



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03038/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 29th October 2018**

**Decision & Reasons
Promulgated
On 14 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**AH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S Ell, Counsel instructed by Maya Solicitors
For the Respondent: Mr. C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Brunnen promulgated on 24th April 2018. The FtT Judge dismissed the appellant’s appeal against the respondent’s decision of 20th February 2018 refusing his claim for international protection.

2. There was no application for anonymity before the First-tier Tribunal (“FtT”) and the FtT Judge considered there to be no reason to make a direction for anonymity. Although no application is made before me, the appeal concerns a claim for asylum and international protection and in my judgement it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. AH is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.
3. The appellant is a national of Afghanistan. His immigration history is set out at paragraphs [10] and [11] of the decision of the FtT Judge. The appellant’s account of events is to be found at paragraphs [12] to [22] of the decision, and at paragraphs [23] to [50], the FtT Judge sets out his findings and conclusions. The Judge concluded that the appellant has failed to establish that he has a well-founded fear of persecution in Afghanistan, or that on return there, he would be at real risk of suffering serious harm or suffering inhuman or degrading treatment or punishment.
4. The FtT Judge’s findings are succinctly set out at paragraph [45] of the decision as follows:

“45. I am prepared to accept that the Appellant is the son of a wealthy family. I am also prepared to accept that his father was a supporter of the Taliban until they began to interfere with his family. I am prepared to accept that the Appellant's sisters were abducted and that his father's health deteriorated. However, in the light of the inconsistencies concerning the incidents in Balkh and, even more so, the inconsistencies concerning the incident in Kabul, I do not accept that there is even a reasonable degree of likelihood that the Appellant attempted to sell the land, or that he was threatened in Balkh and in Kabul. I do not accept that the order for his arrest is genuine or that the Taliban have mobilised their resources to find him. I do not accept that he would be of any interest to them if he were to return to Kabul.”

5. The FtT Judge referred to the Country Guidance decision of AS (safety in Kabul) Afghanistan CG [2018] UKUT (IAC) and having considered, at [47], the appellant's case, concluded that the appellant does not fall within any of the categories of persons identified in the country guidance, as being at risk. For the reasons set out at paragraphs [48] and [49], the FtT Judge concluded that relocation to Kabul would not be unreasonable or unduly harsh.

Error of Law

6. Although the appellant was represented, the grounds of appeal appear to have been prepared by the appellant himself. The appellant refers to the various aspects of his claim that were accepted by the FtT Judge, and challenges the Judge's conclusions where the Judge did not accept the account advanced by the appellant. The appellant maintains that the Judge erred in his conclusion that there is no reasonable likelihood that the appellant attempted to sell land, and in finding that the appellant was not threatened in Balkh and in Kabul. The appellant maintains that the arrest warrant that he relied upon is genuine and claims the Judge erred in failing to accept that the order for his arrest, is genuine. The appellant maintains that he has a high profile and that the Judge's conclusion to the contrary, is irrational. He claims that the Judge accepted that the appellant is the eldest son of a wealthy family, and the son of an individual that supported the Taliban, and "*..this automatically makes me a high profile individual..*" and subject to the interest of the Taliban. The appellant also claims that the Judge's conclusion that the appellant can internally relocate because he is someone able to afford carrying guns and hiring a bodyguard, is irrational, because if he were not a 'high profile individual', there would be no need for him to carry guns and hire bodyguards.
7. Permission to appeal was granted by Upper Tribunal Judge Finch on 16th July 2018. On behalf of the appellant, Mr Ell was content to adopt the

two grounds summarised by Upper Tribunal Judge Finch in her order. First, the FtT Judge failed to adopt a holistic approach to the evidence and consider the totality of the evidence before reaching a decision in relation to the credibility of the appellant's account and second, the FtT Judge failed to give sufficient, or at times, any reasons, for believing parts of the appellant's account, but not others.

