



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

Appeal Number: AA/08189/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 23 October 2015**

**Decision & Reasons Promulgated
On: 21 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR HAIDER MOHAMMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, Counsel
For the Respondent: Miss A Fijiwala, Senior Presenting Officer

Decision and Reasons

1. The appellant is a citizen of Afghanistan born on 1 January 1991. He appeared against the decision of the respondent dated 21 September 2014 to refuse to grant him further leave to remain in the United Kingdom as a refugee and on humanitarian protection grounds. First-tier Tribunal Judge Farmer dismissed the appellant's appeal on 5 June 2015. Permission to appeal was initially refused by a Judge of the First-tier Tribunal Andrew and subsequently granted by Upper Tribunal Judge Goldstein on 24 August 2015 who found that it is arguable that the Judge's approach, evaluation and reasoning, in relation to the "night letters" claim to be from the Taliban brought him into error which in turn led to tainting the weight that he attached to the appellant's expert report.

The First-tier Tribunal's findings

2. The First-tier Tribunal Judge made the following findings in dismissing the appellant's appeal which I set out in summary. It was agreed by the appellant's representatives that the primary issue to determine in this appeal, is the credibility of the appellant's account. However, the Home Office Presenting Officer submitted that even taking the appellant's account at its highest, protection would be available to the appellant in Kabul and relocation therefore would be an option for him.
3. The respondent produced a document at the hearing, detailing an account of the appellant's arrest which adversely affects the appellant's credibility. When the appellant was questioned in examination in chief, he said that he could not understand the questions that the immigration Officer had put to him because the officer spoke in English. Later, when asked to explain how then was it that he managed to give so much information at his interview, most of which, he has accepted is accurate. The appellant said he did understand some of the questions because the officer also spoke some Urdu. The Judge accepted that the information given by the appellant in his asylum interview was an accurate account of what he told the interviewing officer and found that the appellant has been in the United Kingdom longer than the three days that he claimed at the date of arrest.
4. It is not accepted that the appellant was kidnapped and detained as he has described. It is inconsistent that he would claim that the Taliban have strong intelligence on him and who have his address, photo and telephone number and yet not ambush him in the city but they would wait until he visited his family in the village, to ambush him given that he only visited the village once a fortnight. According to the appellant, the Taliban had his address and could have visited him there at any time.
5. The appellant's explanation for why they ambushed him at the village was that in the city there would be police around and it would be more difficult to kidnap him. The appellant has therefore accepted that he would be able to avail himself of police protection should he need it. However, the appellant also stated that he had not sought protection from the government and that he cannot seek their protection is contradicted by his statement that it is safer in cities due to police presence.
6. While it is accepted that the appellant has achieved a good level of competency in Taekwondo, there is no reasonable explanation for why the Taliban would have identified him specifically as their trainer. The evidence is that the appellant himself still had trainers to train him. It is more likely that the Taliban would seek to recruit the trainers rather than the pupil, regardless of his level of proficiency in Taekwondo. The appellant has given no reasonable explanation as to why the Taliban would have identified him to train them.
7. The appellant claims to have been detained for 14 days by the Taliban and then released on the surety of his brother and his trainer. He claims that following this the government were harassing his mother to find out where the Taliban and the helpers are. This is not a credible claim because the appellant lived in Jalalabad and he accepts that the Taliban knew his address. It would have been more likely, had his account been true about being recruited by the Taliban, that the government would have come and asked him about it.

