



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01418/2019

THE IMMIGRATION ACTS

Heard at Field House
On 5 August 2019

Decision & Reasons Promulgated
On 26 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS

Between

AB
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Ms V Easty, Counsel, on behalf of Elder Rahimi Solicitors

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Bowler ('the judge'), promulgated on 17 April 2019, dismissing the appellant's appeal against the respondent's decision to refuse his asylum, humanitarian protection and human rights applications.
2. The appellant is a citizen of Afghanistan. He appealed against the decision of the respondent to refuse him asylum based upon his claimed well-founded fear of persecution as a result of threats and imputed political opinion; and in terms of there being substantial grounds for believing he would face a real risk of suffering serious harm on return from the UK under paragraph 339C of the Immigration Rules; and under Articles 2, 3 and 15(c) of the European Convention on Human Rights.
3. The judge made the following findings (which I do not understand to be in dispute): the appellant arrived in the UK [on 29 December 2016] when he was 17 years of age; he was born and grew up in Afghanistan; he was one of several children in his family; the appellant's father had a role within the former Afghan President's staff; the appellant's father fled Afghanistan in the mid to late 1990's and was granted refugee status in the UK.
4. The appellant's father sadly passed away shortly before the appellant's arrival.
5. The judge heard the appeal on 14 March 2019, dismissing each element of the appellant's claim.
6. An anonymity direction was made by Judge Bowler and I extend that direction for the purposes of these Upper Tribunal proceedings.
7. On 13 June 2019, the appellant's representatives renewed their application for permission to appeal to the Upper Tribunal. They did so on three grounds:
 1. error in evaluation of evidence considering risk on return;
 2. error of fact resulting in error of law;
 3. failure to assess the appellant's claim in the round; procedural unfairness.
8. In granting permission to appeal, Upper Tribunal Judge Blum stated:
 1. It was arguable (ground 2) that the First-tier Judge failed to take account of relevant evidence when stating that neither A nor B had left Afghanistan.
 2. It was also arguable (ground 3) that the First-tier Judge failed to consider the appellant's evidence in his asylum interview relating to B's work as an interpreter with the Americans.

3. Although ground 1 is less meritorious (it is essentially a disagreement with the First-tier judge's factual findings), it is appropriate to grant permission on all grounds.
9. It is against this background that the appeal was listed before me.
 1. *Failing to take account of relevant evidence when stating that neither A nor B had left Afghanistan*
10. In short, this ground fixes upon what is said to be a factual error. At paragraph 46 of the determination the judge states:

"46. The appellant claims in his February 2017 witness statement at page E-13 that his mother has told him that Taliban members have looked for him since he left Afghanistan. There was no claim that he was previously sought by the Taliban and there is little reason why they should now seek him after he has left the country. There are other obvious family members such as A and B for the Taliban to act against. He has not described either A or B as having left Afghanistan."
11. It is the final sentence that is the force of the objection. It is submitted that the judge's statement that the appellant 'had not described either A or B as having left Afghanistan', was wrong and material to the judge's assessment of risk on return.
12. By way of background, and for the purposes of this decision, 'A' is the appellant's brother, and 'B' is the appellant's cousin. The appellant's case was that both A and B had been threatened by the Taliban as a result of their employment.
13. It is apparent from the appellant's latest witness statement, dated 26 February 2019, that he now understands the situation to be as follows:

'24. I don't know for sure, but I think that my brother A may be in Iran. When I was in France, I received a telephone call from my maternal cousin, C. During this conversation C told me that A is currently in hiding in Iran and he doesn't know what his plans are. This is the last news I have heard about A.'
14. Further, the appellant stated at questions 90 and 91 of his asylum interview in 2017 that he had found out while in France that his brother had called C and was in Iran, but he did not know if he had remained there or travelled on to Turkey.
15. The further difficulty is that the judge appears to link her observation that the appellant had not described either A or B as having left Afghanistan, to the statement that '*There are other obvious family members such as A and B for the Taliban to act against*'. This suggests that she believed A and B were still in Afghanistan.

