



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

Appeal Number: AA/03421/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 February 2015**

**Decision & Reasons
Promulgated
On 27 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR ABDUL MOMIN SAHIBLADAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Selwood, Counsel instructed by Duncan Lewis & Co
(Solicitors) Harrow

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan whose date of birth is recorded as 1 February 1973. He arrived in the United Kingdom on 16 November 2012 and made application for international protection as a refugee. On 9 May 2014 a decision was made to refuse the application and the Appellant appealed.
2. On 2 December 2014 his appeal was heard by Designated Judge of the First-tier Tribunal Manuell, sitting at Richmond.

3. The case which the Appellant advanced, and which was accepted in every material particular, “to the required standard and beyond”, was as set out in the application for permission to appeal following the decision of Judge Manuell to dismiss the appeal and is as follows:

“He supported and was involved with the Hezb-e-Islami party; his step-brother Noor Ullah Sahibzadah (recognised as a refugee in the United Kingdom) was a Commander in the organisation. In 2003 the Appellant’s house was raided by the Taliban. The Appellant was approached by the Taliban on several occasions and received threatening letters to join them. They kidnapped him in 2005, during which he was interrogated about his brother’s activities, starved and beaten. He escaped and informed his nephew who was a police officer. The police subsequently raided the place where he was held, and a number of members of the Taliban were killed. The Appellant’s nephew was also killed, along with six other officers in 2006. The Appellant fled Afghanistan and initially claimed asylum in Italy; his application was never determined there. The Appellant eventually arrived in the United Kingdom on 16 November 2012.”

4. Given the standard of prove which Judge Manuell found had been met, it is implicit that Judge Manuell also the Appellant’s evidence that he remained on the Taliban’s wanted list; they had their own government system and had information about him. Judge Manuell accepted also that the Taliban had sent to the Appellant threatening letters. Judge Manuell had looked at the country of origin information report which supported that aspect of the Appellant’s evidence.
5. Where Judge Manuell felt that the appeal did not succeed was on the basis of the effluxion of time. On Judge Manuell’s findings it had been ten years since there were any significant events affecting the Appellant. Judge Manuell noted that the Appellant had requested police assistance in 2005 and that assistance had been forthcoming; the Appellant’s nephew had been a police officer and he caused a raid on the Taliban hideout where the Appellant was being held in 2005. A number of police officers however were killed, including the Appellant’s nephew. Judge Manuell found the level of protection now available sufficient and in the alternative relocation was a viable option.
6. Judge Manuell had regard to the expert report of Mr Jawad Hassan Zadeh expressed the view that Mr Zadeh’s assessment of the conditions which the Appellant would face on return was “unduly pessimistic”.
7. Not content with the decision of Designated Judge Manuell, by Notice dated 22 December 2014 application was made for permission to appeal to the Upper Tribunal. On 15 January 2015, Upper Tribunal Judge Deans granted permission. His reasons were stated as follows:

“1) Designated Judge Manuell dismissed this appeal on asylum and human rights grounds. The judge accepted as credible the Appellant’s evidence of kidnapping and mistreatment by the Taliban in 2005 and the account of events which preceded and followed this. However, the judge’s conclusion was that lapse of time together with the adequacy

of protection and the possibility of internal relocation to Kabul meant that the appeal would not succeed.

