



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09552/2017

THE IMMIGRATION ACTS

Heard at Field House
On 18th June 2018

Decision & Reasons Promulgated
On 14th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Mr. H A
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr. E. Fripp, Counsel, instructed by Hoole and Co Solicitors
(Brighton Street)
For the respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Afghanistan. He came to the United Kingdom on 19 September 2014 and claimed protection on 4 November 2014. The respondent refused this on 2 February 2015. His age was disputed. Following

assessment the respondent concluded he was at least a year older than claimed and settled on 1 July 1999. Given his accepted age he was granted leave to remain to adulthood.

2. The basis of the claim was that he was at risk from the Taliban because his father had been involved with the Arkadi, an Afghan tribal system which provides local policing. His father disappeared in November 2013 and the appellant had been living with his paternal uncle who was a police officer. He had a younger brother and sister.
3. The respondent refused his application. His appeal was heard by First-tier Judge O'Rourke and was dismissed. The appellant did not attend.
4. Further representations were received on 20 December 2016, led by a medical report on the appellant's mental health. The respondent did not change the decision.
5. His appeal against that decision was heard by First-tier Judge Frazer at Newport on 16 January 2018 and, in the decision promulgated on 14 February 2018, was dismissed. It is this appeal which forms the basis of the present proceedings.
6. At the hearing before Judge Frazer he was treated as a vulnerable witness. It was submitted on behalf of the respondent that there was no evidence his father had been involved with the Arkadi. It was also noted that his siblings remained in Afghanistan without apparent difficulty. He had given an inconsistent account as to how often the Taleban had approached him. His uncle was the head of the police in Kunduz and so should be in a position to help the appellant on return. Regarding the psychiatric report provided, it was pointed out that there could have been other reasons leading to the diagnoses. The report was not compliant with the Istanbul Protocol. There would be medical treatment available in Afghanistan.
7. On behalf of the appellant it was pointed out that First-tier Judge O'Rourke had not had the benefit of hearing from the appellant and so it was not a true Devaseelan decision. Reference is made to the country expert report produced.
8. First-tier judge Frazer had accepted the appellant's identity. Regarding his evidence, the judge found that he had changed his account between the interview and the oral evidence as to how often he was approached by the Taleban. The judge found this to be a significant inconsistency affecting his credibility. In doing so, the judge said regard is had to the fact he was a minor at the time of the interview. However, by the time of his oral evidence he was over 18. The judge found the inconsistencies could not be accounted for by his age or lack of understanding. Regarding the Devaseelan principles. The

judge acknowledged that the appellant had not attended the earlier hearing and accepted his explanation from non-attendance was plausible, namely, he was unaware of the hearing and his representatives no longer acted.

9. Regarding the underlying claim the judge at paragraph 29 rejected his account. Reference was made to the significant inconsistency in his account about the number of times the Taleban came to his house. The judge did not accept his explanation that this was an interpretation error. In this regard the judge followed the finding of Judge O'Rourke. The judge also noted his siblings were able to remain in Afghanistan. The judge referred to the country expert report but concluded this did not assist with regard to credibility. The judge referred to his lack profile. Reference was made to his delay in claiming and provisions of section 8 (4) of the Asylum and Immigration (Treatment of Claimants) Act 2004.
10. At paragraph 30 the judge referred to the country guidance decision of AK(Article 15 (c)Afghanistan CG[2012]UKUT 00163, which found there was no general article 15 (c) risk in Afghanistan. The judge saw no reason to depart from the country guidance. The judge had regard to the country expert and the material provided on behalf of the appellant but decided to determine matters in line with the extant country guidance. The judge did acknowledge that the Kunduz area is under Taliban control.
11. The judge referred to the medical report and the appellant's statement that he would self harm. The judge did not see the situation approaching the high threshold required for the appellant to succeed on this.

The Upper Tribunal

12. Permission to appeal was granted on the basis that it was arguable the judge failed to adequately assess the risk, including the danger of indiscriminate violence. Furthermore, it was arguable the judge failed to take into account the viability or otherwise of internal relocation. The appellant's mental health had not been adequately considered.
13. Mr Fripp pointed out the first appeal went ahead without the appellant's knowledge. He argued that the negative credibility findings were not sustainable. He comes from a contested area and there was a 15 (c) risk in his home district. That being the case the judge did not adequately deal with the medical evidence and the impact upon his ability to cope in a new area, such as Kabul. I was referred to the new country guidance decision in respect of Kabul at paragraph 241. Mr Fripp submitted the matter should be remitted to the First-tier Tribunal for a de novo hearing.
14. In response, Ms Everett accepted there were deficiencies in the decision with regard to internal relocation but the negative credibility findings were

sustainable. She suggested the relocation issue could be dealt with at a later stage in the Upper Tribunal.

Conclusions.

15. Both representatives are in agreement that the judge did not deal adequately with the reasonableness of relocation. In this context, the psychiatric report is relevant. However, I cannot see any reason for interfering with the negative credibility findings in respect of the underlying claim. The judge has given clear reasons for these. There was no need to go into great detail because the claim was straightforward. The judge referred to the discrepancies about how many times the appellant was approached by the Taleban. There was also the point that his siblings remained in Afghanistan and apparently they were not only risk. Furthermore, his uncle as a police officer should be in a position to help.
16. I find that the negative credibility points can be preserved in the decision. The reasons are adequately set out in paragraph 29. However, the question of relocation was not adequately dealt with. On balance, particularly to convenience the appellant and his representatives, this should be heard in the First-tier Tribunal as requested by the appellant's representative.

Decision.

The decision of First-tier Tribunal Fudge Frazer materially errs in law as relocation was not adequately dealt with. The appeal is remitted to the First-tier Tribunal for a rehearing on this issue. Given the ever-changing situation the question of the prevailing 15 (c) risk can be raised but not the underlying claim .

Francis J Farrelly
Deputy Upper Tribunal Judge

Date 5 August 2018

Directions.

1. Relist in the First-tier Tribunal at Newport, excluding First-tier Judge O'Rourke and First-tier Tribunal judge Frazer .
2. The findings of First-tier Tribunal judge Frazer that the underlying claim made was not credible shall stand. Instead, the First-tier Tribunal in rehearing the appeal should focus upon any changes to the 15 (c) situation and the reasonableness of relocation, for instance, to Kabul. This will include consideration of the medical report produced plus any other evidence about how he has coped in the United Kingdom.
3. The appellant's representatives should prepare an up-to-date bundle setting out the general country situation and the condition in particular in Kabul. Any country information specific to the appellant's uncle or documentation should be provided.
4. A Pashtu interpreter will be required.
5. It is anticipated the hearing would last under two hours.

Francis J Farrelly
Deputy Upper Tribunal Judge