



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04240/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26th March 2018

Decision and Reasons Promulgated
On 16th May 2018

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

MR A R
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr. S. Muquit, Counsel, instructed by Malik and Malik,
Solicitors

For the respondent: Mr. E. Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Afghanistan born in August 1992. He came to the United Kingdom in May 2012 to study. He subsequently made a claim for protection on the basis he was at risk from the Taliban.

2. He returned to his home country for a holiday in the autumn of 2016. He claimed that on his return he received a telephone call. The caller accused him of having converted to Christianity (although in fact he had not) and told him to join the Taliban. He reported this to the police who told him he should leave for his safety. He then left Afghanistan.
3. The respondent did not believe the claim was true and refused it. The respondent also felt there were sufficient protection for the appellant against the Taleban in Afghanistan and that he could relocate if necessary to Jalalabad, some 118 km from Kabul.

The First tier Tribunal

4. His appeal was heard by Judge of the First-tier Tribunal NMK Lawrence at Hatton Cross on 14 June 2017. In a decision promulgated on 19 July 2017 the appeal was dismissed. The Judge summarised the appellant's claim, which now included a claim that he would also be at risk because he would be identified as a Westerner because of his presentation, which included the wearing of jeans. The judge did not find the claim credible.
5. Reference was made to the claimed telephone conversation with a member of the Taleban. The judge questioned why the Taliban, if they believed the appellant had converted to Christianity, would ask him to join them. The judge refers to the appellant's explanation that the Taleban could use a Christian in their efforts. The judge took the view that the Taleban would require the appellant to renounce Christianity if he had converted. Regarding his appearance, the judge concluded this did not make him part of a particular social group. In any event, the judge believed it a bald assertion that being presented as a Westerner would place a person at risk.

The Upper Tribunal.

6. The grounds contend that the judge misunderstood the appellant's claim was the Taliban believing he had converted to Christianity rather than that he had become westernised. This misunderstanding flowed into the judge thinking his claim was the Taleban approached him as he could help them as a Christian. It was also contended the judge ignored evidence about his brother who had been granted protection in the United States and who had been working for American agencies.
7. Permission was granted on the basis it was arguable the judge misunderstood the appellant's evidence.
8. The respondent made a rule 24 response opposing the appeal. It was submitted at the grounds are an attempt to advance arguments not put before the judge.

Reference was made to the skeleton argument which had contended that the threat was because the Taliban believed to have converted to Christianity. Regarding the second ground, the respondent contended that this was inconsistent with the appellant's claim, as recorded by the judge, that the Taleban thought he could be useful to them in its war effort as a Christian. Regarding the third-ground, the judge considered the documents in line with the decision of Tanveer Ahmed. The claim made did not relate to his brother. Instead, it was that the Taliban wanted to recruit him because he was perceived as a Christian convert, consistent with their perception of his family's allegiances.

9. Mr.S.Muquit, Counsel for the appellant had the advantage of having appeared in the First-tier Tribunal. He said that the judge had rejected the claim for three principal reasons. Firstly, he did not accept the Taliban would recruit a Christian unless they recanted. Secondly, the judge did not accept they would want to use a Christian in their campaign. Finally, the judge saw no evidence that those perceived to be westernised would be at risk.
10. Starting with the last ground he submitted that the judge's view was unreasonable and irrational. I was referred to information in the appellant's bundle which indicated individuals could be at risk from the Taleban because of how they dressed. He also submitted that the judge at paragraph 10 misunderstood the appellant's claim as to why the Taliban wanted to recruit him: this had nothing to do with being a Christian. He submitted that the Taliban's position was that either the appellant was for them and joined or else he was against them.
11. I was referred to question 51 of the appellant's interview where he was asked about the phone conversation with the Taliban about his family. The appellant's response was that this individual indicated he knew the appellant had converted to Christianity and that he was expected to join the Taliban and bring his knowledge. At question 99 the appellant confirmed to the interviewer he had not converted to Christianity but said the Taleban accused him of this.
12. Mr.Muquit contended that the claim made by the appellant was that he was at risk because the Taliban perceived his family as collaborators. I was referred to the skeleton argument provided, paragraph 4.This refers to his claim being based upon his family's experience of the Taliban, and that his family stood accused of colluding with the West, based upon his brother's work for various US agencies.
13. In response, Mr Tufan relied on the rule 24 response. He questioned why the Taleban would want to recruit the appellant, a reluctant individual who had returned from the West. He submitted that if the Taleban believed the appellant was a Christian it was bizarre that they would want to recruit him because of this.

