



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/26074/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

N B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel, instructed by Hoole & Co Solicitors
(Brighton Street)
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan who was born on 1 December 1998. On 27 October 2016 the Respondent refused his human rights claim. The Respondent had previously refused his claim to asylum on 11 December 2013.
2. The Appellant appealed against the decision of 27 October 2016 and his appeal came before First-tier Tribunal Judge A D Troup, who in a Decision and Reasons promulgated on 16 August 2017 dismissed his appeal on all grounds. The Appellant then sought permission to appeal the decision of Judge Troup to the Upper Tribunal. His application was initially refused by the First-tier Tribunal and then granted on

renewal by Upper Tribunal Judge Blum. The reasons given for granting permission were that although the Judge appeared to ultimately reject the Appellant's claim to have been sent to a Madrassa there was some ambiguity in his findings at the beginning of paragraph 51 of his Decision and his reasoning for rejecting the Appellant's account was arguably unduly speculative and illogical for the reasons detailed in the grounds of appeal. Judge Blum concluded that all grounds were arguable.

3. The appeal therefore comes before the Upper Tribunal to determine whether or not there is an error of law in the decision of the First-tier Tribunal such that it must be set aside. I heard submissions from both representatives. Mr Bandegani took me through his Grounds specifically with reference to the Ground that had been considered the strongest by Judge Blum. He placed most weight on the Ground that the First-tier Tribunal's rejection of his account was unduly speculative and illogical in relation to a core credibility finding.
4. Having heard his submissions, Mr Walker conceded that there was an error in terms of the reasoning in paragraph 51 and whilst he initially argued that that was rectified by his alternative findings in paragraph 53, after some discussion he conceded that the Judge did not address the reasonableness test in relation to internal flight and material factors highlighted in the grounds in relation to the question of reasonableness were not addressed. Consequently, the speculative findings in paragraph 51 could not be cured.
5. In the light of that concession I concur that, having had regard to the evidence, the reasoning and the overall conclusions of the judge, there was a material error in the decision of the First-tier Tribunal such that it must be set aside. In view of the concession my reasons are brief and as follows.
6. Whilst there are six grounds in the application for permission to appeal I find that Grounds 1 and 4 are made out. Those Grounds both go to the core credibility finding and to the application of the reasonableness test in relation to internal relocation and the cumulative effect of both errors means that the decision as a whole cannot stand.
7. In Ground 1 it is asserted that the Judge's reasoning is illogical. It is asserted that the Judge held in paragraph 51 that he found from the evidence that the Appellant's uncle sent him to the Madrassa in Pakistan in order to improve his role in life and do more than merely herd goats. He did not dispatch him there to study Jihad. It is said that the Judge went on to find that because the Appellant was sent to the Madrassa with three other children from the village the nature and the syllabus of the Madrassa would have been known and in turn that because the syllabus would have been known the Appellant was not sent to the Madrassa at all. It is argued that the reasoning is illogical because having found that the Appellant's uncle did send him to the Madrassa to study but not to learn Jihad the Judge in subsequently concluding that he did not send the Appellant to the Madrassa at all reached an opposite conclusion on the same issue.

8. It is further argued that even if the Appellant's uncle knew that Jihad formed a part of the syllabus the Quranic term does not equate to being schooled in the perpetration of abstract forms of indiscriminate violence such as the suicide bombing of civilians and that the Judge's elision of religious doctrine with murder or war crimes is irrational.
9. It is then further argued that further to his finding in relation to the Madrassa, the Appellant's uncle did not know that the Appellant would be trained to be a martyr and it is therefore wholly unclear why the Judge went on to find that the uncle must have known that the Appellant would be trained to be a suicide bomber simply because two other children were sent to the school also. In the absence of evidence about the knowledge of the other two children's families the fact that one of the three families did not know the Madrassa trained children for martyrdom operations made it less likely rather than more likely that any of them knew.
10. Addressing Ground 1, the Judge's core findings in relation to the Appellant's credibility are at paragraph 51. I do not accept that the Judge made contradictory findings in relation to whether the Appellant was sent to a Madrassa. Looking at the paragraph as a whole, I conclude it is clear that the finding is that the Appellant's uncle did send him to the Madrassa but did not dispatch him there to study Jihad. Those findings were expressly made and they are not contradicted by the subsequent finding that he was not sent to a Jihadist Madrassa. The finding that he was sent to a Madrassa is simply qualified by that comment and that coheres with his finding that he was not sent there to study Jihad.
11. However, I do find that there is speculation in relation to the Judge's finding that led to his conclusion that he was not sent to a Jihadist Madrassa. There was no evidence before the Judge that the families who had also sent their children to the Madrassa from the village knew the nature of the syllabus. The Judge finds that the fact that three other boys from the same village were sent there must have meant they would have known the nature and syllabus of the Madrassa. I agree with the contention in the Grounds that even assuming that the other families did know the nature of the syllabus it was wholly unclear why that logically precluded the real possibility that the Appellant's uncle did not know and in view of the fact that the finding was made in the absence of evidence it is not a rational finding.
12. I then move on to the second Ground in respect of which permission was granted, namely the Judge's conclusions in relation to internal flight. Those findings are at paragraph 52 of the Judge's decision, in which the Judge firstly addresses the level of indiscriminate violence, which is of course a reference to the test for humanitarian protection. He then addresses the case of **AK (Article 15 (c) Afghanistan) v SSHD** [2012] UKUT 163 and finds that the Appellant could find sanctuary in Kabul. He takes two factors into account, namely that the Appellant has spent five years away from the claimed events and was 13 then but is now an adult. He then addresses the risk to the Appellant from the Taliban in Kabul.
13. It is argued in the Grounds that the Judge erred in failing to explain his reasons as to why the Taliban or the State would have no interest in him five years on and the Judge did not assess the reasonableness of relocation to Kabul by reference to all the relevant

circumstances assessed globally at the date of the hearing and in the context of the country material. Instead the judge determined relocation applying the higher threshold of Article 3.

14. I consider that this ground is made out because at no point in the decision does the Judge address the proper test of reasonableness nor does he consider whether it would be unduly harsh for the Appellant to return to Kabul, taking into account the relevant circumstances in this case which are listed in the grounds of appeal, namely his age, the grants of discretionary leave from 2013 to 2016, the fact that he has been in the care of Social Services since arrival in 2012 and in foster care since 2014 and that he would be looked after by the local authority until he is 25 years of age because he is not ready to live independently, also that he attempted suicide between 2012 and 2014 and was detained under the Mental Health Act and sectioned for one week. His GP's letter of June 2017 confirmed that he was suffering from low mood and anxiety with suicidal thoughts and that he had been recommended for counselling from a mental health specialist. There was also a Red Cross letter confirming that the attempts to trace his family were unsuccessful and evidence from his social worker that he had no contact with his family outside the UK and that his father was killed in 2012.
15. I find that the Judge erred in relation to the credibility findings and that this fed into the assessment of internal flight, which in any event did not address the requisite test or have regard to the relevant matters as set out in the grounds seeking permission to appeal. In those circumstances the decision must be set aside because the error of law is material. In view of the fact finding required the matter will be remitted to the First-tier Tribunal for a de novo hearing before a judge other than Judge Troup.

Notice of Decision

The decision contained a material error of law and I set it aside.

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

Date 19 June 2018



Deputy Upper Tribunal Judge L J Murray