



IAC-FH-CK-V1

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

Appeal Number: PA/01111/2020 (V)

THE IMMIGRATION ACTS

**Heard at Field House
By Remote Hearing
On 3 September 2020**

**Decision & Reasons Promulgated
On 21 September 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**A G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Mukherjee, Counsel instructed by Davjunnell Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

Background

1. The appellant is a citizen of Afghanistan of Hazara ethnicity, born in 2000. He entered the UK and claimed asylum in 2016. He claims that the Taliban killed his father and present a continuing risk to him and his family; and that he is at risk in Afghanistan as a Hazara.
2. In 2016 the appellant's asylum claim was refused. He appealed to the First-tier Tribunal, where his appeal was heard by Judge of the First-tier Tribunal McMahon. In a decision promulgated on 11 January 2017, Judge McMahon dismissed the appeal. He did not find the appellant's account credible. Amongst other things, he did not accept that the appellant's father was killed by the Taliban.
3. The appellant made further representations to be recognised as a refugee. These were refused by the respondent on 23 January 2020. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Watson ("the judge"). In a decision promulgated on 16 March 2020, the judge dismissed the appeal. The appellant is now appealing against that decision.

Decision of Judge of the First-tier Tribunal Watson

4. The only evidence material to the appellant's protection claim before the judge that had not been before Judge McMahon was the respondent's family tracing report (which is discussed below in detail) and the evidence of the appellant's foster carer. The judge found that this new evidence did not advance the appellant's claim that his father had been killed by, and that he was at risk from, the Taliban. The judge therefore concluded, applying Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 0070, that, inter alia, there was not a basis to depart from the decision of Judge McMahon in respect of the credibility of the appellant's claim that his father was killed by the Taliban.
5. The judge also found that the appellant would not be at risk by reason of membership of the Hazara ethnicity, or from indiscriminate violence. He also found that it would not be unduly harsh for the appellant to relocate to Kabul, which is close to his village, if he wishes.

The respondent's family tracing report

6. In the respondent's refusal letter of 23 January 2020 ("the refusal letter") reference is made to a family tracing report dated 30 May 2018 ("the family tracing report"). Paragraphs 17 and 18 of the refusal letter state:

"17 "It is noted that you had a family tracing done and it is stated that your family are in Kabul. A family tracing report that is on file dated 30/05/2018 states, "the information obtained during site visit from residents and elder of Jangalok village of Shikh Au district of Parwan province, about the identification of [the appellant] presented as below:

18 Jan Ali...director of provincial from Jangalok ... confirming my recognition with [the appellant]. He is resident of this village. His family is living Kabul."

7. On 7 February 2020 the appellant's solicitor wrote to the respondent requesting disclosure of the family tracing report. In addition, the appellant's solicitor asked whether the respondent had been told what happened to the appellant's father and for an explanation of how the person referred to in paragraph 18 of the refusal letter (Jan Ali) was connected to, or knew, the appellant's family.
8. No response having been received, on 28 February 2020 the appellant's solicitors wrote to the First-tier Tribunal requesting an adjournment of the hearing (scheduled for 9 March 2020) on the basis that respondent had not responded to their queries.
9. On 3 March 2020, the request for an adjournment was refused. The reason given was that the request could be considered by the judge at the hearing where the Presenting Officer should have the relevant documents.
10. Also on 3 March 2020, the respondent wrote to the appellant's solicitors, enclosing a copy of the family tracing report. The letter states:

"This report was done after a family tracing letter was sent to yourselves on 22 February 2018. On 27 March 2018, your client had provided us with a telephone number for his mother. Information was then sent to the embassy to help in tracing your client's family. It was people at the embassy in Kabul that went out and found the applicant's family and provided the report."
11. The family tracing report states that the information in it was obtained during a site visit to Jangalak and that Jan Ali, the "director of provincial", confirmed that the appellant was a resident of the village and his family lived in Kabul. Two brothers were identified, the appellant's father was recorded as deceased and the name of his mother was given. The family tracing report does not include any information about the questions that were asked or provide any information about the appellant's father other than that he is deceased.
12. At the hearing on 9 March 2020, the appellant's representatives did not renew the application for an adjournment.
13. The judge's findings in respect of the family tracing report are set out in paragraph 19 of the decision, where the judge stated:

"The respondent has carried out family tracing. The appellant explained that he had never asked for his mother to be traced as he accepted that he was in contact with her and she was not missing at any time; he had wanted to trace his brother [] from whom he had not had contact. The document produced by the respondent is at p.37 of the appellant's bundle. This states that the official has inspected the Tazkera, confirms that the appellant's father is deceased and that the mother and two brothers are living in Kabul. This accords with the appellant's account in all important respects except for the name of a second brother [] whom the appellant states is a person completely unknown to him. I accept this and find that the name appears not consistent with the known ethnicity of the appellant. However there is nothing in this document that disturbs the findings of Judge McMahon noted above. This document does not give me any information that would lead me to depart from the main finding of the judge that the appellant is not of interest to the Taliban. S/he accepted that

the father was deceased, as noted on this report but not that he had been killed as described by the appellant. The document does not assist the appellant in showing that he is of interest to Taliban.

