



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

Appeal Number: AA/13498/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 1 November 2017

**Promulgated
On 23 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

[S S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nizani, Counsel

For the Respondent: Mr Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on [] 1997. He appealed against a decision of the respondent dated 26 November 2015 refusing to grant him leave to remain in the United Kingdom on asylum, humanitarian protection and human rights grounds. His appeal was heard by Judge of the First-Tier Tribunal Cohen on 25 May 2017. The appeal was dismissed in a decision promulgated on 21 June 2017.

2. An application for permission to appeal was lodged and this was refused by the First-Tier Tribunal on 17 July 2017. A further application for permission to appeal was lodged with the Upper Tribunal and permission was granted by Upper Tribunal Judge Gill on 12 September 2017. The permission states that the Judge may have erred in his assessment of credibility in that it is arguable that paragraph 36 contradicts paragraph 43. Permission was therefore granted on all credibility issues. With regard to ground 2 (17) and (18), the permission states that it appears that the Judge may have meant “credibility” as opposed to “plausibility” at paragraph 35. At paragraph 39 the judge states that there were “significant further elements” of the appellant’s evidence that he found implausible, but he did not detail these in his decision. The permission states that it is arguable that he may have impermissibly taken “implausibility” into account and, given that he referred to these as “significant further elements”, it is arguable that any such error of law is material. Permission is refused re Ground 2 (13) and (14) but is granted re (15) which deals with corroboration as at paragraph 33 of the decision the Judge states that the appellant has not submitted any evidence to support his claim of his uncles and father being actively involved in the Taliban and there are no photographs, which are often produced in similar appeals. The permission states that this indicates an erroneous approach. Permission is refused re ground 3 (a procedural irregularity capable of making a material difference to the outcome of the fairness of the proceedings) and permission is granted re ground 4 when the Judge states that the manner in which the appellant gave evidence before him is further damaging the credibility of this appeal as a whole.
3. There is a Rule 24 response on file. This states that the Judge’s findings at paragraphs 36 and 43 do not impact on the core of the appellant’s claim as this was only one of several findings made by the Judge. The response states that the Judge does use the term “plausibility” but may have meant “credibility”. It states that the Judge has made adequate findings of fact at paragraph 25 onwards and has given adequate reasons for the findings made.

The Hearing

4. An additional ground was submitted on the morning of the hearing at the end of the skeleton argument lodged on behalf of the appellant. The additional ground refers to the Judge’s approach to risk on return with reference to family support and Westernisation. I asked the Presenting Officer for his views on this. He asked that the ground not be included as he had not prepared the case on this basis. Having considered the decision and permission I decided to allow the additional ground relating to Westernisation to be included. I broke the court and gave the Presenting Officer time to consider this.
5. There were no other preliminary issues and Counsel made her submissions. She submitted that (8) to (12) of the grounds of appeal state that the Judge did not give anxious scrutiny to the case and made

contradictory findings at paragraphs 36 and 43 of the decision. These deal with Section 8 of the Asylum and Immigration Treatment of Claimants Etc Act 2004. I accepted that these two paragraphs are contradictory. Counsel submitted that at paragraph 43 the Judge found that Section 8 applied to this appellant and this was a factor when he came to his conclusion and his assessment of credibility was therefore affected. Counsel submitted that the appellant was a minor when he came to the United Kingdom and that has to be taken into account when considering the fact that he passed through safe countries on his way here. As this was not in the refusal letter Counsel submitted that the Judge was not entitled to raise this issue however, I find that is not the case, this issue is relevant. She submitted it was not raised at the hearing. This is an issue that always has to be considered in asylum cases.

