



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06398/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12th July 2018

Decision & Reasons Promulgated
On 19th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR OMID KHAN SULTANZAI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Stevens, Counsel instructed by Fadiga & Co

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan whose appeal was dismissed by First-tier Tribunal Judge Hembrough in a decision promulgated on 2nd May 2018. The judge had concluded (paragraph 98) that the consequences of his return to Afghanistan would be unduly harsh. He had not been so satisfied in relation to his return to Pakistan. He dismissed the appeal on all grounds. The judge had concluded that the Appellant could acquire Pakistani nationality and he gave reasons for such a finding at paragraphs 61 to 67 of his decision.

2. Grounds of application were lodged. The first ground was an error of fact in relation to Pakistani nationality as the judge had misread what the Pakistani Citizenship Act 1951 had said about acquiring citizenship. Given that it had been proved that the Appellant's father was an Afghan national and that Pakistan did not recognise dual nationality with Afghanistan, this was an Appellant who was not entitled to Pakistani citizenship. The second ground was a failure to consider the Appellant's risk on return to Afghanistan and the judge should have made fuller findings about the risk the Appellant would face on return as an Afghan citizen. The judge did find that it would be unduly harsh for the Appellant to be forced to return to Afghanistan in paragraph 90 of the decision which was a reasonable finding given the circumstances. The findings in paragraph 90 should be upheld. Furthermore, the Appellant had provided a volume of evidence confirming the risk general returnees would face on return to his home area in Afghanistan of Nangarhar Province due to the threats from the Taliban and Islamic State in particular. The Appellant also argued that he faced an increased risk of suffering harm as a westernised former accompanied minor. The Appellant therefore argued that the judge should not only have considered whether the Appellant's return to Afghanistan was "unduly harsh" and should properly have considered the risk the Appellant would face in his home area and whether he could relocate. The findings of the judge that the Appellant could not reasonably relocate would be in line with the recent country guidance case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** which was promulgated after the Appellant's appeal was heard but before the decision of the Appellant's appeal was made and was rightly considered by the judge. The Appellant therefore argued that the judge should have found that the Appellant's characteristics would mean that he could not safely relocate to Kabul and because of the risks in his home area the Appellant should have been found to be at real risk of suffering persecution in breach of his rights under Article 3 ECHR.
3. Permission to appeal was granted for reasons given in the Grounds and it was noted that the judge may have materially erred in finding that the Appellant was entitled to be registered as a citizen of Pakistan.
4. Thus the matter came before me on the above date.
5. For the Appellant Mr Stevens relied on the grounds and said that the judge had given clear reasons why it would be unduly harsh for the Appellant to be returned to Afghanistan. The decision should be set aside and the appeal allowed without the need to hear any further evidence.
6. For the Home Office it was agreed that the findings of the judge that the Appellant could apply for Pakistani nationality were not sustainable based on the evidence placed before the judge. This was a case where no Rule 24 notice had been lodged by the Home Office and there was no challenge to the findings made. The judge had referred to country guidance and properly applied the case of **AS**. In all the circumstances there was no objection to the decision being set aside and the appeal allowed on asylum and human rights grounds.

Conclusions

7. It does seem clear enough (and it was agreed by the parties) that the judge's findings that the Appellant could successfully apply for Pakistani citizenship are unsound. The 1951 Act says that only those persons whose father was a citizen of Pakistan would be conferred citizenship if they were born in that country. It is not disputed that the Appellant's father was an Afghan national. Accordingly, the judge erred in law in concluding otherwise and that the Appellant could be safely returned to Pakistan because he was entitled to be a national of that country.
8. The judge gave very sound reasons for finding that it would be unduly harsh for the Appellant to be returned to Afghanistan, primarily because of his medical wellbeing.
9. Given the concession of the Home Office it is not necessary to make any further findings about safety in his home location or whether it would be unduly harsh for him to have to relocate to Kabul.
10. It therefore follows that the decision should be set aside and remade allowing the appeal under the 1951 Convention and Article 3 of the ECHR.

Notice of Decision

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
12. I set aside the decision.
13. The appeal is allowed on asylum and human rights grounds.
14. No anonymity order is made.

Signed *JG Macdonald*

Date 18th July 2018

Deputy Upper Tribunal Judge J G Macdonald