



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: PA/07072/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 9 May 2019

Decision and Reasons Promulgated
On: 20 May 2019

Before
Deputy Upper Tribunal Judge Mailer

Between
M B P
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms G Kiai, counsel, instructed by Southwark Law Centre
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.

1. The appellant is a national of Afghanistan, who was born on 1 June 1999. He appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 26 February 2019, dismissing his asylum, humanitarian protection and human rights claims.
2. The appellant comes from Helmand Province. He arrived in the UK on 7 September 2011, when he was twelve years old. In the decision of the respondent dated 16 December 2011, on the appellant's original asylum claim, it was accepted that his father worked for the Americans in Afghanistan. He claimed that his parents had been murdered for politically motivated reasons. The respondent stated that he could relocate to Kunduz Province where he had an aunt.
3. His asylum appeal was dismissed by the First-tier Tribunal on 16 May 2012. It was noted that the respondent accepts that the appellant's parents were killed by the Taliban because his father was working for the United States.
4. The respondent granted him 5 years discretionary leave as an unaccompanied asylum seeking child in 2011 until 1 December 2016. His application for further leave was refused on 12 July 2017 on the basis that he could safely relocate to Kabul.
5. Ms Kiai, who did not represent the appellant at his appeal before the First-tier Tribunal on 11 February 2019, submitted that the Judge erroneously stated at [12] that the respondent did not accept the appellant's claim that his father was killed because of his work for the American army in Afghanistan. In addition he wrongly stated that the respondent did not find the appellant to be credible regarding his account of his parent's death at [13]. The principles in Deevaseelan were thus not followed. The original decision was the starting point.
6. The Judge made a material error of fact as to the position of the respondent which affected his assessment. At [34] and [35] he went on to reject the appellant's biographical account, without reference to the fact that this account had been agreed between the parties and that he had accordingly not heard evidence on it. That resulted in his going on to rely on the appellant's lack of credibility at [36] when concluding that the appellant had not made a genuine effort to contact his aunt in Kunduz and when rejecting the psychiatric evidence of Dr Ellis at [37].
7. Ms Kiai further submitted that the Judge failed to consider the country expert reports of Dr Giustozzi and Mr Foxley, or give reasons for rejecting the reports. Both experts stated that the appellant would be at risk of targeted persecution in his home area and in Kunduz (where his aunt lived) because of his father's work for the Americans, and the circumstances relating to the murder of his parents. Mr Foxley also believed that he would be at risk of serious harm on account of indiscriminate violence in Helmand and Kunduz and that he would be at risk of destitution and exploitation in Kabul.
8. In finding at [35] that there was a lack of evidence to suggest that the Taliban were likely to find the appellant in Kunduz; and that at the time of his arrival he did not

have a political profile because of his age whilst in the country and has not been politically active; and that there was a lack of evidence to suggest that the Taliban have continued to show an interest in him whilst he has been in this country, the Judge failed to acknowledge, consider or engage with the opinion of those experts, that, notwithstanding his age when he left Afghanistan, he would be perceived by the Taliban as a sympathiser of the international forces, that he would be targeted on that account and that the risk would extend to Kunduz. Nor did the Judge give any reasons for rejecting their opinion.

