



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06585/2015

THE IMMIGRATION ACTS

Heard at Field House
On 29 February 2016

Decision & Reasons Promulgated
On 30 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

AG

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms E King, Counsel instructed by JD Spicer Zeb Solicitors
For the Respondent: Mrs S Sreeraman, Senior Home Office Presenting Officer

Anonymity

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 appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. On 25 March 2015 the respondent refused the appellant's application for asylum or humanitarian protection. It also determined that his removal from the United Kingdom

would not contravene Article 8 ECHR. The appellant's ensuing appeal was heard by First-tier Tribunal ("FtT") Judge Nightingale who, in a decision promulgated on 8 December 2015, dismissed the appeal. The appellant now appeals that decision.

2. The appellant is a citizen of Afghanistan. The respondent considers his date of birth to be 6 November 1994. He claims it is 6 November 1996. He left Afghanistan in November 2012 and arrived in the UK on 30 January 2013. He claimed asylum on 6 February 2013.
3. The appellant's claim is that in around 2011 the Taliban dropped a letter at his family home stating that all young men should participate in the fight against foreign troops. In the summer of 2012 the Taliban's influence increased in the region. Ten days before he fled, the Taliban came to his home (whilst he was not there) to insist he join, and fight for, them. They searched his home. They saw his sister and insisted she should marry soon. The appellant, along with his sister and mother, hid at a friend's house for ten days whilst arrangements were made by an agent to take them out of Afghanistan. The appellant travelled for about two months to get to the UK, and en route was separated from his mother and sister. The appellant's father died in 2002. His brother came to the UK in 2000 and is now a British citizen.
4. The respondent did not accept that the appellant was of interest to the Taliban and concluded that there was sufficient protection available to him or that he could relocate internally in Afghanistan. The respondent also did not accept that the appellant had been truthful about this age.
5. The appellant's appeal was heard by FtT Judge Nightingale. The FtT did not find the appellant credible and was not satisfied that he had been at risk of forced recruitment to the Taliban or that he was forced to flee. Nor was it accepted that his mother and sister left Afghanistan with him.
6. In respect of the risk on return, the FtT stated that it could see no reason why the appellant would be targeted in an urban area such as Kabul where his sister in law's family reside. The FtT further found that the appellant's brother was in a position to provide him with financial support upon return.
7. At paragraphs [59] and [60] the FtT considered the appellant's claim for protection under Article 15(c) of the Qualification Directive (2011/95/EU). The FtT's treatment of this issue forms the basis of the appeal before me and therefore I set out below the relevant findings by the FtT:

59. "Whilst it was not pursued before me, I note that the grounds of appeal do raise Article 15(c). I have not found any risk to the appellant on an individual basis, and albeit the evidence before me does indicate a worrying increase in the number of civilian casualties in Afghanistan, I do not find that the totality of the background evidence before me leads to a finding that AK should not be followed in this particular appeal. I consider this to be applicable and relevant country guidance at the present time...."

60....I have not found the situation in Afghanistan to be such that AK should be revisited with regard to Article 15(c).

8. The grounds of appeal argue that the FtT erred in law by dismissing the appeal under Article 15(c). They submit that the FtT incorrectly stated, at paragraph [59], that this ground of appeal was not pursued at the hearing. It is further argued that the appeal should be stayed pending consideration of this issue in the Court of Appeal in R (on the application of Naziri and Others) IJR [2015] UKUT 00437.
9. In her submissions before me, Ms King reiterated that the Article 15(c) claim was actively pursued by the appellant, as evidenced by the skeleton argument. She argued that Naziri is not Country Guidance and is not binding and that it was for the FtT to examine carefully the objective country evidence, which it had failed to do. She also maintained that we should wait to see what the Court of Appeal in Naziri finds before dismissing the appellant's case in its entirety.
10. Mrs Sreeraman argued that it is clear from the decision that the judge was aware Article 15(c) was a live issue. At paragraph [17] the FtT identified it as an issue and at paragraphs [40] – [43] it discussed the relevant submissions by the appellant's counsel. At paragraph [59] the FtT then considered and made findings about Article 15(c).

Consideration

11. The most recent country guidance decision of the Upper Tribunal relating to Article 15(c) risk in Afghanistan is AK (Article 15(c) Afghanistan)[2012] UKUT 163. In that case, the Tribunal, whilst noting that there had been a deterioration in the general security conditions in Afghanistan, found that there was an insufficient degree of violence in Afghanistan as a whole to overcome the Article 15(c) threshold.
12. The appellant's bundle included a number of reports concerning the circumstances in Afghanistan post dating AK. These included, inter alia, the UK Home Office Country Information and Guidance dated August 2015, a 2015 HRW report, a report by Amnesty International and a report by the US Department of State.
13. I do not accept Ms King's argument that the FtT failed to consider the objective country guidance that was before it. At paragraph [59] the FtT stated that "the evidence before me does indicate a worrying increase in the number of civilian casualties" but that it did "not find that the totality of the background evidence before me leads to a finding that AK should not be followed". It is evident from this passage that the FtT has engaged with and considered the content of the objective evidence before it – finding that it shows an increase in civilian casualties – and that it has then considered whether this evidence would justify a departure from the extant Country Guidance.
14. Nor do I accept that any significance should be placed on the FtT's comment, at the start of paragraph [59], that Article 15(c) was not pursued at the hearing. It is apparent that the appellant's primary case was under asylum law based on the threat to him from the Taliban and that the focus of the case pursued before the FtT concerned this

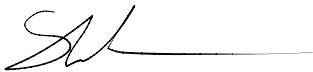
part of his claim. In any event, irrespective of the FtT stating that Article 15(c) was not pursued, it is clear from paragraph [59] that the issue was considered in the decision.

15. I also do not accept that any error arises from a failure to stay the appeal pending the appeal of Naziri. The task for the FtT was to consider the objective country information before it and determine whether that information warranted a departure from AK. There was no requirement on the FtT to delay making a finding because of what the Court of Appeal might conclude in another case which in any event, as acknowledged by Ms King, is not a Country Guidance case.
16. The FtT has correctly identified the relevant Country Guidance, has considered the objective country evidence before it and has reached a conclusion that the objective evidence does not justify a departure from the Country Guidance. I am satisfied that this was the proper approach in this appeal and that the FtT has reached a finding in respect of Article 15(c) that was open to it based on the objective evidence that was before it. Accordingly, I find that the FtT has not erred in law.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 11 March 2016