



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

Appeal Number: AA/00733/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 July 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR SAYED AHMAD KHAKSAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo, Counsel
For the Respondent: Ms J Isherwood, HOPO

DETERMINATION AND REASONS

1. The appellant appeals with leave against the decision made by First-tier Tribunal Judge J D L Edwards dismissing his appeal against the decision of the respondent made on 22 January 2014 refusing him asylum in the UK.
2. The appellant is a citizen of Afghanistan, born on 1 January 1994. He arrived in the UK by lorry on 21 November 2008 and claimed asylum on that day on the ground that he feared persecution in Afghanistan. As the

appellant appeared to be a minor, he was placed by Croydon Social Services Department with foster parents. He subsequently absconded from their care.

3. In or about October 2013, the appellant made a further application for asylum on identical grounds as before. He was interviewed on 29 October 2013 with the assistance of a Pushtu interpreter. The respondent refused his application on 22 January 2014.
4. The appellant based his claim on a longstanding dispute that exists between his family and a distant relative, a Khyal Mohammed, over the ownership of a piece of land. The land was claimed by the appellant's family and worked by a tenant. In about December 2006 a Jirga was called in their village to resolve this problem but Khyal Mohammed refused to attend. Khyal Mohammed's men later visited the appellant's father and told him to cancel the Jirga. It went ahead and in the absence of Khyal Mohammed the Jirga found for the appellant's father. As a consequence Khyal Mohammed's men beat up the tenant. The appellant's father reported this to the police who did nothing because Khyal Mohammed is an influential man and a local District Judge.
5. He said that on 7 January 2007, Khyal Mohammed kidnapped his father. The next day he was found dead. At the funeral, the appellant's brother was warned by Khyal Mohammed's men that he would be killed as well if his family did not comply with his wishes. As a result, the appellant's family moved to Kabul, where they stayed with his maternal uncle. Two of the appellant's brothers reported the matter to the police. They were told to return in two weeks. When they did so, they did not return. The maternal uncle searched for them and the police eventually notified them that they had been killed. He was shown a letter from Khyal Mohammed saying that as they had not complied with his instructions, they would all be killed. As a result, the appellant's mother died of heart failure.
6. At the end of April 2007, the appellant said that he was approached by men in a car in Kabul when he was on his way back home from shopping. He recognised them as Khyal Mohammed's men. They chased him and he managed to escape, but not before a threat was shouted at him. As a result, the appellant's uncles sent him to stay with relatives in Peshawar, and subsequently arranged for him to be sent to the UK. He travelled by lorry and spent time in Greece, where he was fingerprinted. He said he absconded from foster care because he had heard that he would be returned to Greece. He fears that if he returns to Afghanistan, he will be killed by Khyal Mohammed.
7. The judge had before him a report from Dr Antonio Guistozzi.
8. Counsel submitted that there are two planks to the appellant's appeal. The first is the way the judge dealt with the expert evidence and the

second is a reasons challenge which borders on the rationality of the judge's credibility findings.

9. The judge accepted that the appellant is a citizen of Afghanistan, now aged 20 years and has been educated to primary level. In his judgment the appellant was an intelligent and articulate individual. Although Mr. Yeo had suggested that the appellant was vague as to events because they occurred when he was still young, Mr. Yeo did accept that the appellant's statement was quite specific and did give seemingly accurate dates, when this was pointed out to him.
10. In the light of the objective evidence before him, the judge accepted that there are land disputes in Afghanistan, blood feuds and corruption, but he did not accept the conclusion of Dr Guistozzi's report. The judge did not find that the account given by the appellant of the events and reasons that led him to leave Afghanistan and claim asylum in the UK credible. He found that there was nothing to support the appellant's conclusions that Khyal Mohammed is a member of the Afghan judiciary. If, as the appellant claims, and Dr. Guistozzi accepts unquestioningly, Khyal is a member of the judiciary, the judge wondered why he was not willing to attend and to accept the decision of the Jirga. The judge also found that throughout the appellant's claim, Khyal Mohammed appears to have done nothing personally. It was always suggested that others acted on his behalf. This had not been satisfactorily explained to him.
11. The Judge found the account of the incident in Kabul incredible. The appellant was supposedly in fear of his life, yet, when approached by men he did not recognise in a vehicle, he simply goes over to them when beckoned. A twelve year old, in such circumstances would simply run away at once.
12. The judge said the appellant told him that the money required to send him to the UK, some \$7-8,000 was easily raised by selling property and a business in Kabul. The appellant told him he has had no contact with anyone in either Pakistan or Afghanistan for over four years. He did not find this credible.
13. The judge said that Kabul now has a population of some 3.3 million, including many returnees from Pakistan. He did not find it at all likely that the appellant would be found by Khyal Mohammed or anyone else. The appellant is a resourceful individual, not only as demonstrated by his ability to travel to the UK at a tender age, but also by his evasion of the Croydon Social Services Department, which behaviour damaged his credibility.
14. Counsel disagreed with the judge's comments at paragraph 30 on Dr Guistozzi's report but submitted that the comments did not amount to an error of law.

