



IAC-AH-KRL-V1

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

Appeal Number: PA/12133/2019

THE IMMIGRATION ACTS

**Heard Remotely at Field House
On 21st August 2020**

**Decision & Reasons Promulgated
On 23rd September 2020**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**T S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Sanders, query, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was granted permission to appeal the determination of First-tier Tribunal Judge Abebrese promulgated on 20th March 2020. The appellant, a citizen of Afghanistan, born on 1st January 1999 appealed against the Home Office decision to refuse him asylum, humanitarian protection and protection under the European Convention on Human Rights.

2. The appellant claimed his life would be in danger if he were returned to Afghanistan owing to his relationship with the daughter of the head (MH) of the 'mafia' or part of the 'mafia' who worked with the government. MH, it was asserted, was also the nephew of a very powerful man called Sayar/Sayaff/Sayyaf/Sayaf. As a result of this relationship his family, that is his father, had problems with MH regarding money.
3. The grounds for permission to appeal stated as follows:

Ground 1

4. There were factual errors in the case summary and in parts the decision was incoherent, for example in paragraph 4 with reference to the claim for asylum in Austria, the Judge at [4] stated 'the appellant claimed asylum in Austria it is unclear whether the appellant made a claim in Austria'. Secondly the father's land dispute with MH *preceded* the appellant's illicit relationship with his daughter but the relaying of the facts suggested that this caused the problems with the relationship he formed. Thirdly, at 6 it was recorded that the father and brother were killed. The appellant had never claimed his father was killed.
5. This showed the judge had a misunderstanding of the facts and demonstrated a sufficient lack of care and attention contrary to **ML (Nigeria) v the Secretary of State for the Home Department [2013] EWCA Civ 844**.

Ground 2

6. The appellant was assessed by Dr Eileen Walsh, clinical psychologist as suffering from severe PTSD and a severe major depressive disorder (AB, page 55 to 85). The judge acknowledged that the appellant was vulnerable but failed to apply the proper approach when assessing the evidence as set out in the Joint Presidential Guidance Note Number 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance and **AM Afghanistan [2017] EWCA Civ 1123**. The judge should have considered the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity in his evidence and the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it. As **AM Afghanistan** states, the findings of medical experts should not be merely 'add ons' but should be treated as part of a holistic assessment.
7. The judge did not make any reference to the report of Dr Walsh until paragraph 25 and made no mention of her opinion as to the difficulties the appellant was likely to experience when giving evidence. The judge rejected the appellant's evidence before considering the medical evidence and Dr Walsh assessed the appellant for signs of malingering. The judge found the appellant could access medication in Afghanistan, which was unreasoned and he made no reference to the expert evidence to the contrary set out in Dr Ahmad's report, and he could receive support from his family, predicated on his assessment of credibility which was again a circular finding.

Ground 3

8. There were errors in the credibility assessment. The judge failed to properly assess the appellant's evidence in the light of his vulnerability and the following points in relation to his credibility were erroneous. The credibility findings should be made in the round. With regard to the land dispute the judge recorded that the personal details were vague and any issues that arose from the dispute concerned his father and not the appellant personally. It was submitted this finding was insufficiently reasoned and the fact that the appellant had limited knowledge of the land dispute owing to his young age and lack of direct involvement did not in itself support the conclusions the events did not happen. Secondly the judge made a finding that the objective evidence did not support the fact that MH received support from Sayyaf as the objective evidence did not reveal that a person by the name of Sayyaf was a member of the government. This finding at 19 was contrary to the finding at 23 but the country expert report of Dr Ahmad confirmed Sayaff was a politician and former member of parliament and that MH was his nephew. The judge's findings on this point were contradictory and incoherent.
9. At paragraph 24 the judge failed to attach weight to the consistency between the appellant's account and the country background evidence, not just in the terms of the existence of Mumtaz and Sayyaf, but also the consistency of the appellant's experiences with the expert evidence about Afghan honour crimes.
10. Further the findings at 20 to 21 were matters of the judge's personal opinion as to inherent plausibility and are insufficient to reject the appellant's account.
11. The judge also incorrectly summarised **Tanveer Ahmed (documents unreliable and forged) Pakistan * [2002] UKIAT 00439** and although rejected that the appellant was no longer in contact with his family provided no reason for that finding.