8. The appellant's answer at question 55 of the asylum interview that the Taliban also released him as he backed them is not credible. He stated that he begged the Taliban very much and lay at their feet and cried and told them he would return and that he suffered very much which was why he was released. The Judge did not find it credible that the Taliban would release the appellant on arrangements for him to return to the Taliban if called upon, in light of the fact that he was ambushed. This goes to the appellant's credibility.
9. The appellant has produced two night letters in support of his claim. He states that following the receipt of the second letter, he knew that he that if he was caught he would be killed. This was what led him to make the decision to leave the country and this was also on the advice of his mother and trainer. The Judge was referred to the objective evidence that deals with letters and what form they may take and submits that the letters produced by the appellant are within this format. The letters considered in in the round, in accordance with the case of **Tanveer Ahmed**. The Judge found that the letters are completely self-serving and therefore do not assist the appellant's credibility and placed no weight on them.
10. The Judge did not accept Mr Dowd's evidence at the hearing. He stated that it is unlikely that Mr Dowd would travel to Afghanistan and discuss the appellant with his trainer and yet make no enquiries whatsoever of the appellant's family in Afghanistan. The fact that the appellant did not want enquiries to be made of his family damages the appellant's credibility. Given that the appellant claims that his brother was killed shortly before he left Afghanistan, it would be expected that the appellant would want to be reassured that his family were safe. Mr Dowd's initial evidence was that the appellant's family were in "bad situation" which is undermined by his evidence under cross-examination that he has not discussed the family or asked after them but now says, it was just a general comment about the situation of the people in the area where the appellant's family comes from.
11. The appellant claims that he has no family connections in Afghanistan which is not accepted. The appellant made no enquiries about them through his friend Mr Dowd because he did not want any information about his family that would provide a connection of the appellant to Afghanistan, knowing that his appeal was going to be determined. He has made no other attempts to trace his family.
12. The appellant clearly does not want to return to Afghanistan. In the case of **HJ Iran [2010] UK SC 31** at paragraph 88, Lord Walker noted that where a person earnestly does not wish to be returned to his country, his evidence may have to be treated with caution because of his strong personal interest in the outcome of his claim.
13. The expert report has been considered and Ms Bhatti's submissions are accepted that the expert is entitled to give an opinion and does not have to put all sources for all assertions about Afghanistan in his report. However, the report's conclusions were that they relate to the specific detail of the appellant's claim do not assist in the Judge coming to his conclusions. It is accepted that it is plausible that the professional people may be recruited by Taliban to provide skills otherwise lacking, however it still remains to be determined whether in this case, on these facts, the claim is a credible one. It is for the Judge to determine the credibility of the appellant having looked at all the evidence including his oral evidence. Ms Bhatti quite rightly and helpfully conceded this point in her submission. While it is accepted in general terms the

account that a sportsman may be recruited could happen, it is for the reasons set out above that the appellant has not established to the required standard of proof that it occurred as he has stated.

14. The appellant's central core of his case is not accepted. It is submitted on behalf of the appellant that the appellant left shortly after receiving the second night letter dated 5 December 2013 and took a couple of months to get to the United Kingdom arriving on 23 March 2014. She stated that the appellant claimed asylum at the earliest opportunity. However, the appellant only claimed asylum after being arrested and there was little alternative for him as he was being detained having entered the country illegally.
15. The Judge took into account Section 8 of the Asylum and Immigration (Treatment of Claimants Etc) Act 2004 which requires the Judge to take into account as adversely affecting the credibility of the appellant's account any behaviour which is designed and likely to result in concealment of information or to mislead or delay consideration of a claim. This in particular includes failure to produce a passport or production of an invalid passport as if it were valid, destruction of a passport or ticket, failure to answer a question, failing to take advantage of a reasonable opportunity to claim asylum in a safe third country, failure to make a claim promptly failing to provide a reasonable explanation for these matters. Although not determinative of the appeal, the appellant was in to France for two to three months prior to coming to the United Kingdom and could have claimed asylum in that country. However, because this was not raised in evidence and the appellant was not asked for an explanation for why he did not claim asylum in France, little weight is attached to this.
16. The appellant is 24 years old and has family in Afghanistan to whom he could return. He could also return to Jalalabad where he worked with his trainer and had accommodation. He has not established any of the core aspect of his asylum claim. He has not established that he or his family were targeted by the Taliban or the government. He has not established that he was kidnapped or detained. He has not established that the Taliban or anyone else was seeking him before he left Afghanistan.
17. As to the circumstances in Afghanistan generally, the case of **AK Afghanistan [2012] UKUT 2163** has been considered including the COI and the OGN Report.
18. On the bases of the decisions of **AK and HMB v United Kingdom application number 70073/10 and 44539/11**. In a judgement handed down on 9 April 2013. The appellant's claim is not established to the necessary lower standard of proof that it would be unreasonable or unduly harsh to expect him to internally relocate to Kabul. He would lead a normal life as judged by Afghani standards.
19. The Judge dismissed the appellant's appeal on humanitarian protection grounds for the same reasons.