8. The matter comes before me to consider whether the decision of the FtT Judge involved the making of a material error of law, and if so, to remake the decision.
9. Mr Ell submits that the appellant was found by the FtT Judge to be credible in a number of respects, and noted, at [27] and [34], that before reaching any conclusions upon various aspects of the appellant's claim and his credibility, it would be necessary to consider the extent to which any inconsistencies damage the appellant's credibility. Having set that out, the FtT Judge failed to resolve that issue by considering whether any inconsistencies in the appellant's account do in fact undermine his credibility to the extent that the account, is properly rejected. Similarly, at paragraph [41] when considering letters concerning financial donations said to have been made by the appellant's father to the Taliban in December 2013, the Judge notes that there is no way to judge the authenticity of the documents other than to view them in the round with the other evidence. Having said that, the Judge fails to address those documents in reaching his conclusions and does not identify whether, if at all, any weight is attached to the documents. Mr Ell submits that the Judge refers to the evidence relied upon by the appellant and identifies inconsistencies in some of that evidence, but in reaching his final conclusion at paragraph [45], the Judge does not explain why some parts of the account relied upon by the appellant are accepted and others are rejected. To the extent that there are adverse credibility findings made against the appellant, the Judge fails to consider all of the

evidence holistically, and set out the evidence that he accepts and the evidence that he rejects, with reasons explaining why.

10. The appellant challenges the findings made by the Judge and the adequacy of his reasons for dismissing the appeal. I remind myself of the observations made by Mr. Justice Hadon-Cave in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**;

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

11. I have also had regard to the decision of the Upper Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC** where it was stated in the head note that:

"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision makes sense, having regard to the material accepted by the judge."

12. It is in that context that I have considered the grounds of appeal and the submissions that have been advanced on behalf of the appellant. The core of the appellant's account was not particularly complex. It is set out at paragraphs [12] to [22] of the decision of the FtT Judge.
13. I have carefully considered the evidence that was before the FtT Judge. There were several facets to the claim advanced by the appellant. First, the family background of the appellant and in particular the wealth of the appellant's father, his support for the Taliban and the events between 2004 and 2011, when arrangements were made for the appellant to come to study in the UK in order to keep him out of the hands of the Taliban. Second, the events of 2014 during which the appellant's three eldest sisters were taken by the Taliban, and finally, the events between

the appellant's return to Afghanistan in January 2015 and his subsequent return to the UK in February 2015.

14. I reject the claim that the FtT Judge failed to adopt a holistic approach to the evidence and consider the totality of the evidence before reaching a decision in relation to the credibility of the appellant's account. It is clear from a careful reading of the decision that the Judge carefully considered all of the evidence before reaching his overall conclusions set out at paragraph [45] of the decision, identifying those aspects of the appellant's account that he accepts and those that even on the lower standard applicable, the Judge did not accept.
15. At paragraphs [24] to [26] of the decision, the Judge identified the reasons given by the respondent for rejecting the appellant's account that his father was a wealthy landowner. That formed the backdrop to the events that the appellant claimed had occurred between the appellant's return to Afghanistan in January 2015 and his subsequent return to the UK in February 2015. The Judge identified the explanations provided by the appellant in his evidence before the Tribunal, and considered whether the appellant has provided satisfactory explanations to address the matters referred to by the respondent. At paragraph [27] the Judge stated "*.. Before reaching any conclusion on these points there are further issues to be considered.*".
16. At paragraphs [28] to [44] of the decision, the Judge went on to address the account of events relied upon by the appellant. The Judge refers to the reasons provided by the respondent for rejecting the claims made by the appellant, and carefully considered the evidence, identifying the material inconsistencies in the appellant's account of events. The Judge also carefully considered the documents relied upon by the appellant including police reports. The Judge refers, at [33] to inconsistencies in the appellant's own evidence, and how that fits with the documents relied upon. At paragraph [34], the Judge noted that it is possible that

the appellant has simply become confused as to the exact chronology of stressful events and in the end, noted that it is necessary to assess the extent to which the inconsistencies damage the opponents credibility.

