Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02221/2015

THE IMMIGRATION ACTS

Heard at Field House
On 1 September 2015

Decision & Reasons Promulgated
On 3 September 2015

Before

UPPER TRIBUNAL JUDGE PITT

Between

AB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Lloyd, counsel instructed by Crown & Mehria Solicitors
For the Respondent: Ms Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination promulgated on 11 June 2015 of First-tier Tribunal Judge Alis which refused the appellant's asylum and human rights claim.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court

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proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Background

3. The appellant is a citizen of Afghanistan and was born in 1996.

4. The appellant came to the United Kingdom on 19 May 2012. He claimed asylum but his application was refused on 10 April 2013. He was granted discretionary leave to remain until 25 October 2013 as an unaccompanied minor.

5. On 25 October 2013 the appellant sought an extension of his discretionary leave to remain. The respondent refused that application on 26 January 2015. The appeal on asylum and human rights grounds came before First-tier Tribunal Judge Alis on 4 June 2015. First-tier Tribunal Judge Alis did not find the appellant's account of his older brother having been killed by associates of an influential government minister to be credible and did not find that the appellant's situation in the UK with his three sisters who have been granted refugee status amounted to a breach of his Article 8 rights.

6. The first ground of appeal is at paragraphs 9 to 10 of the written grounds and maintain that the First-tier Tribunal erred in refusing to grant an adjournment request made on the day of the hearing in order for the appellant's older sister, X, to attend to give evidence.

7. Ms Lloyd argued that the failure to adjourn for X's evidence was material to both the refugee claim and the Article 8 claim. Her asylum claim had been made on the same facts as those put forward by the appellant and her presence would have meant that there were two corroborative witnesses (another sister, Y, also giving the same evidence) in front of the First-tier Tribunal. She was also the sister closest to the appellant after he was put into her care by Social Services and had relevant evidence to provide in support of his Article 8 claim.

8. The First-tier Tribunal Judge dealt with the adjournment request at paragraphs 9 to 10 of the determination. The application to adjourn was made because X had to sit an examination on the same day. The judge quite properly queried at [9] why no earlier application had been made. As noted by Judge Alis at [10], the document contained at page 79 of the appellant's bundle which was submitted under a cover letter dated 2 June 2015 contained X's examination schedule so the matter could have been raised earlier, particularly where the appellant had legal representation. The judge was entitled to find it relevant that X had provided a letter in support of the appeal. The attendance of another sister, Y, who could give similar evidence, certainly on the asylum claim, was a further factor on which he was entitled to rely when deciding not to adjourn. For those reasons I did not find that this ground had merit.

9. The next ground of appeal is at paragraphs 11 to 13 of the written grounds and is referred to as ground 1(b). At page A5 of the respondent's bundle, in paragraph 39 of the appellant's first refusal letter dated 10 April 2013, the respondent stated:

> "Your sisters have been considered as single females and have been given refugee status in the UK as such."

10. At paragraph 34 his determination, Judge Alis recorded the submission of the Home Office Presenting Officer that:

> "I did not have any information about the sisters' basis of claim save what was recorded in the original refusal letter and this confirmed that they had been granted refugee status as they would be at risk of persecution if returned as single females."

11. At paragraph 35, the submission of Ms Lloyd for the appellant is recorded:

> "His sisters had each been granted asylum and in the absence of any further explanation from the respondent it should be inferred that the respondent accepted the basis of their claim that they would be at risk on return from the same person the appellant now feared."

12. First-tier Tribunal Judge Alis considered this issue at paragraphs 44 to 45 of his determination. He stated as follows:

> "44. I do not have the sisters' interview or any paperwork to do with their asylum claims but it is clear from paragraph [30] of the appellant's 'April 10, 2013' refusal letter the respondent granted them asylum and because they were considered as single females. Such a decision would appear to follow AK (Article 15c) Afghanistan CG [2012] UKUT 00163 (IAC) where the Tribunal held that whilst women with a male support network may be able to relocate internally, '... it would be unreasonable to expect lone women and female heads of household to relocate internally'.
>
> 45. The mere fact that the appellant's sisters were granted asylum does not mean this appellant is entitled to asylum because he is of course not a single female but is instead a fit and intelligent young man who confidently gave his evidence in English. His case has to be considered on its own merits having regard to the issues highlighted above."

13. Ground 1(b) argues that where the respondent sought to rely on the assertion in the April 2013 letter that the appellant's sisters had been granted status as single lone females the burden passed to the respondent to provide documents to support that.