6. Counsel went on to the Judge's reference to the appellant's account being implausible. At paragraph 35 he makes this statement and then states that he finds there are significant discrepancies going to the core of the appellant's claim. He again mentions "implausible" at paragraph 39. He does not however set out "the significant further elements" of the appellant's evidence which he finds to be implausible. I was asked to consider (17) and (18) of the grounds dealing with this point and I was referred to the cases of **Y v SSHD** [2006] EWCA Civ 1223 and **HK v SSHD** [2006] EWCA Civ 1037. She submitted that it is difficult for people living under totally different circumstances to refer to matters being implausible and she submitted that little weight should be placed on the Judge's findings at these paragraphs.
7. Counsel then went on to deal with corroboration and paragraph 33 of the decision in which the Judge states that the appellant has failed to submit any reliable further evidence in support of his claim, either about his uncles or his father or the appellant being involved with the Taliban. She submitted that corroboration is not necessary in asylum claims and at paragraph 33 it was improper for the Judge to state that photographs are often produced in similar appeals. She submitted that the UNHCR guidebook states that a person fleeing from persecution will probably have arrived with the barest necessities and very frequently even without personal documents.
8. Counsel then dealt with ground 4 which states: "The Judge failed to give reasons for concluding that the manner in which the appellant gave evidence was further damaging to the credibility of this appeal as a whole". She submitted that this must be an error as he has not explained what manner he is talking about. I was referred to the case of **MK v SSHD (Pakistan)** [2013] UKUT 641 (IAC). In particular I was referred to paragraph 16 which states that a Judge has to explain why he reaches a finding. She submitted that this statement by the Judge is unreasoned, unexplained and is not illustrated.
9. She submitted that the appellant is a young person and this has to be taken into account by the Judge when making his decision.

10. She then went on to the additional ground of Westernisation and submitted that on return to Afghanistan the appellant will be perceived as Westernised. I was referred to the skeleton argument produced at the first hearing and she submitted that the Judge erred in the way he approached risk on return. At paragraph 23 of that skeleton argument the UNHCR eligibility guidelines record that AGE's are reported to target individuals who are perceived to be Westernised due to their imputed support for the government and the international community, and she submitted that the appellant falls into this category. She submitted that on return it is likely that this appellant will be targeted. He is in this risk category and could even be considered to be a spy for a Western country. She submitted that this appellant has no access to traditional support mechanisms in Kabul and would have no access to shelter and has no skills that would fit the Afghan labour market. She submitted that this was not taken into account by the Judge at the first hearing and should have been and should have been compared to the objective evidence. I was then referred to the Refugee Support Network Report which states that men arriving in Afghanistan from the United Kingdom with family support may have that support withdrawn if they are found to have brought shame on their family. She submitted that this was argued before the Judge at the First Tier hearing and that the Judge's approach to the Westernisation situation is flawed. In paragraph 42 of the decision he states that the appellant said he did not have a beard but he actually did have a small beard and so the Judge rejected the appellant's claim that he would be targeted on return. She submitted that this is not determinative to risk on return.
11. Counsel submitted that there are a number of errors of law which, when taken together, amount to a material error of law.
12. The Presenting Officer made his submissions relying on his Rule 24 response. He submitted that at paragraph 43 when the Judge states that Section 8 of the 2004 Act applies and goes against the appellant's credibility, this is an acceptable finding and the Judge was entitled to make that finding in his decision.
13. With regard to the Judge's reference to "implausibility" he submitted that the way the clauses are worded makes it clear that what he means in "credibility". I was asked to read the whole of paragraph 35. The Judge sets out the law, sets out the past claim, sets out the credibility findings and sets out risk on return in his decision. He submitted that there is no material error of law. The Judge was entitled to make the findings he made at paragraph 35.
14. With regard to paragraph 33 and corroboration he submitted that as no specific cases were referred to by the Judge it is clear that he was only making a general comment and this is not an error of law.
15. He submitted that the Judge's comment that he did not like the manner in which the appellant gave his evidence is not an error. It is clear from the

decision that the Judge considered the appellant's age and looked at his situation as an individual and he does not require to give specific reasons.

