



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

Appeal Number: PA/05441/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17th January 2018**

**Decisions & Reasons Promulgated
On 26th January 2018**

Before

UPPER TRIBUNAL JUDGE COKER

Between

WAHEEDULLAH AMIN

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Oliveira-Agnew instructed by Middlesex Law Chambers
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant sought and was granted permission to appeal a decision by First-tier Tribunal judge Geraint Jones QC who dismissed the appellant's appeal against the decision by the respondent to refuse his international protection and human rights claims for reasons set out in a letter dated 25th May 2017. The grounds upon which permission was granted include that it was arguable the judge misdirected himself as to the confusion in dates because he failed to appreciate the appellant would have been working on the Afghan calendar and not the Georgian calendar; in his approach to credibility and by failing to undertake the appropriate proportionality exercise.
2. The basis of the appellant's international protection claim was that a relationship he had with a young woman which led to her becoming pregnant had resulted in her being killed by her family together with threats from the Taliban because he had worked for a western company; he had to flee.
3. The judge, in paragraph 3, says in relation to further submissions made, "Rather generously, the respondent treated this as a fresh asylum claim which it determined by its Decision Letter dated 25 May 2017". In paragraph 5 he says "I should also mention

that the appellant's case was put, with extreme and unrealistic optimism, on the basis of Article 8 ECHR seemingly with no regard to the fact that the appellant's sojourn in this country has been as somebody who entered clandestinely and after making an asylum claim chose to abscond and remain her illegally". The judge refers at length to the appellant's immigration history of absconding. Of course, it is appropriate and correct to take such matters into account when determining the credibility of an asylum seeker's account but the tenor of this determination is that of disbelief in anything the appellant has said. Great weight is placed upon different dates that the appellant put forward at different times. The judge refers to a confusing account and rejects the reliability of a letter from the appellant's claimed former employer.

4. Although the judge states that s8 of the 2004 Act is to be considered alongside other evidence as a whole, he nevertheless places this centre stage in his decision on the credibility of the appellant's account about his girlfriend when considered with the confusion of dates. The emphasis on different dates for events that occurred some 5 to 6 years ago is difficult to understand. Although each comment by the judge has an appearance of justification, taken overall there is a significant impression of bias arising from initial disbelief of anything the appellant claims. The overall decision on international protection is significantly tainted by the judge's disbelief irrespective of the possible merits of the claim.
5. In reaching his decision on Article 8, the judge does not consider s117A-D of the 2002 Act appropriately. He concludes that "it would be offensive to right thinking members of the public that any private or family life built up during the time when the appellant has wilfully abused and flouted the immigration laws of this country should be relied upon by him with a view to gaining an immigration advantage for himself". This is not the correct approach. That the appellant has been in the UK unlawfully is a factor to be taken into consideration but it does not outweigh, of itself, other factors that may have relevance including the possible dependency of his mother upon him.
6. I am satisfied the judge has erred in law in failing to adequately reason findings on international protection and to fail to address the Article 8 claim within the appropriate jurisprudential framework.
7. This is a case where primary findings of fact have to be made on detailed documentary and oral evidence and should therefore be heard afresh by the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit it to the First-tier Tribunal to be heard afresh, no findings preserved.



Date 25th January 2018

Upper Tribunal Judge Coker