9. Nor, she submitted, did the Judge acknowledge or consider the opinion of Mr Foxley that the appellant could not safely relocate to Kabul. Nor did his consideration of internal relocation at [38] take into account any of the country background evidence that the appellant submitted, which post dated the decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 0118.
10. That evidence demonstrated that there had been major reports from UNAMA and EASO regarding the increased number of civilian casualties in 2017 and 2018. The background evidence was produced from page 350 in the bundle. The Judge failed to consider whether this evidence justified a departure from AS. Nor did he give any adequate reasoning as to why the facts could not be distinguished from the conclusions in AS. He failed to give weight to the UNHCR's opinion dated 2018 where the advice for the first time was that Kabul should not be relied on as an internal relocation alternative for anyone, including healthy, single men.
11. Ms Kiai asserted – ground 5 - that the Judge dismissed the psychiatric evidence on inadequate or irrational reasons. It was not disputed that the appellant arrived in the UK with serious mental health problems which had gradually improved with support and stability. Dr Ellis, the consultant psychiatrist, found that the appellant was presently suffering from PTSD of “mild severity.”
12. His removal from the UK would remove several protective factors in his life and would likely lead to a significant deterioration in his mental health. He had a history of self harm and his risk of suicide would be increased. The appellant's present vulnerabilities would also reduce his ability to access healthcare and meaningful employment. The report showed that he would not have access to mental healthcare in Kabul which would make him highly vulnerable to exploitation.
13. She submitted that the Judge's reasons for rejecting Dr Ellis's evidence are flawed. His report must be seen in the light of the lack of credibility surrounding the claim of his lack of contact with his family in Afghanistan. Even if he is suffering from PTSD, the Judge in reliance on AS concluded that he could cope in Kabul with or without family support. At [39] he stated that the extent of his PTSD is mild, with a suggestion that it would deteriorate which was in his view speculative.
14. Ms Kiai submitted that the Tribunal in AS held that the particular circumstances of an individual applicant must be taken into account in the context of conditions in the

place of relocation, including his age, nature and quality of support networks/connections with Kabul/Afghanistan, their psychological and mental health, and their language, education and vocational skills, when determining whether a person falls within the general position that it would not be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network there.

15. She submitted that it was meaningless to describe Dr Ellis's prognosis as speculative. He carried out 'a forward looking' risk assessment which was based on his medical expertise and proper reasoning. Both experts had built into their assessments of his vulnerability, the fact that he had learned English and that he had been brought to the UK at a tender age.
16. Finally, she contended that the social worker gave unchallenged evidence that the appellant required more support than a typical nineteen year old and that when he experienced difficulties he tended to become upset, harmed himself and had thoughts of suicide. He had never lived independently.
17. The social worker did not believe that the appellant would be able to function or look after himself without a support network. Although the evidence was referred to by the Judge at [27], he failed to consider it at all in his assessment of the appellant's ability to relocate to Kabul. The social worker's evidence was also relevant to the circumstances to be considered under headnote [iii] of AS; the application of country guidance determination in AA (Afghanistan) CG [2012] UKUT 0016 on which the appellant relied; and to the conclusions of Dr Ellis and Mr Foxley.
18. On behalf of the respondent, Mr Tarlow submitted that the submissions amount to a disagreement with the reasoned findings of the First-tier Tribunal. AS is the recent country guidance. Although the situation in Kabul is not perfect, the authorities are able to provide stable conditions.
19. Dr Ellis in his report at 8.6.2, acknowledges that it is difficult to predict how precisely the prospect of forced return to Afghanistan would result in a significant deterioration in his mental health.
20. Mr Tarlow submitted that it was for the Judge to decide what weight to give to the report.
21. The finding at [37] that even if the appellant is suffering from PTSD, he is likely with or without family support to be able to cope in Afghanistan and particularly in Kabul, was a finding open to the Judge. Similarly, his finding at [39] that the extent of his PTSD is mild and the suggestion that it would deteriorate is speculative and was similarly open to him. The Judge noted that he has improved his education in the UK and would have learned skills which would be of assistance to him on his return. He has shown resilience in arriving here at a tender age with no knowledge of this country.

22. It was open to the Judge to conclude that he was not going to depart from the country guidance in AS.
23. Taken as a whole, the determination can stand.
24. In reply, Ms Kiai submitted his finding that notwithstanding the fact that he had PTSD, the appellant could cope, does not properly engage with the country guidance decision at headnote [iii]. All the particular circumstances must be taken into account.
25. Nor did the Judge properly engage with the evidence or explain why the appellant could relocate safely. No adequate reasons have been given. She submitted that the expert did not find that the appellant could return with mental health problems. The Judge did not grapple with his opinion.
26. Nor did he give proper reasons for distinguishing AS, which has been considered by the Court of Appeal. It dealt with a mistake in the country guidance case about indiscriminate violence in Afghanistan. The Tribunal had found that the proportion of the Kabul population suffering death or serious injury in security incidents was "less than 0.01." The actual figure, which was undisputed, is "around 0.1". The difference was thus between less than 1 in 10,000 and around 1 in 1,000. In the circumstances, AS still remains country guidance and will need to be distinguished by pointing to the Court of Appeal judgment.