15. However Counsel took issue with the judge's finding that Dr Guistozi seems to have accepted, without challenge things that the appellant had said, such as that Khyal Mohammed is a member of the Afghan judiciary and further that there was nothing to support the appellant's conclusion that Khyal Mohammed is a member of the Afghan judiciary. Counsel questioned what evidence the appellant could have submitted to prove this point. Ms Isherwood on the other hand submitted that at paragraph 28 of the respondent's Reasons for Refusal Letter, the respondent had considered the appellant's claim that his family have a dispute with Khyal Mohammed and that Khyal Mohammed is the District Judge of Pacher Agham area. The respondent had carried out an extensive search of the internet and had not found a person by this name working as a District Judge in Afghanistan. In addition, a search of this name did not find anyone of that name working in the legal system in Afghanistan.
16. Counsel argued that the judge's finding that Dr. Guistozi seems to have accepted, without challenge things that the appellant has said, such as that Khyal Mohammed is a member of the Afghan judiciary was misguided. The expert was asked to comment on general issues. Dr. Guistozi has no direct personal knowledge of the appellant or his family so he could not go into more details on the appellant's personal situation. The expert accepted the appellant's account without question because those were the instructions given to him. It was not the job of the expert to examine credibility but to comment on plausibility. To do so requires acceptance of the appellant's account and therefore this was an irrelevant reason for reducing the weight to be attached to the report.
17. I find in light of Miss Isherwood's submission that the respondent did not accept the appellant's evidence that Khyal Mohammed was a member of the Afghan judiciary. The respondent clearly stated at paragraph 29 of the Reasons for Refusal Letter that the appellant's claim was not accepted. It is therefore troubling that the expert would have been given instructions which included the acceptance of the appellant's claim. In paragraph 2 of his report, the expert said he had read the Screening Interview, Asylum Statement, Substantive asylum interview and Reasons for Refusal letter. If, as he said, he had read the Reasons for Refusal letter, he would have been aware from paragraphs 28 and 29 that the respondent did not accept the appellant's claim that Khyal Mohammed was a member of the Afghan judiciary. The expert's failure to take this on board leads me to agree with the judge that it is troubling that the expert seems to have accepted, without challenge, the things that the appellant said, such as that Khyal Mohammed is a member of the Afghan judiciary.
18. I find that the absence of evidence to support the appellant's claim that Khyal Mohammed is a member of the Afghan judiciary and consequently has the reach to persecute him using agents of persecution undermines the credibility of his claim. I disagree with the argument in the grounds that the fact that the appellant could not produce evidence to show that Khyal Mohammed was a member of the judiciary was not a relevant

reason for rejecting the appellant's credibility. This issue is at the heart of the appellant's claim and without evidence to support it, his claim does not stand up to scrutiny.

19. I find that the judge's adverse credibility finding at paragraph 31(d) is not sustainable because it did not take into account the naivety of a twelve-year old child. I also find that the judge's findings at paragraphs 31(e) and (f) are not reasoned. Nevertheless I do not find that these errors undermine the judge's finding that the appellant's core claim was not credible.
20. The judge's finding that the appellant's behaviour in absconding damaged his credibility and did not accept his excuse of fearing being returned to Greece, was a sustainable finding.
21. I find that the grounds do not disclose a material error of law in the judge's decision.
22. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun