



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04126/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 5th January 2015

Decision & Reasons Promulgated
On 30th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

EJAZ SAFI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott instructed by Paragon Law
For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born on 1st January 1994.
2. The Appellant arrived in the United Kingdom on or about 29th May 2008. He claimed asylum approximately a month later on 25th June 2008. His application for asylum was refused but he was granted discretionary leave to remain until 1st August 2012,

in accordance with the Respondent's policy relating to unaccompanied minors. He appealed against the refusal but his appeal was dismissed on 26th November 2008 by Immigration Judge Pooler. Thereafter his appeal rights became exhausted.

3. On 29th June 2012 the Appellant applied for further leave to remain. His application was refused by the Respondent on 6th June 2014 and directions were given for his removal from the United Kingdom. An appeal against that decision was dismissed by Judge of the First-tier Tribunal Matthews in a determination dated 16th September 2014. The appeal hearing in the First-tier Tribunal took place on 2nd September 2014.
4. The Appellant's representatives applied for permission to appeal and permission was granted in the First-tier Tribunal on 9th October 2014. The judge who granted permission considered it arguable that Judge Matthews erred in law in that he failed to give proper weight to the expert report of Dr Giustozzi and that he failed to give proper weight to the evidence of Jane Oakley, whose letter was also before the Tribunal at the appeal hearing.
5. The Respondent's representative filed a Rule 24 response dated 20th October 2014. The response contends that the First-tier Judge directed himself appropriately and that the Appellant's Grounds of Appeal are no more than a lengthy expression of disagreement with the judge's findings.
6. Thus the matter came before me in the Upper Tribunal for an error of law hearing on 5th January 2015. Representation was as mentioned above. I had before me all the documents which were before the First-tier Tribunal. In addition, I have taken into account the Appellant's consolidated bundle submitted by his solicitors on 26th November 2014, a bundle of case law and a skeleton argument prepared by Mr Draycott. At the end of the hearing I reserved my decision which I now give.
7. The Appellant's initial asylum claim was refused on 30th September 2008 and his appeal against that refusal was dismissed by Immigration Judge Pooler in a determination dated 25th November 2008. Judge Matthews has referred to this determination and, at paragraph 15 of his decision and reasons, has referred to the principles set out in Devaseelan [2002] UKIAT 00702. Judge Matthews points out that in his latest appeal the Appellant is not advancing a significantly different factual account of his experiences in Afghanistan to that put before Judge Pooler. Judge Matthews has correctly taken into account Judge Pooler's findings as his starting point.
8. The circumstances of the Appellant's initial claim are set out by Judge Pooler in his decision from paragraph 7 onwards. His claim was based on his father's claimed activities as a commander with Hizb-i-Islami. The Appellant was told by his mother that his father was a commander and for as long as the Appellant could remember his father had been away from home for two or three months at a time, returning for periods of between ten and fifteen days. The Appellant's father was brought home in 2007 having been wounded by the authorities. Subsequently the Appellant's house was attacked. In interview he said that there were three attacks, the first of which occurred one month after his father had recovered from his injuries and rejoined Hizb-i-Islami. At the time of the first attack the Appellant was in the house with his mother, grandmother and siblings. A second attack took place ten or fifteen days

later when the Appellant, his mother, his grandmother and his brother were present. Two months later the Appellant's father returned home. The house was subject to an attack at night. Subsequently the Appellant saw the dead bodies of his father's friend and two other men. His father was missing.

9. The Appellant and other members of his family fled to the house of his maternal uncle. After the attack a message was sent to the family saying that they would be killed. The Appellant was told by his uncle that he would be next as he was the eldest male. Therefore, arrangements were made for the Appellant to be taken to Iran and eventually to the United Kingdom.
10. As Mr Draycott has pointed out in his skeleton argument and submissions, Judge Pooler made a number of findings which were in favourable to the Appellant. He accepted the Appellant's account of his father's involvement with Hizb-i-Islami. He accepted that the Appellant's father was a commander although he noted that there was no evidence to suggest that the father was anything other than a local commander. There was no evidence to suggest that the Appellant's father was known outside his local area. Judge Pooler also accepted that the Appellant's father was wounded in combat by the authorities.
11. It is pertinent to note that Judge Pooler had the benefit of a report by Dr Giustozzi. Judge Pooler rightly paid careful attention to Dr Giustozzi's report but concluded, at paragraph 23, that it did not establish that the Appellant would be at risk on return. Judge Pooler said this:

“While I accept Dr Giustozzi's expert evidence that clashes in Kunar have been very frequent, the appellant must, if he is to succeed in this appeal, satisfy me that he as an individual would be at real risk for a Convention reason. I am not satisfied that the appellant, at the age of 14 and having no history of personal involvement with Hizb-i-Islami, would be individually targeted by reason of an imputed political opinion. Dr Giustozzi describes the appellant as ‘a likely target for arrest and interrogation’ but he has not satisfied me that the appellant as an individual would be at real risk in spite of the evidence in his report that as many as 15,000 people have been detained by the authorities for questioning in Afghanistan”.
12. Judge Pooler further concluded, having taken into account the Country of Origin Report on Afghanistan that he was not satisfied on the evidence that the Appellant would effectively be left to fend for himself as a street child in Kabul. Further, there was no evidence to suggest that the Appellant's uncle would be unable to make arrangements for the Appellant to be brought from Kabul to his home area. The uncle had after all been able to arrange for the Appellant's journey from Afghanistan to the United Kingdom. Judge Pooler was not satisfied on the evidence that contact with the Appellant's family could not be made and that arrangements for his accompanied travel from Kabul to Kunar could not be put in place.
13. Judge Pooler's determination has not been successfully challenged on appeal. His findings are valid and subsisting and Judge Matthews rightly adopted them as his starting point when considering the Appellant's most recent appeal. However, at paragraph 15, Judge Matthews has rightly confirmed that it is his duty to consider all the evidence before him as to risk to the Appellant, and his evidence on the issue of attempts to contact his family, and make his own findings and conclusions since they are inevitably matters that are capable of changing over the period that has elapsed since Judge Pooler's decision.

14. The main thrust of Mr Draycott's argument is that Judge Matthews failed to give sufficient weight to the evidence of Dr Giustozzi, a well-known expert on Afghanistan, whose evidence has been accepted by courts and Tribunals on many occasions. Mr Draycott acknowledged that a judge is not obliged to accept the opinion of a well-known expert but, if he declines to accept it, then cogent reasons for so doing need to be given.
15. As I have already pointed out, Dr Giustozzi's evidence in the first appeal did not satisfy Judge Pooler that the Appellant's claim should succeed, even on the low standard of proof. That finding remains undisturbed.
16. It is clear from Judge Matthews' decision that he has given due consideration to Dr Giustozzi's further report. This is mentioned first at paragraph 14 and then at paragraph 16 the judge states –

“I note the further expert report and have considered that with care, I shall address its contents in relation to my own findings as to the present risk on return. I do not accept, as stated in the further report, that there has been any misunderstanding in Immigration Judge Pooler's mind as to the assertions of the expert in the report prepared for the first appeal”.
17. There is further reference at paragraph 19 where Judge Matthews states –

“On the evidence it could not be established who was responsible for the attacks (on the Appellant's home). I have reviewed the further expert report before me and note that at page 21 onwards views are expressed as to the attacks being typical of the Arabakai, but the authorities cannot be ruled out as perpetrators. I still find, on a fresh analysis of this area of the evidence, that the perpetrators of the attacks cannot be established”.
18. Moving on to paragraph 27 of the decision, at that point Judge Matthews explains why he has declined to accept Dr Giustozzi's latest opinion. He states –