16. With regard to Westernisation I was referred to paragraph 42 of the decision and the guidelines. The Judge does not just refer to his lack of a beard, he states that on return the appellant will be in the same position as millions of the population in Afghanistan and he does not have any distinguishing features or a profile. He does not find that the country situation in Afghanistan or in Kabul as sufficient to enable the appellant's appeal to be allowed on human rights grounds or grounds of humanitarian protection. He submitted that there is no merit in this additional ground.
17. The Presenting Officer submitted that if I find that there are errors of law they are not material and the decision should stand.
18. Counsel submitted that with regard to Section 8 the Judge was wrong at paragraph 43 to take this into account and hold it against the appellant. He submitted that the Judge has not used anxious scrutiny and that plausibility is not the same as credibility and he has not explained a number of his findings.
19. Counsel submitted that with regard to corroboration the Judge is not entitled to make a general reference to other cases and he has a duty to give reasons for all his findings. She submitted that she disagrees with the Presenting Officer regarding the Westernisation point. She submitted that the Judge has not properly considered the objective evidence on this and that this appellant is an individual who has spent a long time while he was a child outside Afghanistan and his profile is not what matters, it is his situation on return and his genuine fear of the Taliban. She submitted that not only will he be found to be Westernised on return but he is an individual who fears the Taliban and the UNHCR eligibility guidelines make reference to stigma and discrimination against those who return to Afghanistan after spending time abroad. The objective evidence makes it clear that there are specific risks associated with growing up abroad and the Judge has not taken these into account.

Decision and Reasons

20. Having carefully considered the grounds of appeal and the permission I find that there are errors of law in the Judge's decision. I now have to decide if they are material errors of law.
21. Section 8 does apply to this appellant but he was very young and he was in the hands of an agent. I do not believe that this should go against his credibility to any great extent. The judge was not wrong to mention it but it should only have affected his credibility assessment in a minor way.
22. I cannot accept the Presenting Officer's submission that "implausibility" should be changed to "credibility" in the decision as it is mentioned more

than once. This is an error. "Plausibility" is a different concept to "credibility".

23. With regard to corroboration, corroboration is not required in asylum claims. I am sure the Judge was aware of this. I find it was an error to refer to evidence which had been before him in other Afghani asylum appeals although he did not name any of the cases.
24. With regard to the Westernisation point I find that this is important. I allowed it to be dealt with at this hearing as it was referred to in the previous skeleton argument so it was before the Judge but he did not take it into account. He refers to the appellant's profile and the fact that he does not have a beard but he has not referred to the relevant case law and objective evidence, which makes it clear that young men who have lived for most of their lives abroad, on return to Afghanistan are considered to be Westernised and may even be considered to be spies. This is a serious matter which the Judge should have given weight to. On return the appellant is likely to have no support network and the Refugee Support Network's After Return Report 2016 emphasises the risks that former unaccompanied minors face if returned to Afghanistan, and the fact that they are targeted due to their status as returnees. I find that the Judge has not engaged with the detailed objective evidence before him about this and so has not properly considered risk on return.
25. I also find that the Judge made an error when he stated that he was unhappy with the manner in which the appellant gave his evidence but goes no further, so we are left with no explanation of what it was he objected to.
26. I therefore find that there are a number of errors of law in the Judge's decision and when these are taken together I find that there is a material error of law due to a lack of anxious scrutiny when the Judge made his decision. It is clear that he did not properly consider the objective evidence and the risk on return to this appellant in Afghanistan.

Notice of Decision

27. I find that there are material errors of law in the Judge's decision promulgated on 21 June 2017.
28. I direct that the First-Tier decision be set aside and the appeal remitted back to the First-Tier Tribunal for re-hearing by a Judge other than Judge of the First-Tier Tribunal Cohen.
29. Anonymity has not been directed.

Signed

Date

Deputy Upper Tribunal Judge IAM Murray