14. I did not find that this ground had merit. It is not disputed that there were no documents before Judge Alis from the asylum claims of the appellants' sisters. If the appellant wished to rely on their asylum claims and subsequent grants of refugee status to support his claim, those documents could have been provided. Paragraph 12 of the grounds states that "the judge was made aware that the Appellant's representatives had one of the sister's statements". If that was so, it is not clear to me why it was not submitted with the appellant's bundle with the other evidence and nothing

in the materials before me suggested that the First-tier Tribunal declined to admit the sister's witness statement if it was available on the day of the hearing.

15. There was therefore nothing before Judge Alis challenging the statement at paragraph 39 of the appellant's refusal letter of April 2013 that they had been given refugee status as lone females. He had nothing to suggest that the respondent had accepted in the sisters' claims the account now being put forward by the appellant. It was for the appellant through his legal advisers to provide that evidence rather than the burden passing to the respondent to provide documents supporting the statement at paragraph 39 of the refusal letter of 10 April 2013. Judge Alis did not err at [44] and [45], therefore.

16. When making her submissions on the question of the basis of the grants of refugee status to the appellant's sisters, Ms Lloyd sought to rely on the case of Chicaiza v SSHD [2002] UKIAT 01200. This case is not reported. No application was made for permission to cite the case in line with the Senior President's Practice Direction for the Immigration and Asylum Chamber first issued on 10 February 2010 and amended on 13 November 2014. This states:

> "Citation of unreported determinations
>
> 11.1 A determination of the Tribunal which has not been reported may not be cited in proceedings before the Tribunal unless:
>
> > (a) the person who is or was the appellant before the First-tier Tribunal, or a member of that person's family, was a party to the proceedings in which the previous determination was issued; or
> >
> > (b) the Tribunal gives permission.
>
> 11.2 An application for permission to cite a determination which has not been reported must:
>
> > (a) include a **full** transcript of the determination;
> >
> > (b) identify the proposition for which the determination is to be cited; and
> >
> > (c) certify that the proposition is not to be found in any reported determination of the Tribunal, the IAT or the AIT and had not been superseded by the decision of a higher authority.
>
> 11.3 Permission under paragraph 11.1 will be given only where the Tribunal considers that it would be materially assisted by citation of the determination, as distinct from the adoption in argument of the reasoning to be found in the determination. Such instances are likely to be rare; in particular, in the case of determinations which were unreportable (see Practice Statement 11 (reporting of determinations)). It should be emphasised that the Tribunal will not exclude good arguments from consideration but it will be rare for such an argument to be capable of being made only by reference to an unreported determination.
>
> 11.4 The provisions of paragraph 11.1 to 11.3 apply to unreported and unreportable determinations of the AIT, the IAT and adjudicators, as those

> provisions apply respectively to unreported and unreportable determinations of the Tribunal.
>
> 11.5 A party citing a determination of the IAT bearing a neutral citation number prior to [2003] (including all series of "bracket numbers") must be in a position to certify that the matter or proposition for which the determination is cited has not been the subject of more recent, reported, determinations of the IAT, the AIT or the Tribunal.
>
> 11.6 In this Practice Direction and Practice Direction 12, "determination" includes any decision of the AIT or the Tribunal."

17. No formal application for permission was made and no certification that the proposition in the case has not been the subject of more recent, reported determinations.

18. Be that as it may, the passage on which Ms Lloyd sought to rely is at paragraph 6 of Chicaiza. This states:

> "It is important in this case where two members of the family have succeeded in being granted asylum status having based their claims on very similar considerations to those raised by this appellant that any rejection should be very carefully reasoned and we do not find that care in this determination".

19. As I see it, the difficulty in relying on that principle is that the evidence before the First-tier Tribunal did not show that the appellant's sisters had been granted asylum on very similar considerations and that, further, the April 2013 refusal letter suggested that they had succeeded on a different basis.

20. The appellant also challenges the First-tier Tribunal's credibility findings. This challenge was broken down into three parts. The first is at paragraph 15 of the written grounds which is referred to as ground 2(a). This ground argues that First-tier Tribunal Judge Alis did not make clear findings on the reliability of the evidence of the appellant's sister, Y, and that this was material where her evidence was corroborative.