17. At paragraphs [35] to [44], the Judge continues to address the account relied upon by the appellant of events in 2014, and of events between the appellant returning to Afghanistan in 2015 and his return to the UK in February 2015. The Judge carefully considered the account advanced by the appellant and whether the documents relied upon by him, lend support to that account. In assessing the account relied upon by the appellant, the FtT Judge also carefully considered the matters relied upon by the respondent in the reasons for refusal letter.
18. At paragraph [35], the Judge considered the difference in the account given by the appellant as to the threat made on 7th February 2015 when he was in Kabul, and the report dated 8th February 2015 recorded by the Kabul police. At paragraph [36], the FtT Judge considered the appellant's explanation for the police reports bearing a rubber stamp impression of the Ministry of Finance, Kabul Tax Office. The Judge considered at the explanation offered by the appellant to be a plausible one.
19. At paragraph [41], the Judge refers to the two letters produced by the appellant concerning financial donations made by his father to the Taliban in December 2013. At paragraph [42], the Judge referred to photographs relied upon by the appellant and at paragraph [43], the Judge considered a document relied upon by the appellant, and described as an arrest warrant. Again, the FtT Judge appears to have carefully considered how that document fits with the account of events relied upon by the appellant.
20. The Judge had the opportunity of hearing the appellant give evidence and having that evidence tested, although it is clear that it was the content of the evidence rather than the way in which was given, that the Judge was concerned about. The obligation on a Tribunal Judge is to

give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. It is sufficient that the critical reasons to the decision, are recorded.

21. In my judgement, a careful reading of the decision of the FtT Judge demonstrates that the Judge considered all of the evidence before him holistically, before identifying those aspects of the appellant's account that he was prepared to accept, and those aspects of the appellant's account that he rejected. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence was a matter for him. In my judgement the FtT Judge carefully considered at each stage whether there was evidence, independent of the appellants own evidence, that was capable of casting light upon the matters relied upon by the appellant. It is in that context that the Judge had regard to the documents.
22. The assessment of risk upon return and credibility is always a highly fact sensitive task. It is well established that the ingredients of the story, and the story as a whole, have to be considered by reference to the evidence available to the Tribunal. In any assessment of the account relied upon by an appellant, factors such as consistency with what the appellant has said before, and with other evidence, including any documents relied upon are relevant. In my judgement, a careful reading of the consideration by the Judge demonstrates that he had clearly in mind, the various facets to the appellant's claim. It was for the Tribunal to make its own findings on whether, and to what extent, the appellant's account is credible. In my judgement the FtT Judge carefully weighed up the evidence and reached a conclusion as to the evidence that is believed and that which is not.

23. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.
24. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is “perverse” embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence.
25. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original Judge's thought process when the Judge was making material findings. In my judgement, it is clear that the findings summarised at paragraph [45] of the decision of the FtT Judge, flow from the careful consideration of the claim that is to be found at paragraphs [24] to [44] of the decision. The Judge identified those aspects of the claim that he was able to accept and referred carefully, to the other aspects of the appellant’s claim that were plagued with inconsistency, and not supported by the documents relied upon. The Judge states, at [45], his reasons for rejecting the appellant’s account of events when her returned to Afghanistan in January 2015. The Judge states “..However, in the light of the inconsistencies concerning the incidents Balkh, and even more so, the inconsistencies

concerning the incident in Kabul, I do not accept that...". The FtT Judge had previously clearly identified the inconsistencies concerning the incidents, and the concerns that he had about the arrest warrant.

26. In my judgement, the findings made by the FtT Judge were open to him and are sufficiently and adequately explained. It follows that in my judgement, the decision of the FtT Judge is not infected by any material error of law and the appeal is dismissed.

Notice of Decision

27. The decision of the FtT Judge does not contain any error of law, and the appeal is dismissed
28. An anonymity direction is made.

Signed
2018

Date

7th

November

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

There can be no fee award.

Signed
2018

Date

7th

November

Deputy Upper Tribunal Judge Mandalia