



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

Appeal Number: PA/02590/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 6th March 2019**

**Decision & Reasons Promulgated
On 01st April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**M S K A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Rylatt, Counsel, instructed by Hasan Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a national of Afghanistan, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 8th February 2018 to refuse his application for asylum, humanitarian protection and leave to remain on the basis of his private and family life under Article 8 of the ECHR. First-tier Tribunal E M M Smith dismissed the appeal in a decision promulgated on 3rd January 2019. The Appellant appeals against that decision with permission granted by Judge M Haria on 29th January 2019.

The Background to this Appeal

The Appellant claims that he lived in Afghanistan with his parents and two younger siblings, that the Taliban came to his home in June or July 2011 and took his father away and that he later heard that his father had been killed by the Taliban and that the Appellant's life was in danger as the eldest child. The Appellant entered the UK on 12th October 2011, when he was aged 11. The Appellant was placed with a foster family. His application for asylum was refused but he was granted discretionary leave to remain valid until 1st July 2017. He did not appeal against the decision to refuse asylum. On 29th June 2017 he applied for further leave to remain. The refusal of that application is the subject of this appeal.

He has been in a relationship with a British citizen, for a number of years. They claim that they conducted an Islamic marriage in November 2018. The Appellant claims that his wife's family opposed the relationship and assaulted the Appellant and that he and his wife were under police protection and had moved to London from the Midlands for safety reasons.

The judge considered the Appellant's asylum claim but found that he was not credible and did not accept that the Appellant was or is of any interest to the Taliban and did not accept his account of events in Afghanistan to be reliable. The judge considered the issue of internal relocation and concluded that the Appellant could return to Kabul. The judge went on to find that the Appellant had not established that he was at risk of serious harm under Article 15(c). The judge considered Article 8 and found that the Appellant could not satisfy the provisions of paragraph 276ADE(1)(vi) of the Immigration Rules, nor could he establish that his removal would breach Article 8 of the ECHR.

That decision is challenged on the basis of three grounds.

It is contended in the first ground that the judge erred in failing to account all relevant considerations in addressing the Appellant's asylum claim, namely the impact of his wife's proposed relocation to Afghanistan. It is set out in the grounds and is not in dispute that at the hearing during cross-examination the Appellant's wife said that she would go to Afghanistan with the Appellant if he were returned there. It is contended in the grounds that the judge erred in failing to recognise the possible risks to the Appellant that arise from returning to Afghanistan with her, given that she would be identified as a Westerner.

In his submissions, Mr Rylatt contended that the mere fact of being a Westerner gives rise to a wholly separate risk. I pointed out to Mr Rylatt that any risk arising from the Appellant's wife being a British citizen was not put to the First-tier Tribunal. He referred to his skeleton argument before the First-tier Tribunal and I pointed out that this issue was not raised there. He submitted that he had only found out on the day of the hearing that the Appellant was married to a British citizen and it was only in cross-examination that it became apparent that she would return to Afghanistan with him but it is clear that this was a key factor in the judge's decision.

The issue of Westernisation is dealt with in the case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** as follows:

“Risk due to westernisation

1. The EASO Country of Origin Information Report “Afghanistan – Individuals targeted under societal and legal norms” (December 2017) includes a specific section on targeting of Afghan returnees on the basis of ‘Westernisation’ following time spent in Europe or Western countries. Their broad conclusion on this is as follows:

“Documented instances of individual targeting of returning Afghans on the basis of ‘Westernisation’ due to having travelled in or lived in Europe, holding Western ID documents, or adopting ideas that seem to be ‘un-Afghan’, ‘Western’ or ‘European’ following time spent outside Afghanistan were scarce. Varying descriptions by sources indicated that there were ‘occasional reports’ of alleged kidnapping and targeting, or, that not everyone is at risk, but it ‘does happen,’ though the scale and prevalence is ‘difficult to quantify’, or, that targeting does not specifically occur because of having sought asylum or having travelled to Western countries.”