The claim presented to the judge on the papers

14. In order to see if the judge misunderstood the claim I have gone over the details in papers. At the screening interview on 14 November 2016 he made no reference to Christianity. He said he had gone to Kabul for a holiday when he received a telephone call from the Taliban telling him to join them. The caller indicated they knew of him and his family. The appellant indicated that his brother used to work for the UN and for the US Department in Kabul and now was living in New Jersey. He referred to having documents in support of his claim, including a letter he received from the Taliban and from the head of his village. He was awaiting translations.
15. In his substantive interview he explained how his parents had moved to America in December 2015. He had returned to Afghanistan in order to prepare for a visa application. He was staying with his uncle. He records that he was having dinner with friends on 27 September 2016 when his phone rang. The caller told him he knew about him and his family living abroad. The caller then said the appellant had converted to Christianity and was not following his religion (Islam) and needed to 'join us'. The appellant then hung up. The caller had given his name and he asked his uncle if he knew him. His uncle said he had a relative of that name.
16. The following day his uncle went to the police and the council of the area. They advised that the call was related to the Taliban and they both should leave the country for their safety. He said he attempted to get an early flight to the United Kingdom and then he received a stamped letter from the Taliban.
17. At question 88 he was asked why his family left in 2015. He said that they had received threats from the Taliban. He said that his brother had worked for the UN and moved to the US in 2012. He also referred to another brother living in America on a spousal visa.
18. At question 98 he referred to the Taliban thinking he had changed his religion because he was wearing jeans. He confirmed he was a Muslim. At question 101, he was asked why the Taliban would believe he had changed his religion because of his clothes. He said he did not know the reason but suspected it was because he lived in the United Kingdom and his brother had worked for the US authorities.
19. His solicitor forwarded the letter said to be from the Taleban, dated 28 September 2016. It was addressed to his uncle and stated that the Taleban were aware family members were residing in America and the appellant had lived in the United Kingdom. He was told to join the Taliban. His representatives also provided a letter purporting to be from the local council of his area confirming the appellant was at risk in Afghanistan and he is advised to remain abroad. They subsequently provided a similar letter from the Afghan authorities also dated 28

September 2016. There is also letter of the same date from the appellant's uncle lodging a complaint with the authorities against the caller.

20. There is a statement from his uncle that the appellant came for a holiday and stayed with him from 17 September 2016 until 2 October 2016. He refers to him receiving a telephone call on 27 September 2016 which upset him. His uncle, then made enquiries and lodged a complaint against the caller.
21. The refusal letter indicates the claim was considered under the Refugee Convention on the basis of imputed political opinion. This was because the Taliban perceived him to be westernised and that he had converted to Christianity. The refusal letter refers to the country information about the Taliban having a radicalised interpretation of Islam and a commitment to the strict interpretation of Sharia law. With this background it was not likely they would seek to recruit a Christian. The appellant's credibility was challenged with the respondent questioning why, if his parents and brother had genuinely left out of fear, he would return.
22. The documents submitted in support of the claim were considered in line with Tanveer Ahmed. The respondent acknowledged they were consistent with the claim but it had not been possible to verify them.
23. In the appellant's statement at paragraph 3 he states he was targeted by the Taliban because he has spent time abroad and his family were perceived as pro-Western. At paragraph 12 he states that the allegation he had converted to Christianity was being used by the Taliban to test his loyalty.
24. Paragraph 4 of the Skeleton Argument states that on return to Afghanistan he faced threats from the Taleban on the basis his family had collaborated with the West. In the appellant's case, the allegation was that he had converted to Christianity consistent with the perception of his family's allegiances.
25. It is my conclusion that based on what is recorded in the papers the case being made was not primarily that the appellant was being seen as a Christian convert and therefore at risk. Rather, he has been targeted because of association with his family and the fact he had been United Kingdom and was westernised. The question of religion was really an add-on.