Grounds of Appeal

14. Mr Mukherjee, in the grounds of appeal, his skeleton argument, and in his submissions, has advanced several arguments regarding the family tracing report. These are that:
 - a. The respondent, having taken the step of locating and speaking to the appellant's family, ought to have verified whether the appellant's father was killed by the Taliban;
 - b. The respondent was under an obligation to disclose information obtained about how the appellant's father was killed; and
 - c. The judge should have either drawn a negative inference from the respondent not disclosing information about how the appellant's father died or adjourned the hearing and directed the respondent to obtain and/or disclose this information. It is argued, in addition, that an adjournment would also have enabled the appellant to instruct an external investigator to the respondent's vague evidence.
15. The grounds also argue that because the family tracing report was not before Judge McMohan the judge erred by treating the decision of Judge McMohan as a starting point in respect of the issue of how the appellant's father died.

New Evidence

16. Shortly before the hearing, the appellant submitted a supplementary bundle. This included two items of evidence that were not before the First-tier Tribunal. The first is a statement of the appellant dated 19 August 2020. The statement states that it is not true that people from the British Embassy met his mother and family members, and that a man called Jan Ali (the person referred to in the family tracing report) is not known to him or his family.
17. The second item of new evidence is a report by Dr Giustozzi, a visiting professor at the War Studies Department KCL. The report states that, on his instruction, a researcher based in Kabul with whom he works met Mr Jan Ali who confirmed knowing the appellant personally. It is recorded that Mr Ali stated that the appellant's family now live in Kabul and that the appellant's father was killed by the Taliban. The report also states that Mr Ali did not discuss the visits carried out by the representative of the British Embassy.
18. In respect of new evidence, Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules requires provision of a notice to the Upper Tribunal and the other party indicating the nature of the evidence and explaining why it was not submitted to the First-tier Tribunal. No such notice was given, even though the directions of Upper Tribunal Judge Reeds (at paragraph 4(iii)) reminded the parties of the need to comply with Rule 15(2A).

19. I have considered the failure to comply with Rule 15(2A) in the light of the guidance given in *Hysaj v SSHD* [2014] EWCA Civ 1633. This is a serious default and no good (or, indeed, any) reason has been given for non-compliance. Mr Mukherjee's only argument to support the evidence being admitted was that it is highly relevant to whether the judge erred. I do not accept this. Firstly, the report and statement were not before the judge and therefore no error can arise from failing to have regard to the information contained within them. Secondly, as explained further below, the new evidence does not assist the appellant in establishing that the respondent breached her duty to not mislead by failing to disclose material information about the death of the appellant's father because the report and statement do not say anything relevant to this issue.

Analysis

20. The respondent has a duty to endeavour to trace family members of an unaccompanied minor as soon as possible after the minor makes a claim for asylum: regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005. Mr Mukherjee argued that, in this case, there was a further duty on the respondent, which was to make enquiries about how the appellant's father died. Mr Mukherjee argued that because the cause of the appellant's father's death was central to the appellant's case, the person sent by the embassy to undertake family tracing could and should have taken the additional step of enquiring about how he died.
21. Mr Mukherjee was unable to identify (and I am not aware of) any authority to support the existence of a duty on the respondent to broaden the scope of family tracing investigations to make enquires relevant to the basis of an asylum claim. I agree with Mr Lindsay that whilst the respondent had a duty to endeavour to trace the appellant's family she did not have a duty to investigate and attempt to verify the account the appellant gave in his asylum interview. The burden of proof is on the appellant and this does not change because an appellant is a child or because the respondent carried out family tracing. It is entirely consistent with the respondent's duties that a person from the embassy in Kabul compiled a report on the identity and whereabouts of the appellant's family without investigating (or asking questions about) the reason the appellant's father died.
22. The respondent has a duty not to mislead, which requires her to draw attention to information which might undermine her case. See *BH (policies/information: SoS's duties) Iraq* [2020] UKUT 189 (IAC) and *Nimo (appeals: duty of disclosure)* [2020] UKUT 88 (IAC). If the respondent obtained information about the cause of the appellant's father's death and did not disclose it to the appellant a breach of the duty to not mislead might arise. However, there is no reason to believe the respondent obtained any such information as she had no duty, or reason, to investigate the cause of the appellant's father's death. The report of Dr Giustozzi, had it been admitted, would not have assisted the appellant because in the report it is stated that Mr Ali did not discuss the visits carried out by the representative of the British Embassy. Dr Giustozzi's report therefore is of no

assistance in ascertaining whether the respondent obtained information (that was not subsequently disclosed) about the cause of the appellant's father's death.

23. There is no merit to the contention that the judge erred by not adjourning the hearing. As emphasised by Mr Lindsay, neither party sought an adjournment at the hearing. It was made clear to the appellant, when his application for an adjournment was refused on 3 March 2020, that if an adjournment was still sought it could be requested at the hearing. However, no such application was made. Moreover, this is not a case where there was a reason to adjourn that was, or ought to have been, apparent to the judge. The main reason the adjournment had previously been sought was that the family tracing report had not been disclosed. However, by that time the hearing took place it had been disclosed. I am satisfied, therefore, that no unfairness arose from the judge proceeding with the hearing.
24. The family tracing report neither supports nor detracts from the appellant's claim that his father was killed by the Taliban, because it is silent on the issue. It merely confirms what was not in dispute – that the appellant's father is deceased. The judge was therefore entitled to find, as he did in paragraph 19 of the decision, that the report did not provide any information that would support a departure from the finding of Judge McMahon on the issue of how the appellant's father died.
25. The grounds of appeal do not identify an error of law. The appeal is therefore dismissed.

Notice of Decision

26. The decision of the First-tier Tribunal does not contain an error of law and stands.
27. The appeal is dismissed.

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

Daniel Sheridan
Upper Tribunal Judge Sheridan

Dated: 15 September 2020