



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001929
First-tier Tribunal No:
PA/51426/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 August 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms M Sepulveda, Fountain Solicitors Ltd

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 21 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant claimed asylum on 4 October 2019. The claim was refused by the respondent for reasons set out in a decision dated 9 September 2020. The respondent accepted the appellant is a national of Afghanistan, but

rejected the appellant's claim that he had come to the adverse attention of the Taliban or that he is and risk upon return because he is of adverse interest to the government.

2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Barker for reasons set out a decision dated 12 May 2021.
3. The appellant claims Judge Barker made material errors of law in her consideration of the appellant's claim. In summary, four grounds of appeal are advanced. First, Judge Barker dealt with the explanation provided by the appellant in his evidence regarding the date of the incident that was at the core of his claim in an unfair manner. Second, Judge Barker failed to apply the standard of proof in relation to material parts of the appellant's claim. Third, Judge Barker failed to reach any conclusive finding regarding the letter relied upon by the appellant confirming the death sentence ordered by the Taliban. Fourth, in considering the risk upon return and internal relocation to Kabul, Judge Barker failed to consider the fact that the appellant would be considered to be a spy by the Taliban.
4. Permission to appeal was granted by Designated Judge Shaerf on 19 August 2021.
5. Before me, Ms Sepulveda confirmed that the fourth ground of appeal regarding the judge's consideration of the risk upon return and internal relocation to Kabul is no longer pursued. She accepts the judge considered the relevant country guidance in force at the time and found, at [68], the appellant seems to fall within the definition of those described as 'of lower-level interest for the Taliban'. She noted he is not a spy, and therefore is not at real risk of persecution from the Taliban in Kabul.
6. Ms Sepulveda took the three remaining grounds of appeal in turn. First, she submits Judge Barker found the appellant's inability to provide the correct date of the event that lies at the heart of the appellant's claim impacts on his credibility. The Judge refers at paragraph [44] to the explanation provided by the appellant regarding his inability to understand the Gregorian calendar but rejected that explanation. That has impacted upon the judge's consideration of other aspects of the claim made by the appellant.
7. Second, Ms Sepulveda submits that at paragraph [52] of her decision Judge Barker criticises the appellant for not having provided a letter or statement from his mother regarding the threat from the Taliban. She submits the appellant is from a rural area in Afghanistan and there was no specific evidence that the appellant's mother was educated or uneducated. It is likely, Ms Sepulveda submits, that she was uneducated and would not have been able to provide a statement to support the appellant's claim. Ms Sepulveda submits that at paragraph [62] of her decision, Judge Barker rejected the appellant's account of his sighting of the Taliban governor. She submits Judge Barker unreasonably wanted a more thorough explanation as to why the governor was not wearing a disguise. Why the governor did not wear a disguise is not something that the appellant can properly be expected to explain.

8. Finally, as far as the third ground of appeal is concerned, Ms Sepulveda submits that when considering the letter the appellant provided in support of his claim that he is wanted by the Taliban, Judge Barker did not consider the document separately from the appellant's account. Ms Sepulveda accepts the document forms part of the overall claim made by the appellant, but submits the adverse credibility findings made by the Judge impacted on her assessment of that document. The copy of the original document that was relied upon by the appellant was at page 71 of the appellant's bundle and a translation was at page 75. Ms Sepulveda submits Judge Barker failed to make a finding as to the Notice and whether the appellant is wanted by the Taliban.
9. In reply, Mr Bates submits Judge Barker was entitled to have regard to the inconsistencies in the appellant's account regarding the date upon which the incident involving the Taliban governor occurred. Judge Barker confirms at [45] that she had considered the appellant's explanation. It was open to her to reject the explanation. The respondent had set out in paragraph [39] of her decision the inconsistent dates referred to by the appellant in respect of something that was central to his claim. It was only in his oral evidence, as Judge Barker noted at paragraph [45], that the appellant gave an accurate date. Mr Bates submits that in any event, Judge Barker confirmed at paragraph [45] that the inconsistency as to the date alone would not be so significant as to fatally damage the appellant's credibility.
10. Mr Bates submits that throughout, Judge Barker directs herself properly regarding the standard of proof to be applied. The appellant's account was that letters were received from the Afghan authorities by all locals. Judge Barker considered whether it is credible that the government would warn the people in advance when those people are suspected of being aligned to the Taliban. He submits there is nothing in paragraph [51] of her decision to show Judge Barker applied an incorrect standard of proof. Mr Bates submits that at paragraph [52], Judge Barker was entitled to have regard to the absence of any evidence from the appellant's mother. Mr Bates submits that in TK (Burundi), the Court of Appeal noted there is a lower standard in asylum claims, but if there is no good reason why evidence that should be available is not produced, the judge is entitled to take that into account in the assessment of the credibility of the account. Mr Bates submits that at paragraph [62] of her decision, Judge Barker rejected the appellant's account of his sighting of the Taliban governor and his bodyguards. He submits Judge Barker records that she asked the appellant about his account of events and in reaching her decision, Judge Barker considered the response provided by the appellant. The appellant had not been asked to speculate. The Judge was entitled to probe the appellant's account and consider why the bodyguards would be disguised on attending the mosque but the person they are protecting would not be.
11. Finally, Mr Bates submits at paragraph [56] of her decision, Judge Barker clearly considered the letter the appellant has provided in support of his claim that he is wanted by the Taliban. The Judge said, at [53], that the