2. Dr Schuster, in oral evidence stated that after a person has been out of Afghanistan it would be relatively easy for them on return to change their physical appearance so as not to stand out. However, it would be more difficult to change values and attitudes that have been learnt and developed whilst away from Afghanistan. A person would have to monitor and self-censor their behaviour on return. An individual’s capacity to self-censor would depend upon their maturity, their mental health and their ability to be astute about the social surroundings in Afghanistan, being able to pick up on what it is inappropriate to say and to do.
3. Dr Schuster also referred to the assumptions that people make about those who have been away from Afghanistan about their lifestyle, and question whether they have retained their Islamic faith, drink alcohol, or have relationships with women for example. The EASO report “Afghanistan – Individuals targeted under societal and legal norms” also refers to perceptions of those on return, including concern that returnees fear being labelled by insurgents as spies and a perception by others that an individual would be wealthy having accumulated funds abroad with the consequent fear of kidnapping for ransom for this reason. There is however very limited evidence of kidnapping other than isolated cases.
4. The EASO report “Afghanistan – Individuals targeted under societal and legal norms” does not find any agreement from its sources of a collective or consistent attitude toward ‘Westernisation’ in Afghan society. There are references to broader Western influence on Afghan society in recent decades due to the international military presence and the increasing popularity, particularly amongst young Afghans, towards Western trends and influences (such as fashion, entertainment and tattoos). There are however strong conservative views held amongst individuals, family groups and wider communities.

5. Both Dr Schuster and the EASO report “Afghanistan – Individuals targeted under societal and legal norms” refer to the risk of someone saying the wrong thing at the wrong time, even in Kabul (which generally has a higher tolerance for westernisation than rural areas) which would not necessarily, but may, cause difficulties and because a person has returned from the West could be used against them with accusations made. Further, the sources both refer to the need for guidance on Afghan cultural norms to those who have been absent from the country and the importance of family, friends or connections to support their understanding of the limits and boundaries of societal norms and behavioural expectations.”

It is clear to me in this case that the issue raised in the Grounds of Appeal was not put to the judge in the way expressed in the grounds. It was not put to the judge that there would be any specific additional risk on internal relocation based on the fact that the Appellant’s wife is a British citizen. In any event the judge considered the matter of Westernisation as covered in the expert report at paragraph 28 and found that it had not been established that there was an objective fear based on Westernisation. Further, it is very clear, reading the asylum section as a whole, that the judge did not accept the Appellant’s claim to be credible and therefore did not accept that the Appellant is at risk in his home area. Therefore, any assessment of internal relocation was an alternative finding. Even if the judge made an error in relation to internal relocation, which I do not accept, this is not material and does not undermine the judge’s findings in relation to the asylum aspect of the claim.

I note that the judge’s findings in relation to asylum outside of the internal relocation issue have not been challenged. In these circumstances, there is no material error in relation to the approach to internal relocation.

It is contended in the second ground that the judge failed to take into account all relevant considerations in assessing the Appellant’s claim under paragraph 276ADE(1)(vi) and/or failing to provide adequate reasons for the refusal of his claim. The judge considered paragraph 276ADE(1)(vi) at paragraph 44 of the decision where he said: *“However, having concluded that the Appellant can internally relocate to Kabul I am satisfied he cannot satisfy the provisions of paragraph 276ADE(1)(vi).”*

Mr Rylatt contended that that test in relation to internal relocation, which is whether it would be unduly harsh to relocate, is different from the test in 276ADE(1)(vi), which is whether there would be very significant obstacles to reintegration. In his submission, the issue of Westernisation would be relevant to reintegration as would the Appellant’s mental health and the fact that he has no contact with his family.

I accept that the judge’s consideration of this issue was brief. However, in my view, it is sufficiently clear that he had all relevant matters in mind when considering whether there would be very significant obstacles to the Appellant's integration in Afghanistan. At paragraph 11 he set out the evidence as to the relationship which he clearly had in mind. At paragraph 29 he set out

the evidence of the Appellant's wife that she would return to Afghanistan with him. At paragraph 30 the judge listed factors related to the Appellant in terms of his presence and progress in the UK which would serve him well in the future. At paragraph 32 the judge considered the factors as to risks in Afghanistan and the fact that the Appellant would be returning there with his wife and concluded that the Appellant could return to Afghanistan.