- 2) The application for permission to appeal, which was made in time, contends that the judge overstated the lapse of time since the events in question occurred and failed to have proper regard to an expert report on the risk to the Appellant in Afghanistan. The judge did not properly assess the viability of internal relocation having regard; in particular, to the fact the Appellant's home was in the province of Kabul.
 - 3) The grounds are arguable."
8. For the Secretary of State, Mr Tarlow submits that Designated Judge Manuell had clearly had regard to the report of Mr Zadeh; reference is made to it at paragraphs 25 and 26 of the Decision and Reasons. Having focused on the report and noting the assistance given to the Appellant by the police in 2005, in reliance upon the Secretary of State's "Rule 24 Notice", dated 23 January 2015, Mr Tarlow submits that the Designated Judge Manuell made findings that were open to him and that the grounds amount no more than a disagreement with the findings of Designated Judge Manuell all of which were open to him.
 9. The first ground of appeal focuses on paragraph 26 of the Decision and Reasons in which Designated Judge Manuell viewed the expert's assessment of the conditions which the Appellant would face on return to Afghanistan as, "unduly pessimistic." I invited Mr Tarlow to assist me in pointing to evidence which justified that contention in the face of the expert evidence, when there had been no suggestion that the expert was without expertise in respect of those matters upon which that expert had been invited to comment. He accepted that it was something of a challenge but pointed to the assistance that had been afforded to him by the police in 2005.
 10. On the other hand, the reasons given for finding that Mr Zadeh's assessments were unduly pessimistic were, in the submission of Mr Selwood largely immaterial. The fact that the Appellant was not a foreign tourist but an Afghan national who had kept in touch with his own country was not a factor which was capable of assisting in determining the extent to which the Appellant would be at risk on return. The same was true of the fact that the Appellant had kept in touch with other Afghan nationals in the United Kingdom. Designated Judge Manuell criticised Mr Zadeh's report for failing to give sufficient attention to the regular visits to Afghanistan made by members of the Afghan diaspora from western countries in order to see their relatives but Mr Selwood pointed to the fact that that was a point which in large measure was supportive of the Appellant. The background material demonstrated that where individuals have family support they are less likely to be at risk. This Appellant was a person who did not have that material family support. The whereabouts of his family was unknown and the nephew who had been able to offer protection was dead. That the Appellant was only one of many Afghans

who had encountered violence with the Taliban in the past did not of itself assist either so that in essence Mr Selwood submitted that the only point that was material was that the Appellant had received support from the police in 2005 though I note too that reference is made to the Appellant being Pashtun, being a majority ethnicity with a large population in Metropolitan Kabul.

11. Mr Tarlow took me to the operational guidance note of September 2014 at 3.10.3 which states;

“President Kharzai has stated publically that he is open to talking with anti-government insurgents, and the United States has encouraged this exploration to be an Afghan led and Afghan owned process. However, Taliban members made clear that they would not cease fighting, accept the Afghan constitution, or engage with the Afghan government directly. The Afghan government is implementing a lower level reconciliation and reintegration process, called the Afghan peace and reintegration programme. It works to reintegrate lower level and less ideological elements among the insurgents by encouraging them to end their armed opposition to the government and to reintegrate peacefully in society. However, the number of participants has been low, and as of June 2007, ISAF estimates did not exceed 2,000 individuals.”

12. Mr Tarlow sought to interpret that paragraph as suggesting that the number of Taliban insurgents was low but Mr Selwood invited me to accept that the passage was simply referring to the number of participants in the reconciliation and reintegration process. I am bound to say that I much prefer Mr Selwood’s interpretation of the passage.

13. The Secretary of State’s own evidence about sufficiency of protection is nuanced. At 2.2.16 it reads:

“If the ill treatment/persecution is at the hands of non-state agents, then the provision of state protection outside of Kabul and other main cities might not be accessible due to the structural weakness of the security services. In Kabul and other cities the authorities are in general willing to offer protection to citizens; however their willingness and ability to do so needs to be judged against the individual facts of each claim. It is important therefore the caseworkers refer to the most up to date country information to ascertain whether in the circumstances prevailing at the time the decision is made, effective protection is available for an individual applicant, taking full account of their personal circumstances.”

14. Against that, Mr Zadeh’s opinion, rejected by Judge Manuell, was that in Kabul the places with the majority of Pashtun populations are the most dangerous areas where the Taliban and Hezb-e-Islami have many active insurgents, spies and sympathisers. Insofar as Judge Manuell was suggesting therefore that the Appellant was a majority Pashtun who might find protection in Kabul, that had to be read in the context of it being a dangerous area with the Taliban having active insurgents. Further at paragraph 14 of his report, Mr Zadeh states,

“A person to survive in Kabul or in any Afghan provinces must have immediate and extended family members who are willing and capable of providing support.”

That goes to the point which I have already made with respect to the observation of Designated Judge Manuell that there are Afghans who return to Afghanistan to see their families. However, the question is whether the Appellant has that support. Further and in any event, there was, Mr Selwood pointed out, material errors in the findings of fact by Judge Manuell because though Judge Manuell speaks of the events having occurred ten years ago, the Appellant’s nephew was killed in 2006, some eight years ago and the last letter the Appellant received from the Taliban was in 2007, some seven years ago in circumstances in which it appears to have been accepted that the Appellant was on a wanted list. (In each case the calculation is by reference to the date of the hearing in the First-tier).

15. In my judgment there was no sufficient basis for rejecting the expert evidence of Mr Zadeh. Designated Judge Manuell found him “unduly pessimistic” but the reasoning is, I find, and as Mr Selwood submits, insufficient given the lower standard which is to be applied in cases such as this. The police were prepared to assist the Appellant but that nephew is now dead.
16. Past events inform what is reasonably likely to occur in the future. The Appellant has been found to be a person with a profile. He has demonstrated that he has been a person of interest to the Taliban in the past. In my judgment given the expert evidence which was before Designated Judge Manuell to find that the Appellant was no longer in danger were he to return was to ignore the real risk consequent upon the Appellant, being a person with a profile remaining on a wanted list. Designated Judge Manuell in being prepared to expose the Appellant to that risk, in my judgement, set the threshold too high. There is a reasonable risk of persecution facing this Appellant. The expert evidence was that there was no sufficient protection. The expert evidence was that the police force was infiltrated by the Taliban and therefore unreliable. Even the Secretary of State’s own evidence demonstrates that whilst there may have been some improvement, when taken together with the expert evidence, it is not sufficient for a person such as this Appellant.
17. The issue of internal relocation arises but the Appellant is and was from Kabul province. Insofar as it is suggested that the Appellant might relocate anywhere, it is to Kabul which clearly would be unreasonable or unduly harsh given the facts.
18. Whilst enormous respect is to be given to the attention which has been given by Designated Judge Manuell, a very experienced judge, I am bound to find that on this particular occasion he has materially erred in failing to give sufficient weight to the expert evidence and being influenced, as submitted in the grounds, by factors, which on closer examination, cannot

really be said to be relevant. The fact that the Appellant would not be a not a foreign tourist but an Afghan national who has kept in touch with Afghanistan in various ways is not capable of assisting in the assessment of whether the Appellant is less likely to be at risk were he to return to Afghanistan. The same is true in respect of the contacts which he has maintained in the United Kingdom. As a Pashtun, the expert evidence is that he would be in an area which is most violent and therefore the risk would be all the greater. Designated Judge Manuell suggested that Mr Zadeh's report fails to give sufficient attention to regular visits to Afghanistan paid by the many members of the Afghan diaspora in order to see their relatives but as I have already observed, the Appellant's evidence was to the effect that he does not know where his family are and the one member of his family who could offer protection, his nephew has been killed, he being the one connected with the police. That there have been many Afghans who have encountered violence in Afghanistan does not point to any enhanced protection to the Appellant nor is it a relevant consideration. One needs to focus on this particular Appellant being a person who is on a list. What is more it was not ten years since the last events affecting this Appellant but rather sooner.

19. In all the circumstances there is, I find a material error of law such that the decision cannot stand and having regard to the totality of the evidence including the report of Mr Zadeh I find to the lower standard that the Appellant had proved his case.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The Decision of Designated Judge Manuell is set aside and remade such that the appeal is allowed both on asylum and human rights grounds (Articles 2 and 3).

Signed

Date 26 February 2015

Deputy Upper Tribunal Judge Zucker