Ground 4

12. There was a failure to consider the appellant's age and maturity. At ground 5 the judge failed to address submissions in relationship to the Convention reason and the judge failed completely to consider the submission as set out in Counsel's skeleton argument 7 to 9 regarding the appellant's membership of a particular social group as an individual who had transgressed against traditional notions of honour.

Ground 6

13. There was an erroneous finding in relation to internal relocation. The judge although finding that the appellant could relocate within Afghanistan provided no reasons in support of that finding and did not address any of the Counsel's submissions.

Ground 7

14. There was an erroneous assessment of Article 8 because there was an erroneous factual assessment underlying the conclusions.

15. It was further submitted that the judge's summary of the oral evidence was incomplete and/or inaccurate. The judge omitted a reference to the appellant confirming that he did claim asylum in Austria but the authorities there sought to return him to Greece because he was fingerprinted there. The summary of the appellant's medication was inaccurate at 13 and the judge's summary at 14 was inaccurate. The appellant did not indicate any problem with the Tribunal interpreter.

Analysis

16. At the hearing before me Mr Walker conceded, very properly in my view, that there was a material error in relation to ground 1, for example, the timing of the father's land dispute with M H.
17. Any error must be "a material error of fact in a determination of a Tribunal" in order to constitute an error of law. Any doubt as to whether an incorrect fact was material, should be resolved in favour of the individual who so claims. The question is whether there was any doubt in this instance. There are contradictions within the recording of the evidence for example at paragraph 5 and 19 which suggest that the judge did not have a firm grasp of the facts before him or at least that was not the impression conveyed in the decision.
18. Central to the claim was that the appellant had engaged in a relationship with a girl who was connected to a powerful figure named Sayaff. The judge used numerous spellings in relation to this particular individual who was said to be powerful and in part of the threat. The judge made no findings about the various spellings. In the asylum interview, I note, the appellant referred to this person as both Sayar and Sayaf and in his witness statement as Sayaff. The forenames were identical to those of someone with a similar surname said by the Secretary of State to be not listed as someone 'in power' and by the expert as currently a politician in Afghanistan.
19. At paragraph 19 the Judge made a finding that the objective evidence did not reveal that there was a person by the name of *Sayaff* who was a member government and related to MH but at paragraph 24 recorded there was a reference to the expert stating that MH was the nephew of *Sayyaf* who in turn was previously a member of parliament (and his own son now was a member of parliament). The findings on this were contradictory.
20. The Judge found the information provided by the appellant regarding *Sayyaf* was available on the internet and was public knowledge and was easily accessible and thus the appellant's account of the relationship was discounted, but the assessment of the appellant's own credibility was affected by the failure to apply the Joint Presidential Guidance Note Number 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance and **AM Afghanistan [2017] EWCA Civ 1123**.
21. The judge failed to approach the evidence holistically and made a credibility finding at the outset of his findings at paragraph 19 and turned only to the medical report much later at paragraph 25 noting 'the appellant also provided me with an expert report from a psychiatrist who states that the appellant presents himself as a person who has symptoms of having gone through trauma 'PTSD and depression'. Those

credibility findings were thus rendered unreliable but fed into the assessment of the overall account regarding the relationship and the relevant family members.

22. I have not pursued an analysis of the remaining grounds but bearing in mind the fundamental errors that I have identified I conclude there are indeed material errors of law which undermines the safety of the decision.
23. Owing to the nature and extent of the findings the matter should be remitted to the First-tier Tribunal. I set aside the decision in its entirety.
24. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed *Helen Rimington*
Upper Tribunal Judge Rimington

Date 17th September 2020