I accept that the judge appears to have been mistaken at paragraph 32 where he said that the Appellant indicated a desire to trace his family through the Red Cross but there was no evidence that the trace was actually undertaken. In fact, at pages 16 to 18 of the supplementary bundle there is a letter from the Red Cross (undated) which states that with the details given the Red Cross had been unable to obtain any information from any of the sources given regarding the present location of his relatives. However, I note that the letter from the Red Cross clarifies that, even though they had been unable to find the person sought, it did not mean that the relative could not be traced through other channels.

Mr Rylatt further contended that the judge failed to take into account the Appellant's mental health in relation to 276ADE (1)(vi). However, in my view, there was limited evidence before the judge of the Appellant's mental health.

Mr Rylatt also referred to the Appellant's supplementary witness statement where he described the dispute with his wife's family and stated that his foster mother had to resign as his carer for his and her own safety and protection and said that this had caused him a lot of distress and heartache. He also referred to the Appellant's second witness statement in the first bundle where he said at paragraph 29 that he was depressed and worried about his future and was losing sleep and having nightmares and had been prescribed medication from his GP to help him relax and sleep (statement of 22nd May 2018). He also pointed to a photocopy of medication at pages 85 to 86 of the Appellant's bundle. However the Appellant's own assertion and a list of medication is not adequate evidence on which to make sustainable findings as to the Appellant's mental health. In these circumstances, I do not see how the judge could have attached any significant weight to this matter.

Mr Rylatt relied on the case of **IA (Somalia) v Secretary of State [2007] EWCA Civ 323** and submitted that it could not be said that consideration of these issues would not have made a difference to the judge's conclusions in the case. In any event, he submitted that the judge had failed to give adequate reasons for his conclusion in relation to 276ADE(1)(vi).

In my view, the judge's consideration of this issue was adequate on the basis of the evidence before him and the case put to him. The specific issue of risks arising from Westernisation in relation to the Appellant's wife was not put to the judge and Mr Rylatt did not highlight any evidence before the judge which could have led him to any other conclusion on this matter. In these circumstances, the judge was entitled to reach the conclusions raised at paragraph 44.

It is contended in the third ground that the judge failed to apply a structured analysis in relation to Article 8. I accept that the judge's analysis of Article 8 outside the Immigration Rules at paragraph 45 is brief. However, the judge accepted that there is family life between the Appellant and his wife but took into account the very significant evidence from her that she will go to Afghanistan with the Appellant if he is returned there. The judge noted that the Appellant has no other family life over and above that with his wife. In my view, this was a conclusion open to the judge on the basis of the evidence.

It appears from the decision that the evidence before the judge at that time was that the Appellant and his wife were living in London, away from his foster family and her family because of the dispute with her family as to their relationship. Mr Rylatt referred to the factors set out in paragraph 35 of his skeleton argument before the First-tier Tribunal. However, these include the family bonds with the foster mother and he accepted that at the time of the hearing in the First-tier Tribunal the Appellant had moved away from his foster family. The skeleton argument highlights the Appellant's relationship with his wife, which was taken into account by the judge. The other factors highlighted are factors under Section 117B of the 2002 Act. However, these too were taken into account by the judge. The list also identified the Appellant's friendships with friends from school. However, I note that the evidence before the judge was that, at the time of the hearing, a number of the Appellant's friends had turned against him and started harassing and causing problems for him as a result of his relationship (the Appellant's witness statement of 29th November 2018 and that of his wife of the same date).

Mr Rylatt submitted that there was evidence before the judge that there were cultural and ethnical difficulties between the couple which had caused tension in the UK (Appellant's wife's statement of 29th November 2018) and that it could be extrapolated that there would be cultural and ethnical difficulties in Afghanistan. However, this was not the evidence before the judge and I do not agree that it could be extrapolated from the evidence before him.

Accordingly, in my view, the judge's conclusions in relation to Article 8 were open to him on the basis of the evidence.

In my view, the grounds amount to disagreement with the judge's conclusions on the case as put to him. The judge considered all of the evidence and reached findings open to him in relation to the asylum claim. In fact, these have not been challenged. The judge did not have to go on to consider internal relocation but did so. However the factors considered in that assessment were factors which fed into the assessment of paragraph 276ADE(1)(vi) and Article 8 and I find that it was clear that the judge had those factors in mind in reaching those conclusions.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law. The decision of the First-tier Tribunal will stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.

Signed

Date: 27th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed. Therefore, there is no fee award.

Signed

Date: 27th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes