afghanistan and that this may have coloured the judge's view of the report. He submitted that whilst that may be an error in this case it is not material when the other aspects of the case are taken into account. With regard to the conclusions on credibility he submitted that on reading the decision it appears that the judge has fallen into two errors, namely an incorrect assumption about the whereabouts of the author of the expert report and a prior finding on credibility before considering the other objective evidence.
11. In reply Mr Ahmed submitted that from the determination it is not clear that the judge took the evidence into consideration when arriving at conclusions on credibility and that there had been no reasons given or engagement with the expert's report.

Discussion

12. The First-tier Tribunal Judge in this case at paragraph 13 states:

"13. I took into account all of the evidence to which I was referred, whether or not mentioned specifically in these reasons."

13. The judge recorded at paragraph 12 that the appellant's bundle included his witness statement, a letter from his brother-in-law, a letter from Mr M

Z, photographs, instructions to and a report from Mr Viyaar and background evidence about Afghanistan. Between paragraphs 36 and 43 under the heading of "Findings" the judge sets out and analyses the appellant's claim. At paragraph 43 the judge finds:

'Overall I am forced to the conclusion that the appellant's account is not even reasonably likely to be true but instead that it is an invention...'

14. Although it is clear that there are a number of factors in this case that could have led to the judge concluding that the appellant's account is not even reasonably likely to be true but instead that it is an invention, the judge has reached firm conclusions prior to considering the objective evidence about Afghanistan or the expert's report. Whilst this may have been simply the structure of the decision I cannot be satisfied that when assessing whether the appellant's account was in fact credible, in light of the situation in Afghanistan, the judge did take into account the objective evidence and the expert's report. Following the finding above, at paragraph 44 the judge set out:

"44. As will be clear **from my conclusions above**, I am unable to place any reliance on the claimed Taliban letter and police report. Similarly, weighing the letters claimed to be from the Appellant's brother-in-law and village representative within the context of the Appellant's general credibility, I am unable to give them any credence.

45. As for Mr Viyaar's report, it is a most unimpressive and unprofessional piece of work. Moreover, there is no good reason why Mr Viyaar could not have been called to confirm the truth of his report. As it is, I am unable to place any weight on the contents of the report."

15. It would appear from these paragraphs that the judge has fallen into the error identified in the case of **Mibanga**. The judge has reached conclusions prior to consideration of the background evidence or the expert's report.
16. Further, the judge has failed to give any reasons as to why he had found the expert report unimpressive and unprofessional and does not appear to have taken into account the fact that Mr Viyaar was in Afghanistan when finding that there is no good reason why he could not have been called.
17. Given the requirements for anxious scrutiny in asylum claims the judge ought not to have reached conclusions on the credibility of the appellant's account without first considering the objective evidence and the expert's report. The judge ought to have engaged with that evidence. Whilst it is a matter for the judge as to what weight to place on the evidence, at least brief reasons need to be given for the rejection of any such evidence.
18. I find that there is a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
19. I considered whether or not I could re-make the decision myself. I considered the Practice Statement concerning transfer of proceedings. I

am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal

20. The matter is remitted to Hatton Cross for a de novo hearing before any judge other than Judge O'Brian to be heard on the next available date.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law. The decision is set aside and the matter is remitted to the First-tier Tribunal at Hatton Cross for a de-novo hearing.

Signed P M Ramshaw

Date 12 October 2017

Deputy Upper Tribunal Judge Ramshaw