“I diverge from the expert opinion before me because the expert finds that the Appellant is at risk due to his father's activities, but in my judgment the evidence does not indicate that his father's activities were the cause of attacks on the family home, nor does it show any interest in the Appellant individually or his family beyond the inevitable risks that are inherent in residence in modern Afghanistan”.
19. It is trite law to say that a First-tier Judge does not have to accept the opinion of an expert witness, no matter how well respected that expert may be. However, Mr Draycott is also correct to point out that if the expert's opinion is to be rejected, then adequate reasons have to be given. The weight to be given to the evidence of an expert witness is essentially a matter for the Tribunal Judge. I am satisfied that in this case Judge Matthews has given a clear and adequate explanation in support of his decision to diverge from Dr Giustozzi's opinion.
20. Permission to appeal was also given on the basis that Judge Matthews arguably failed to give proper weight to the evidence of Jane Oakley and that his conclusion that the Appellant would have the support of his mother and younger siblings failed to reflect the evidence. This is a matter which was also relied upon by Mr Draycott in submissions.
21. Mr Draycott is correct in pointing out that nowhere in his decision and reasons does Judge Matthews make any direct reference to a letter dated 2nd July 2014 from Jane

Oakley, which is at page 44 in the Appellant's bundle. Ms Oakley is employed by an organisation called Futures and expresses the opinion that the Appellant suffers either from a mild learning disability or autism. I have to consider whether the failure to make findings in respect of this letter amounts to a material error of law.

22. The first point to note, as I observed during the hearing, is that there is nothing in the letter to suggest that Ms Oakley is qualified to diagnose or give an opinion on learning difficulties or autism. Furthermore, it appears from her letter that there has never been any formal diagnosis to that effect. Ms Oakley refers to the fact that the Appellant has never been formally assessed but that it is her opinion that he may have "mild learning difficulties or beyond the autistic spectrum".
23. In this context Judge Matthews has made explicit reference at paragraph 21 to evidence from Mrs B Bassett, the Appellant's after-care personal adviser. Mrs Bassett is described as an experienced youth worker and personal adviser. Judge Matthews noted her evidence to the effect that the Appellant had required support in setting up his own flat and arranging utility services. Mrs Bassett explained in her evidence that when the Appellant lost his first employment he was slow to seek jobseekers allowance despite her support and advice and that he needed to do so urgently in order to secure housing benefit. Mrs Bassett described the Appellant's behaviour as displaying naivety and some unrealistic optimism at times.
24. Judge Matthews accepted (paragraph 22) that the Appellant needed support and was at times naïve, and he was willing to find that this went beyond a simple language barrier and betrayed cultural differences. But he also found that the Appellant had been successful in independently establishing himself and had done so in a culture other than his own native culture. The judge noted that the Appellant needed more support than some care leavers but he found that was in part due to language and cultural differences. He did not find from the evidence that the Appellant has been unable to move to independent living or that he lacked drive and motivation. The judge also found that the cultural matters that have contributed to the support level required would not be relevant in Afghanistan.
25. The judge concluded that the Appellant was neither an unaccompanied child nor an orphan. He has never been approached for any forced recruitment and he is now an adult. The judge did not find a basis for any risk of persecution for a Convention reason that requires a grant of asylum. In his decision on human rights, the judge found that the Appellant was born and lived in Afghanistan for the first fourteen years of his life. The judge found that his family remained there. He speaks the local language. The judge was not persuaded that the Appellant's six years in the UK have resulted in him no longer having real ties to Afghanistan, in the form not only of his cultural background but also close family ties.
26. Article 8 has been assessed in accordance with the five step Razgar guidance at paragraph 44 onwards. It is not argued on the Appellant's behalf that he could satisfy the requirements of the Immigration Rules so far as private life in this country is concerned.
27. As is noted in the grant of permission to appeal, the grounds submitted by Mr Draycott extend to ten pages which is a page longer than the determination which they seek to challenge. The Respondent's Rule 24 response argues that the

grounds are nothing more than a very lengthy disagreement with the findings of the First-tier Judge.

28. In my view the First-tier Judge has made clear findings which are supported by cogent reasons. The determination discloses that the judge has considered the appeal in the round as he is required to do. Having given careful consideration to the arguments, I am not persuaded that the First-tier Tribunal's decision discloses a material error of law such that it falls to be set aside. I uphold the determination and dismiss the appeal.

No anonymity direction is made.

Signed

Date 28th January 2015

Deputy Upper Tribunal Judge Coates