Grounds of appeal

20. The Judge's assessment of the credibility of the appellant's core account is solely based on plausibility. The Court of Appeal has been categorical in repudiation of plausibility as a means of assessing credibility. See **HK v Secretary of State for the**

Home Department [2006] EWCA Civ 1037 at paragraph 28. In **Y v Secretary of State for the Home Department [2006] EWCA Civ 1223** paragraph 25, it was stated that “there seems to be to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as the Immigration Judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that it should seek to view an appellant’s account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes”.

21. The Judge found that it was implausible that the Taliban would have waited until the applicant visited his family before attempting to abduct him or that they would have only sought to do so when the applicant was alone travelling to his family’s home. It is contended that there is clearly nothing implausible about the applicant’s account and more importantly the FTTJs finding is reliant on how he assesses the Taliban, unsupported by evidence, would or would not behave. Similarly, the Judge found that it was implausible that the Taliban would not have attempted to abduct the appellant when he was in Jalalabad.
22. In respect of the Taliban’s ongoing interest, the Judge found at paragraph 27 that in spite of the accepted ability of the applicant, he would not accept the Taliban would seek to recruit him as a taekwondo trainer. Again the finding is based entirely on the assumed knowledge of how the Taliban would operate.
23. The Judge found that it is implausible that the Taliban would release the applicant after 14 days, with an understanding that he would be recruited to return again when they needed his assistance. There is nothing intrinsically implausible about the appellant’s account of this and once again the finding is solely predicated on an assumption concerning the actions of the Taliban. Moreover, the Judge finds that it is inconsistent that the Taliban would have released the appellant having captured him in the manner that they did. The Judge found that this inconsistency damaged the appellant’s credibility overall. There is no inconsistency.
24. The second ground of appeal is that the Judge give a misdirection regarding the case of **Tanveer Ahmed** and perverse findings were made regarding the night letters served on the appellant. The Judge placed no weight on the letters based on a misdirection regarding this case. He also reached the perverse conclusion that the letters could not be relied on as they were all self-serving. All evidence submitted “serves” the appellant’s claim it is not a reason to fail to give weight to that evidence.
25. The third ground of appeal is that the Judge failed to give weight to the expert evidence of Jawad Haassan Zadeh. The Judge should consider the objective evidence in reaching his conclusions on the appellant’s credibility. Particularly as the Judge appears to accept the expert’s comments that the Taliban do recruit specific professionals to assist them and that in general terms, sportsmen may be recruited by the Taliban.

26. The fourth ground is that the failure of the Judge to consider the relevant country guidance regarding internal flight. The night letters demonstrate that the Taliban have an ongoing interest in the applicant and therefore there is an individual risk for the purposes of the country guidance case of **RQ Afghanistan CG [2008] UKAIT 00013**.

Findings as to whether there is an error of law

27. The main complaint made about the determination is that the Judge based his findings on plausibility without regard to the appellant's evidence, the Taliban night letters and the expert report on how the Taliban functions. It is also alleged that the Judge did not make sustainable findings as he did not consider the evidence in the round.
28. The Judge in his determination stated that he has taken the country guidance case of **AK Afghanistan**, COIR and the OGN on Afghanistan into account in his decision. This clearly indicates that the Judge was aware of how the Taliban operates in Afghanistan. Therefore, the Judge did not just take into account his view of the world, as alleged by the appellant in his grounds of appeal, but that of the world as it existed for the appellant in Afghanistan.
29. The Judge in a careful and detailed determination made many credibility findings against the appellant and took into account all the evidence in the appeal. His credibility findings are set out from paragraph 24 to 30 of the determination. At paragraph 30 the Judge took into account the two night letters and also took into account, the appellant's evidence that following the receipt of the second letter, the appellant knew that if he was caught by the Taliban he would be killed and this was the catalyst for his decision to leave the country to find safety.
30. Given appellant's claim that he fled Afghanistan for his safety, the Judge took into account, in the round, the evidence that that the appellant was in France for two to three months and he did not claim asylum while in a safe country. The Judge was entitled to find that this is not a profile of a genuine asylum seeker that he would not seek asylum while in a safe country. The Judge also found against the appellant that he only claimed asylum after he was arrested. The Judge gave other reasons for finding the appellant and his claim not credible.
31. The Judge considered the night letters from the Taliban in the round with the guidance given in **Tanveer Ahmed** and found them to be self-serving and placed no weight on them. He found that it was not credible that the Taliban who had to the appellant's name and address in Jalalabad would not kidnap him there but would wait for him to go to the village, which he did only fortnightly, in order to abduct him to recruit him into the Taliban. The Judge took into account the reason that the appellant gave for why he was not abducted in Jalalabad because he said there is police presence in Jalalabad. The Judge rightly concluded from this evidence that the appellant's claim that he could not access police protection in Jalalabad was not credible given his evidence of the police presence and thereby protection against the Taliban in Jalalabad.
32. The Judge took into account the background evidence, and found that it is not credible that the Taliban who knew the appellant's address in Jalalabad would wait for him to go to the village to ambush him instead of doing so in Jalalabad. This

evidence demonstrated to the Judge that this cautious approach by the Taliban does not accord with the background evidence that the Taliban would abduct anyone they wanted notwithstanding where they lived.

33. The Judge took into account, against the appellant, his attempt to deceive. He found at paragraph 24 of the determination that the respondent handed in a document detailing an account of the appellant's arrest in this country in an attempt to determine when he came to this country. The Judge noted that the appellant distanced himself from what he said in his answers at his interview and explained that he did not understand all the questions put to him because the interviewer was speaking English which he does not understand. The Judge did not find this to be credible as he noted that there was abundant information, (most of which the appellant accepted was true), in the interview record which would not have been possible if the appellant does not speak English. The appellant then said that he understood some of the questions as the immigration officer spoke some Urdu. The Judge implicitly found that the appellant has a propensity to deceive to achieve his objectives by distancing himself from evidence not convenient for him.
34. The Judge also did not find the appellant's evidence credible that he would be ambushed by the Taliban and detained for 14 days and then released merely because he pleaded with the Taliban to release him on the surety of his brother and his trainer on the understanding that he would return to Taliban when they wanted him. The Judge essentially found, given that the appellant was a reluctant recruit into the Taliban because he had to be ambushed, the Taliban would not have believed him that he will return to the Taliban in the future. The Judge was entitled not find credible that by releasing the appellant, the Taliban would have given the opportunity to run away from them which in fact is exactly what the appellant did. The Judge was entitled to find that this is not credible evidence and does not fit into the profile of the Taliban as he understands it from the background evidence.
35. The appellant also claimed that the government was harassing his mother to find out where the Taliban and helpers are located. The Judge was entitled not to find this evidence of harassing the appellant's mother credible given that the authorities knew the appellant's address in Jalalabad and would have gone to his home to see the appellant instead of harassing his mother. This was another credibility point against the appellant amongst others which the Judge took into account with all the other evidence in the appeal.
36. The Judge at paragraph 36 considered the expert report. He rightly said that the expert's conclusions which relate to the specific detail of the appellant's claim do not assist him in his conclusions. The Judge said although he accepts that the Taliban do recruit professionals in order to assist them, but found that the appellant was not one of them. He was entitled to so find and it is for the Judge to decide about the appellant's credibility and not an expert.
37. The Judge found that the appellant is aged 24 years and can return to Jalalabad where he worked with his trainer and had accommodation and continue his life. The Judge placed reliance on the country guidance case and the background evidence on Afghanistan and came to this sustainable conclusion on the evidence before him.

38. I find that there is no material error of law made by the Judge in the determination and therefore it stands. The grounds of appeal are no more than a quarrel with the Judges findings.

Decision

Appeal Dismissed

Signed by

A Deputy Judge of the upper Tribunal
Mrs S Chana

Dated this 6th day of December 2015