



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03905/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 12 April 2019

Decision & Reasons

Promulgated

On 08 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR T M O (TO)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Fitzsimon of counsel

For the Respondent: Ms Kiss, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Afghanistan who is assumed to have been born on the 1st January 1997.
2. He appeals to the Upper Tribunal (UT) with the permission of First-tier Tribunal Judge Saffer on 12 February 2019.

Background

3. The appellant arrived in the UK on 25 December 2017 having travelled through Iran, Turkey, Bulgaria, Germany and France. He claimed to have been threatened by the Taliban whilst serving as a prison guard at a detention centre in Kabul and to fear them on return, but the respondent did not accept his account. It was not accepted that he was either a police or prison officer or that he would not have been targeted by the Taliban, as he claimed. His account was found to have been incredible for several reasons more fully set out in the refusal letter dated 2nd March 2018. In addition, protection would have been available to him from the authorities in Afghanistan, if he chose to avail himself of it. Finally, if the appellant had been a refugee he would have been able to avail himself of an internal flight alternative to seeking international protection by moving to a different part of Kabul, which was generally safe, or, if not, to a different part of Afghanistan. Accordingly, the respondent refused his asylum claim on 2 March 2018.
4. The appellant appealed that refusal to the First-tier Tribunal (FTT). However, First-tier Tribunal Judge Abebrese (the judge) dismissed his appeal. His decision was promulgated on 27 December 2018.
5. The appellant appealed to the UT on 10 January 2019 because he said that there was no/no adequate evidence to support some of the findings, the adverse credibility finding in relation to the failure to claim asylum *en route* was flawed because several of the countries were not “safe countries” and the judge had failed to make adequate findings on the appellant’s age, which had been a material matter. Additionally, the judge was said to have made other findings without there being evidence to support them.

The UT hearing

6. At the hearing I heard oral submissions by both representatives and at the end of the hearing reserved my decision.
7. Miss Fitzsimon outlined her grounds as follows:
 - (i) There is no reason why the Taliban would be any less likely to target a prison guard than a police officer;
 - (ii) The judge had mistakenly referred to Iran and Turkey as being “safe countries” within the meaning of section 8(7) of the Asylum (Treatment of Claimants) Act 2004 (2004 Act), when in fact they were not and there were problems with claiming asylum in Bulgaria where the authorities took a tough line on would-be refugees;

- (iii) The judge had found the appellant to have been 15 at the date of his alleged application for/admission into, the police, which made his account incredible, rejecting a document known as a "Taskira" which suggested that he was in fact 26 at that date. Therefore, the judge concluded, the appellant could not have been old enough to join the police when he said he had. The judge's findings would result, Ms Fitzsimon said, in the appellant being aged 22 at the date of the hearing in 2018 when in fact he was then in fact 33 at that point in his life;
 - (iv) The judge had not given adequate reasons for not being of interest to the Taliban. The judge had been wrong to conclude that the Taliban did not have the capability of pursuing the appellant.
 - (v) The conclusion that the appellant could seek protection in Kabul was contentious according to Ms Fitzsimons and was inconsistent with the case of **CG**. She accepted that ground 6 overlapped with ground 5 as the issue of the safety of relocating to Kabul also arose on the issue of internal relocation.
 - (vi) Finally, the judge was criticised for failing to deal adequately or fully with the prevalence of indiscriminate violence in Afghanistan including Kabul.
8. On the other hand, Miss Kiss submitted that the judge had been entitled to accept the evidence of the appellant established that the appellant had been perfectly safe whilst in Germany and France. Although the appellant had claimed to have a cousin in UK, this had not been established. The appellant to reasons for coming to the UK therefore could not be established either the appellant has been no less than a month in France wished to come to the UK at all costs stop she referred to paragraph 29 of the decision where the judge preferred in full to the appellant's failure to claim asylum en route UK and gave cogent reasons rejecting the explanation given, for example, that the appellant had been "quite scared" that the German authorities were "deporting quote. The judge made reference to the appellant's interview and in particular the screening interview. Ms kiss also pointed out that the appellant had not given a consistent account when he left his own country, stating that it was "two years ago" in answer to question 42 in his asylum interview. He left 2015, the interview taking place on 28 November 2017 stop the appellant confirmed in question 43,000 so. It was pointed out that this contradicted his screening interview which took place on 25 December 2016. In that interview the appellant has stated that he left Afghanistan "three months prior to the screening interview". This would mean he left in 2016. Even making allowance for the appellant's young age and cultural differences, Miss Kiss submitted these were adverse credibility points that the judge was perfectly entitled, and did, take account of in paragraph 29 of his decision. Although the appellant was

put forward as an illiterate individual, these matters did not really relate to his literacy. Also relevant to take account of the long period of time that the appellant apparently had spent working in Turkey and the fact that the appellant actually made a claim in Germany.