21. It is quite clear that First-tier Tribunal Judge Alis took into account the evidence of the appellant's sister Y. The judge says that he did so in clear terms in paragraph 8 of the decision and at paragraphs 30 to 32 he sets out the evidence given by Y. At paragraph 46 Judge Alis acknowledges that the appellant's case before him was supported by Y to the extent she also gave evidence that it was associates of a government minister who had killed their brother. The judge refers to this again at paragraph 46(g). The judge goes on to acknowledge at paragraph 49 that the evidence given about the brother's death was "consistent". It is unarguable that Judge Alis took into account the evidence of Y and appreciated that it was evidence capable of being corroborative but found that the claim was still not made out. A proper reading of the decision shows that he did not accept the evidence of the appellant's sister and ground 2(a) has no merit.

22. Judge Alis sets out at paragraphs 49 and 50 why he did not accept the appellant's claim notwithstanding the evidence of the sister. There were two main reasons. The first was that in his first interview the appellant had stated that his brother was killed by robbers. It was only in his second application on asylum grounds that he maintained that his brother was killed by agents of a government minister. It was clearly open to the judge to find this undermined the appellant's credibility, having considered at [49] the appellant's explanation for the change in his evidence. The second reason was that the appellant and Y gave different accounts of when he knew the truth about the death of his brother, his sister maintaining it was before he left Afghanistan and that he attended his brother's funeral, the appellant stating it was after he left and that he did not attend the funeral. These were not tangential or immaterial issues. They went to the core of the claim and reliability of the witnesses. Where paragraph 21 of the grounds seeks to argue otherwise and that these were not material parts of the evidence it has no merit (ground 2(d)).

23. Ground 2(b) is set out at paragraphs 16 and 17 of the determination. This states that the judge did not take into account properly the statement and oral evidence of the appellant's social worker, Mr N. This ground has no merit as it is entirely clear from the written statement and oral evidence recorded of the social worker that he could only but base his evidence on what he knew of the appellant's asylum claim from the information given to him by the appellant and his sisters and had no first hand knowledge of such a matter whatsoever. The First-tier Tribunal was therefore fully entitled to find at paragraph 49 that he could not place weight on what was said by the social worker in support of the appellant's asylum claim.

24. Ground 2(c) is contained in paragraphs 18 to 20 of the written grounds. This challenge is put on the basis that the First-tier Tribunal failed to give proper weight to the fact that the appellant was a minor when he was interviewed. The First-tier Tribunal judge refers to the appellant's minority in paragraphs 37, 46, 48 and 49. He refers at paragraph 37 to the appellant giving been only 16 years of age when he first came to the United Kingdom and that he was interviewed as a minor. The judge then states in terms, "I take that into account when assessing his claim". The judge refers again to having taken into account that the appellant was 16 when he was interviewed at paragraph 46(a). The challenge on the basis of the First-tier Tribunal failing to take into account the appellant's age cannot have merit where that is so.

25. The remaining grounds address the findings under Article 8 ECHR. The first ground in this regard is at paragraph 22 of the written grounds and is referred to as ground 3(a). The grounds suggest that because the judge referred to the appellant's future plans of going to study at university away from his older sister, specifying Plymouth as a possible location, that the judge assessed the evidence at the wrong date. The judge should have addressed the appellant's situation and circumstances as of the date of decision when he was still living with his sister and was not away at university.

26. I did not find that this ground had any merit. It was the appellant's evidence that he intended to leave home. That was an indication of his future intentions as of the date of the hearing and that was part of the evidence upon which the judge was entitled to rely when making findings about the nature of his relationship with his sister. The judge was clearly entitled to take into account that the appellant was of an age when he was looking to separate from his siblings and to live an independent life as a student.

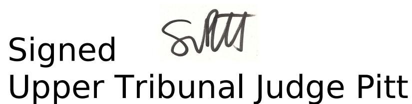
27. The second ground challenging the Article 8 findings is at paragraphs 23 to 24 of the written grounds and is referred to as ground 3(b). I found no merit in this where it challenged the judge's application of the provisions of Section 117B(3). The judge had to apply this section concerning financial independence and burden on the taxpayer. He was entitled to place weight on the fact that the appellant's education and future education incurred public expense. The fact that the appellant has been working and only partially maintained by social services is not a factor that could, in my judgement, have made a material difference to the outcome of the Article 8 assessment.

28. The final ground is set out in paragraphs 25 to 27 of the written grounds and is referred to as ground 3(c). Here the challenge is that the judge made irrational or perverse findings as to it being reasonable for the appellant to leave the UK when his sisters were here with refugee status and he was living with one of his sisters. The threshold for a challenge on rationality or perverseness is a relatively high one and the grounds here do not show that the decision could not have been one open to the First-tier Tribunal.

29. For all of these reasons I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law.

Decision

30. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed  Date:

Upper Tribunal Judge Pitt