letter merits no weight and explains why at paragraphs [53] to [56] of her decision.

12. In response, Ms Sepulveda maintains that although Judge Barker said, at [45], that the inconsistency as to the date of the event alone would not be so significant as to fatally damage the appellant's credibility, that inconsistency formed part of the Judge's overall assessment of the credibility of the appellant. She submits that unlike in TK Burundi, a letter or statement from the appellant's mother was not readily available and there was no indication that the appellant's mother could write a letter. It is likely that she would have required support in preparing a letter, but that and the fact that she lives in a conflict area, was not considered by the Judge.

Decision

13. The appellant's claim is summarised at paragraph [9] of the decision of Judge Barker:

"In essence, the Appellant's claim is that if returned to Afghanistan he will be at risk of persecution, serious harm or treatment that breaches Articles 2 and/or 3 of the ECHR, from the Taliban as they suspect him of informing on a local Taliban governor which led to an attack which resulted in the death of that governor. In the alternative the Appellant claims that he is at risk from the authorities in Afghanistan who suspect him of being involved with the Taliban. The Appellant claims that he would be at risk in either event on return anywhere within Afghanistan and cannot obtain the protection of the Afghani authorities in those circumstances."

14. At paragraph [36] of her decision Judge Barker properly noted:

"The first issue I must consider is whether the Appellant has demonstrated to the required standard that his account of being at risk from the Taliban is credible. I remind myself that although the burden of proof is on the Appellant, it is only to the lower standard that I must be satisfied."

15. I note from the outset that Judge Barker properly identified the issue in the appeal, and clearly directed herself properly as to the burden and standard of proof.
16. The assessment of a claim for international protection is fact sensitive fact. In an appeal such as the present, where the credibility of the appellant is in issue, a Tribunal Judge adopts a variety of different evaluative techniques to assess the evidence. The judge will for instance consider: (i) the consistency (or otherwise) of accounts given by the appellant at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (iv), the overall plausibility of an appellant's account.
17. In Y -v- SSHD [2006] EWCA Civ 1223, Keene LJ referred to the authorities and confirmed that a Judge should be cautious before finding an account to

be inherently incredible, because there is a considerable risk that they will be over influenced by their own views on what is or is not plausible, and those views will have inevitably been influenced by their own background in this country and by the customs and ways of our own society. However, he went on to say, at [26];

“None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be...”