The case at hearing.

26. The next stage is the oral hearing. There is no transcript but the decision indicates at paragraph 6 that the judge was absolutely clear on the case being made on the papers. It records the telephone call, the conversation, and the subsequent claim of going to the police and then receiving the threatening letter. This is completely in accordance with what I have recorded above. The second aspect of the claim is

really a separate issue and can be considered as a general point. It is not apparent if the reference is specific to the Taliban or the general populace.

27. The following paragraphs in the decision indicate the way the case was presented. It suggests that the question of religion did come to the fore. This is reflected in paragraph 10 where the judge asked the appellant whether the caller, in asking him to 'join them' meant renouncing Christianity. The judge recorded the appellant's claim was he understood 'join us' as meaning joining the Taliban who could use his Christianity in its war effort. This is reinforced by the submission of Counsel which suggested the Taliban's thinking was to use the appellant as a Christian with the analogy of urinating outside the tent. Therefore, the claim has moved from that set out in the interview to one where the Taliban are seeking to recruit him because he is a Christian and as such could be of use to them in understanding their perceived opponent's standpoint. They were not trying to convert him back to Islam, albeit he never left Islam.
28. The judge rejects this as nonsense, referring to the incongruity of such a claim given that the Taliban are a terrorist Muslim group.
29. It is my conclusion from the above that the judge did follow the claim made. The judge in paragraph 6 accurately set out the claim made initially. However, the claim changed direction because of the appellant's evidence and the way the case was presented. My conclusion therefore is in line with the respondent's rule 24 response.
30. The second aspect of the appellant's claim was he would be perceived as being westernised because of his appearance. The judge recorded that the wearing western clothes is not an immutable characteristic. The reference to a bald assertion appears to relate to the comment that once someone is recognised as such this cannot be changed. In other words, that perception cannot be changed by the person, for instance, growing a beard or wearing traditional clothes. This accord with the respondent's policy document issued of January 2008 about Afghans perceived as westernised. The conclusion was that are not considered to form a particular social group within the meaning of the Refugee Convention. This is because they do not share an immutable or innate characteristic that cannot be changed and, in general, they are not perceived as different and do not have a distinct identity in Afghan society. Afghan society links a man's ability to provide for his family with his self-image and honour. Western and northern Europe hold high symbolic value and notions of successful migration are linked to personal and family honour and community standing. Consequently, there is no error in concluding the appellant's dress does not place him at risk
31. AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) was promulgated on the 23rd March 2018, three days before the hearing in this appeal. It confirms someone of low-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the

Taliban in Kabul. It held that in general it would not be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul. The particular circumstances of an individual applicant must be taken into account. In this instance, the appellant has his uncle and friends in Kabul and he is highly educated. Consequently, nothing has changed in relation to the conclusion that the 15 C risk is not established.

Conclusion

32. It has not been established that the judge misunderstood the case being made by the appellant. Rather, there was a change in the claim presented by the appellant and his representative at the appeal stage which the judge correctly addressed. The judge carefully considered the evidence and made an assessment on credibility, looking at matters in the round. The conclusion was that the claim was a fabrication. I find no material error of law established.

Decision.

No material error of law has been established. Consequently, the decision of First-tier Tribunal NMK Lawrence dismissing the appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge

Dated 14 May 2018