Assessment

27. Counsel who represented the appellant at his asylum appeal on 11 February 2019 has produced a short statement dated 8 May 2019. Mr Tarlow did not object to its admission.
28. Counsel stated that at the end of the brief oral evidence, both she and the presenting officer made submissions. During her submissions she reminded the Judge that the truth of the appellant's account of events in Afghanistan had not been challenged by the Home Office.
29. Mr Tarlow submitted that any error made by the Judge, even if based on the erroneous premise that the respondent had rejected the appellant's account of events in Afghanistan, was not material in the circumstances.
30. It is evident however, that the Judge did base his assessment on that incorrect premise.
31. He also failed to treat the previous determination of First-tier Tribunal Judge Davison as his starting point. He had accepted the appellant's account. He did not refer to that determination or to the acceptance of the appellant's account of events leading up to his flight from Afghanistan.
32. In the circumstances, the Judge rejected the appellant's biographical account without noting that this account had been agreed between the parties and which is the reason why he had not therefore heard evidence on that account.
33. That credibility finding in turn affected his finding that the appellant had made genuine efforts to contact his aunt in Kundoz. Further, the appellant's diagnosis of PTSD must be seen in the light of the lack of credibility surrounding his lack of contacts with his family in Afghanistan [37].
34. Nor did the Judge engage with the opinions of the two experts that the appellant would be perceived by the Taliban as a sympathiser of the international forces and would be targeted on that account. That risk moreover would extend to Kundoz. No reasons were given for discarding their opinions.
35. It was not in dispute that the appellant arrived in the UK with serious mental health problems which had improved with support and stability. As noted, he was presently suffering from PTSD of mild severity. His removal would accordingly remove several protective factors in his life, leading to a significant deterioration in his mental health. Dr Ellis noted that he had a history of self harm, and his risk of suicide would be increased. Given his vulnerabilities, it was noted that his ability to access healthcare and meaningful employment would be reduced. Mr Foxley was of the opinion that the appellant would not have access to mental healthcare in Kabul, rendering him highly vulnerable to exploitation.

36. In considering whether it would be unreasonable or unduly harsh for a single adult to relocate to Kabul, even if he does not have specific connections or support networks there, the Tribunal in AS dealt with an adult male in good health. The Tribunal however also underlined the fact that the particular circumstances of the individual must be taken into account in the context of conditions in the place of relocation. In particular, this included not only his age and the quality of support network or connections that he may have but also his physical and mental health.
37. The First-tier Tribunal Judge did not consider the implications of the appellant's mental health in concluding that he could cope in Kabul. Moreover, Dr Ellis made a prognosis of the likely implications for the appellant on return based on his medical expertise. He has set out the basis for his concerns.
38. Both experts have taken into account that the appellant had learned English and that he had been brought to the UK at a tender age. The Judge's finding at [39] that the appellant had shown tremendous resilience by arriving in the UK at the tender age of twelve when he had no knowledge of this country and that he is "not" – presumably 'now' - an adult with more life experience, did not factor in whether his current vulnerabilities would reduce his ability to access healthcare or proper employment. Nor was his vulnerability to exploitation in these circumstances considered.
39. Nor did the Judge consider as part of that assessment, the evidence of Mr Robert Young, the appellant's social worker. He stated that the appellant required more support than a typical nineteen year old and that when he experienced difficulties, he tended to become upset, harm himself and had suicidal ideation. He had never lived independently. Mr Young did not believe that he would be able to function or look after himself without a support network. Although that evidence was referred to by the Judge at [27] he failed to consider its significance in the context of assessing his ability to relocate to Kabul.
40. I find that the decision of the First-tier Tribunal involved the making of an error on a point of law. I accordingly set the decision aside.
41. The parties agreed that if that conclusions was reached, this is a case which should be remitted to the First-tier Tribunal for a fresh decision to be made.
42. I find that the extent of judicial fact finding which is necessary for the decision to be re-made is extensive. In the circumstances, I find that this is a proper case to remit.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal, Hatton Cross, for a fresh decision to be made by another Judge.

Anonymity direction continued.

Deputy Upper Tribunal Judge Mailer

Signed and dated 16 May 2019