18. The appellant gave oral evidence at the hearing of the appeal. At paragraph [38], Judge Barker said that the appellant’s account was littered throughout with significant inconsistencies, and is generally vague and lacking in any real detail.
19. Judge Barker noted the appellant’s account about the government’s attack on his village and an incident that led to the death of the Taliban governor Mowlawi Law Mohammad is consistent with the external background information. However, as Judge Barker said at [39], it does not necessarily follow that the appellant’s account of event, insofar as they relate to him, is true.
20. I reject the appellant’s claim that Judge Barker irrationally or unfairly concluded that the inconsistency in the appellant’s claim at various stages concerning the date upon which the core event leading to the appellant’s departure from Afghanistan impacts upon the appellant’s credibility. Judge Barker noted that information about the incident that led to the death of the Taliban governor Mowlawi Law Mohammad is publicly accessible. However, the appellant’s specific account was in her judgment, vague, inconsistent and incredible. At paragraphs [41] to [64], Judge Barker set out a number of reasons for rejecting the appellant’s claim. The appellant’s evidence regarding the date of the incident was internally inconsistent. Judge Barker considered the appellant’s explanation for the inconsistencies and she rejected his explanation. She was undoubtedly entitled to take into account the fact that the appellant had given three different dates for the incident and that it was only in his oral evidence before the Tribunal that the appellant gave an accurate date.
21. I do not accept the appellant’s claim that at paragraph [52], of her decision Judge Barker unreasonably or irrationally referred to the absence of supporting evidence to support the claim that he was threatened by the Taliban. Judge Barker noted that the appellant’s evidence in the end was that he had not received any direct threats from the Taliban but had only heard from his mother that they were looking for him. The appellant is in contact with his mother. Judge Barker properly reminded herself that corroboration is not required, but as Mr Bates submits, in *TK (Burundi)*, the Court of Appeal noted that if there is no good reason why evidence that should be available is not produced, the judge is entitled to take that into account in the assessment of the credibility of the account. Ms Sepulveda speculates that the appellant’s mother may be uneducated and may not have been able to provide a statement to support the appellant’s claim but

that is not an explanation that was advanced at the hearing of the appeal. Similarly, in my judgment, Judge Barker was entitled to have concerns about the appellant's claim that when he saw the governor, the bodyguards were disguised but the person they were protecting were not. Although I recognise the force in the submission that is made by Ms Sepulveda that the appellant cannot be expected to explain the conduct of others, the judge's concern must be read in the context of the appellant's claim as a whole. It is common sense that the local governor of the Taliban, would as the situation in Afghanistan was at that time, be the most likely person of interest to the authorities and so it is odd that he was not disguised. As Keene LJ said in Y v SSHD a Judge is not required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. In any event, that was only one of several reasons given by Judge Barker for rejecting the core of the appellant's account and if she had erred in that respect, that error was not material to the outcome of the appeal.

22. I reject the general claim made by the appellant that Judge Barker failed to apply the correct standard of proof. AT paragraph [36] of her decision, Judge Barker plainly directed herself properly as to the burden and standard of proof. There is nothing in the decision to suggest that having given herself that direction, she did anything other than apply the correct standard of proof. In fact at paragraph [65] she said:

“Given my general credibility findings about the Appellant and the specific discrepancies I have detailed above, I find that the Appellant has not demonstrated even to the lower standard that he is at risk on return from the Taliban.”

23. Finally, I reject the appellant's claim that Judge Barker failed to make any conclusive findings in relation to the death sentence ordered against the appellant by the Taliban as evidenced in the document from the heads of the 'Upper Ahmadzi Development Council'. Judge Baker addressed that evidence carefully at paragraphs [53] to [56] of her decision. Contrary to what is said by the appellant, at paragraph [56] of her decision Judge Barker found the letter relied upon by the appellant is not worthy of any weight.
24. In Tanveer Ahmed v SSHD [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Judge Barker carefully considered the lack of any credible evidence to establish how that letter and its content has come to be established and provided to the appellant.
25. Here, reading the decision as a whole and the reasons given by Judge Barker for dismissing the appeal, it is in my judgment clear that Judge Barker gives a number of reasons for her finding that the appellant is not a credible witness and for rejecting the core of his claim.

26. Despite the best efforts of Ms Sepulveda to persuade me otherwise, it is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is in my judgement clear that in reaching her decision, Judge Barker considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to her on the evidence. A fact-sensitive analysis of the risk upon return was required. In my judgement, the findings made by Judge Barker were rooted in the evidence before the Tribunal. The findings reached cannot be said to be perverse, irrational or findings that were not supported by the evidence.
27. It follows that in my judgment it was open to Judge Barker to dismiss the appeal for the reasons she set out.
28. I dismiss the appeal.

Notice of Decision

29. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia
Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 July 2023