9. The respondent also submitted that credibility went to the heart of the claim and the judge was also entitled to reject the appellant's case as to his alleged date of birth the copy of the Taskira provided, which suggested that he was in fact 26 from 15 when he entered the police force, was rejected by the judge. It was a copy, the appellant claimed, provided to him by his brother through a friend. There was no witness statement or other confirmation as to the source of this document. The judge's approach was generally consistent with the leading case of *Tanveer Ahmed*, therefore. The judge's analysis at paragraph 30 cannot be faulted, the respondent submitted. There was no proper explanation as to how the document had come into the appellant's possession and the lack of corroborating material was something the judge could take into account, even though formal corroboration is not required before an asylum claim can be accepted. The judge having taken account of the appellant's explanation was entitled to reject it. As this was an appellate jurisdiction, it was for the tribunal which heard the evidence to reach conclusions about the matters summarised above.
10. Next I was referred to paragraph 32 where the judge rejected a key part appellant's account. This was the contention by the appellant that certain people were killed based on information from people in the village. When the appellant had been asked about the perpetrators whether there was a reason for killing of certain officers the appellant had been "non-responsive". The judge had not found it credible that the perpetrators would have known that the appellant was on leave at the time and that he had changed shifts with another colleague. The judge did not accept that the appellant had gained the information from "people in the village". Ms Kiss considered this finding was not speculative to an unacceptable degree but in any event was consistent with other adverse credibility findings.
11. As far as the appellant's family were concerned, the majority were in Afghanistan and there were no "very significant obstacles" to the appellant returning there where he had his mother, three children and siblings.
12. Next I was referred to the leading case of ***Ortega***, which I understood to be a reference by Ms Kiss to the case of ***Ortega (remittal: bias: parental relationship) [2018] UKUT 298 (IAC)***. I understand that case was referred to as it was said to indicate the broad range of reasons the judge can a case of this type and the degree that an appeal tribunal will not interfere provided it was not manifestly wrong in law.

13. Miss Fitzsimons made no further submissions in reply.
14. At the end of the hearing I decided to reserve my decision as to whether an error of law had been established and as to ultimate disposal.

Discussion

15. The key questions are:
 - (i) Whether it was speculative for the judge to distinguish between the treatment by the Taliban of police intelligence officers and prison guards?
 - (ii) Whether the judge was entitled to dismiss the appellant's credibility and was this informed to an excessive degree by his failure to claim asylum in certain third countries *en route* for the UK?
 - (iii) Whether the judge was entitled to find that the appellant was in fact younger than he claimed and therefore could not have been admitted to the police on the date when he said he was so admitted?
 - (iv) Whether the judge was entitled to find the appellant would be able to claim sufficient protection from the authorities in Kabul or relocate to a different area in Afghanistan away from his home area where he would be reasonably safe?
16. The appellant claims to be at risk of indiscriminate violence/serious harm to the from the Taliban on his return to Afghanistan in his home area, alternatively, that there is no safe alternative part of that country to which he could be returned where he would not be at risk, so that he requires international humanitarian protection.
17. Judge Saffer, when he gave permission, thought it may have been speculative for the judge to consider the Taliban's *modus operandi* in the way that he had.
18. The second ground on which Judge Saffer gave permission was: whether the judge had erred in finding that the appellant had failed to claim asylum in a safe country *en route* for the UK?
19. However, neither ground on which Judge Saffer expressly gave permission, were necessarily material, given that the appellant's evidence was largely rejected as being incredible and he had, indisputably, passed through several safe countries.

20. Mrs Fitzsimons's drew my attention in her grounds of appeal to the CPIN report on Afghanistan: Security and Humanitarian Protection (April 2018) which states that the number of civilian casualties and deaths had also increased to their highest level for some years and that in the worst areas, for example, the southern provinces, the Taliban had increased activities. The Taliban were also active in north-east Afghanistan including the capital. This had affected both the risk on return to the appellant's home area and the possibility of internal relocation. The safety *en route* to those places had to be considered. In order for an internal relocation option to be reasonably available it must be possible to get to that place. I was referred to the case of **HH (Somalia)**.