16. It is arguable therefore that the judge has made a factual error, or at least has not considered all of the evidence in the round and the balancing exercise required, in coming to her conclusion that the appellant had not described A or B as having left Afghanistan.
17. I frame it in such a way and with a degree of caution because it is necessary to consider the complete picture. The question that arises is, if there has been a factual error, whether such an error constitutes a material error of law. I am satisfied that it does not.
18. First, the judge was aware of the appellant's account in terms of his brother. In a letter, dated 5 September 2016 (which the judge acknowledges must be treated with considerable caution) the appellant states that after his sister was killed '*my brother left the city and settled in Kabul where he still lives*'. In a more recent statement, the appellant says the assertion about his brother living in Kabul was incorrect. Importantly, this is something the judge acknowledges (para 49). She was therefore aware of the change in account. She was also aware (para 43) that the appellant's case was that A '*moved to Kabul before leaving the country*'. To that extent, the judges comment at paragraph 46 appears ambiguous.
19. This is particularly so, as second, in his statement at page E-9 to E-13 of the respondent's bundle, dated 30 January 2017, the appellant does not describe either A or B as having left Afghanistan. His statement is silent in terms of their whereabouts, other than a passing reference to his brother deciding to leave the family home. If paragraph 46 is read solely as a reference to his original statement, then on one view it is correct.
20. Third, in relation to B, as far as I can ascertain the appellant does not provide any definitive information or explanation as to where B may now be located; and I cannot see in the submissions I have received any reference to his situation. The whereabouts of B did not feature in the asylum interview. The criticism levelled at the judge therefore cannot be levied in relation to B. The judge's statement stands good to that extent.
21. Factual findings, plausibility and credibility are inevitably interrelated when it comes to assessing risk on return. I cannot say that this one sentence causes any material error to arise in terms of the overall reading of this decision. The judge was correctly focused on this appellant and the risk on return posed. She was aware that the appellant claimed his brother had left Afghanistan, but she was satisfied that the appellant had not been threatened and was not at risk from the Taliban or any other insurgent groups.
22. I return to this below, when I come to look at the appeal grounds collectively.
 2. *Failure to consider the appellant's evidence in his asylum interview relating to B's work as an interpreter with the Americans.*

23. This second ground focusses upon the appellant's explanation about B's work as an interpreter for NATO/the Americans.
24. The judge states as follows:

“35. The appellant's cousin, B, worked at [the] airport. The appellant understands that B worked with Americans at the airport, but he was not aware of any details of Bs work at the time of his asylum interview. The most that the appellant could say in his asylum interview was that B went to work in a car with blacked out windows, which given that the appellant says such cars are generally prohibited, is a surprising claim given that it would have drawn considerable attention to B.

36. Later in his witness statement of 26 February 2019, the appellant says that B works as an interpreter for NATO, but he has not explained how he knows this. Given that he is legally represented, I would have expected this to have been explained.”
25. In short, the judge was not satisfied, even applying the lower standard of proof, that the appellant's brother and cousin worked for NATO at the airport. She found that the appellant must have lived close to B and, given the close community the appellant had described, there were plausibility issues raised by his claim that his brother and B were going to work for NATO at the airport when neither the appellant nor his mother had at the time been aware of this; (or, for that matter, the Taliban, who it appears were unaware of any link between the appellant's brother and his cousin when they approached him in July 2015).
26. It is submitted on behalf of the appellant that the judge failed to appreciate the appellant had stated in his asylum interview that B worked with the Americans as an interpreter at [the] airport. At questions 73 and 74 of the asylum interview, the appellant does state that B works with the Americans as an interpreter 'or maybe other jobs for them'. *'I don't know personally I have not been there. He has been working there for a long time, he is a grown-up boy. Probably doing it for four years or more'*.
27. The question of whether B, or for that matter A, worked as an interpreter at the airport was entirely a matter for the judge to consider. The point, if one can put it that highly, was that the appellant had identified early on that his cousin worked as an interpreter, and therefore this was not a recent disclosure by the appellant.
28. The judge, it appears to me, in circumstances where the account appeared vague, was entitled to have reservations about how the appellant became aware that B worked as an interpreter. She has stated that he does not say how he knows this, beyond the bare assertion in his most recent witness statement that B was an interpreter for foreign soldiers in Afghanistan: *'He interprets for NATO. In Afghanistan if you work with foreign soldiers you are an enemy to the Taliban and so is your family'*.