Conclusions

21. It is important to note that, like the respondent, the judge largely rejected the credibility of the appellant's account noting a number of adverse credibility features, for example, in paragraph 28 *et seq* of his decision. The judge identified a number of discrepancies in relation to the appellant's a journey to the UK and these justified the conclusion that he had not given a credible account. Any distinction between intelligence officers and prison guards, which I do not find to be central to the judge's conclusions, had to be seen in that context.
22. In relation to the appellant's alleged failure to claim asylum in a safe third country, I bear in mind appellant's relatively young age at the date of the hearing, the fact that he was illiterate, and the fact claimed not to understand numbers or the concept of dates. Nevertheless, the judge was entitled to attach weight the fact that appellant had passed through a number of safe countries. Two of those countries, Turkey and Serbia, were not safe countries within the meaning of section 8 (7) and schedule 3 part 2 of the 2004 Act, but the other countries were. The fact that not all the countries through which the appellant passed were "safe countries" did not detract from the fact that a number of them, including Germany and France, were.
23. The decision that the appellant had not claimed asylum at the first opportunity was plainly open to the judge given that the appellant passed through the safe countries identified above, especially France and Germany. The fact that he did not await the processing of his claim in Germany suggests that he had no wish to claim asylum in Germany and simply wished to come to the UK at all costs. The erroneous reference to Turkey and Serbia as being "safe countries" was plainly not material to the decision.
24. It was also open to the judge to take into account the overall credibility of the appellant's claim. Even taking into account the appellant's young age and lack of education, the judge was entitled to take account of

inconsistencies as to the dates when the appellant claims to have departed from Afghanistan and as to his age.

25. It was open to the judge to find that the appellant was in fact significantly younger than he had claimed. The Taskira was not evidence the judge was bound to accept, particularly given the manner in which he came by it. Indeed, in the light of the other evidence, the judge was entitled to reject it. Applying the principle established in the **Tanveer Ahmed**, that the weight to be given to documentary evidence was as much a matter for the judge as the oral evidence. He had considered that evidence but decided to reject it.
26. The safety of Afghanistan generally, and Kabul in particular, is a contentious issue at the present time. The judge had regard to recent country guidance but concluded the appellant would be safe in his home area. He noted that there were a number of family members in the area. He referred to the latest COIS report which made reference to the limited protection provided by the police in Afghanistan, a continuing state of violence and the fact that police corruption remains a problem.
27. As far as internal relocation was concerned, the judge was referred to the latest case law on the subject at the time of the hearing although he appears not to have referred to it expressly (see **AS (Safety in Kabul) Afghanistan [2018] UKUT 00118**). I was referred to that case by Miss Fitzsimon. There is some lack of clarity at present, however. Since the FTT hearing (in November 2018) **AS** has gone to the Court of Appeal. An initial procedural issue is reported at **[2019] EWCA Civ 208**. However, until that case is substantively considered by the Court of Appeal, a young adult male in reasonable physical and mental health, particularly who has a supportive family in Afghanistan, will not generally be regarded as being at risk on return to Kabul. Unfortunately, a small number of people are affected by the security situation but there is a dispute as to the actual figures. That matter will be considered by the higher court. The key question to ask in every case is: whether the degree of protection available to the appellant in his own country is sufficient? The Secretary of State has only to establish the primary facts giving rise to an internal flight alternative for it to be potentially available. The question is whether the court or tribunal took account of all material factors in reaching its decision?
28. I have concluded that the judge considered this issue in, for example, paragraph 33 of his decision and was entitled to conclude that it was not reasonably likely that the appellant would not be at risk on return. There was an internal flight alternative of relocating within Afghanistan either to a different part of the country or to a different part of Kabul. Given the lapse of time since he was last in that country and, based on the judge's findings, the family support network he had there, the judge was entitled to reach these conclusions. The submission that an appellant

cannot go to any part of his own country, however large, is often made but it must be based on proper foundations. The appellant must submit proper evidence to show this is so.

29. Here there was no adequate evidence to suggest that the judge had misdirected himself. Essentially, the judge concluded the appellant could return safely home to his home area or in default of that, the appellant had an internal flight alternative available to him.
30. There is no separate article 8 challenge to the FTT's decision.
31. Accordingly, the judge's decision does not contain a material error of law.

Notice of Decision

The appeal against the FTT's decision is dismissed and that decision stands.

An anonymity direction was made by the FTT and I continue that anonymity direction as follows.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 2nd May 2019

W.E. Hanbury
Deputy Upper Tribunal Judge

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 2 May 2019

Deputy Upper Tribunal Judge Hanbury