29. The judge was entitled to assess the credibility of this account. She had the benefit of hearing from the appellant directly. She finds that the appellant had embellished his case in some respects. She makes the point that leaving home in a special car may have drawn considerable attention to B, and for that matter the appellant's brother. She finds this curious bearing in mind they were all living in close proximity, that it was claimed B had been doing this for 4 years, and yet it never came to light what he actually did until the letter from the Taliban in September 2015. It is apparent that the judge was concerned about the plausibility of the appellant's account, together with other inconsistencies.
30. The second difficulty for the appellant is that the judge goes on to state that even if B and A were working for NATO at the airport, which she clearly doubts, she still finds there to be little basis for the appellant's claim to be at risk upon return.
31. The judge finds that the appellant was not subject to threats, that any general threat to members of the family had been shown to be baseless and that no harm had come to any other family member. She finds the letter produced at the time of his departure from France (referred to as 'the Calais letter') was remarkably accurate in some respects, and while the letter does record reasons for the appellant leaving Afghanistan, it does not mention threats from the Taliban when describing the situation in Afghanistan.
32. It appears to me that these are all conclusions the judge was entitled to reach for the reasons she gives. The judge is not required to give reasons for her reasons. The judge had the advantage of hearing from the appellant and I would be slow to interfere with findings of fact unless there was good reason to do so. I am not persuaded in the instant matter that those good reasons exist. (I observe, but no more, that when asked in interview whether or not the Taliban were interested in harming his family because of B's occupation, the appellant replied: *'No not because of B's job but because of the fact that my father worked for [the President] and my brother himself worked. Probably they think that my father here in London works with the British government, that is why.'*)
33. The appellant's representative further advances that the judge makes no allowance whatsoever for the appellant's age and vulnerability. I disagree. It is apparent from the outset of the determination that the judge has in mind the appellant's age and the distressing events leading up to the appellant's claim for asylum. She made reasonable adjustments and sensitively handled the appeal in terms of evidence. The judge has appropriately followed Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance and the principles enshrined in *AM (Afghanistan) v Secretary of State for the Home Department*, [2017] EWCA Civ 1123.
34. The judge was fully aware that the appellant was a child when he arrived in the UK and she states in terms that she 'assesses and evaluates his evidence with his level of maturity in mind'. She was also aware of his health issues and

recognises the appellant's vulnerability throughout the determination. Having read the decision, in my view there is nothing in this point.

3. *Error in evaluation of evidence considering risk on return*

35. I remind myself that permission to appeal to this Upper Tribunal may only be granted in relation to an arguable error of law, and not simply in relation to a disagreement over findings of fact.
36. The appellant's representative asserts that in assessing the appellant's credibility, the judge raises plausibility issues in relation to the actions, or inactions, of the Taliban in certain scenarios and thus falls into error by basing her conclusions on what the reasonable persecutor would do and places undue weight on the plausibility of the actions of others.
37. I disagree. The judge is not basing her conclusions on what the reasonable persecutor would do, rather she is basing her conclusions on the evidence that was presented to her. She is entitled to take a view about that evidence. It was open to her to find that the appellant was not at risk because there had been no past persecution and it was not accepted that his brother and cousin were interpreters for the American forces. While the representative may disagree with the reasons that she gives, I do not find them to be in error of law.
38. For example, the representative is correct to suggest that the reasoning the judge gives included that the appellant was not subject to threats. That was his evidence. The judge has correctly identified that the appellant stated he cannot return to his province because members of the Taliban who threatened his brother may also threaten him. I do not read anything into the underlining of the word 'may' other than the judge was emphasising that the appellant was not making a definitive statement. The judge goes on to develop other reasons why she does not consider the appellant to have been threatened or to be at risk from the Taliban. That was the test she was considering, and this was but one ingredient in the overall case.
39. Nor can I say that the judge has in some way strayed from the question that the court was dealing with. She deals with the risk. She deals with it adequately. She gives her reasons. The fact that another judge may have taken a different view or that the representative may disagree with those reasons is not a ground for overturning this decision unless more can be shown. I reject the suggestion that the judge has not taken into account the country background evidence. Within the body of her decision she includes some of the country policy and information notes and country guidance she found to be relevant. The judge was aware of the background evidence.
40. The judge, applying the appropriate standard, was not satisfied that the appellant was a family member of an interpreter, nor that the appellant's family worked with foreign troops. To that extent the objective evidence that the appellant is said to rely on has little application.

Conclusion

41. I am less than persuaded that any of these points have merit. Looking at all three grounds cumulatively, I cannot see that they reveal a material error of law. I am not prepared to assume the judge made a material error just because every factual finding is not fully set out.
42. In my view, the judge has made adequate findings of fact, adequately applied the law, and adequately provided her reasons.
43. In the circumstances, the decision must stand.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal sitting in Hatton Cross, London promulgated on 17 April 2019 under reference PA/01418/2019 is upheld.

The anonymity direction made by the First-tier Tribunal is preserved in this appeal.

Signed



Date 24 September 2019

Deputy Upper Tribunal Judge Sutherland Williams