



IAC-FH-NL-V1

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

Appeal Number: AA/00815/2015

THE IMMIGRATION ACTS

**Delivered orally at Field House
On 4 January 2016**

**Decision & Reasons Promulgated
On 28 January 2016**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMAD NORMAL SAFI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr J Wells of Counsel instructed by Messrs M & K Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Quinn who sitting at Hatton Cross on 21 September 2015 and in a decision promulgated on 2 October 2015 allowed the appeal of the Respondent (hereinafter called the Claimant), a citizen of Afghanistan, born on 1 January 1996 against the decision of the Secretary of State dated 5 January 2015 to refuse to grant to the Claimant further leave and to refuse to vary leave to enter the United Kingdom and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The brief immigration history of the Claimant was that he entered the United Kingdom illegally as an unaccompanied minor with no documentation on 29 April 2008 and claimed asylum on 28 October 2008. His asylum claim was refused with a right of appeal and he was granted discretionary leave to 27 October 2011. On 25 October 2011 the Claimant applied for further leave to remain in the UK.
3. The Secretary of State's letter of refusal dated 5 January 2015 considered whether or not the Claimant qualified for the grant of asylum, in the course of which he considered the Claimant's initial asylum application and the Reasons for Refusal Letter dated 27 October 2008 that accompanied it. It was noted that the Claimant maintained that he had a continuing fear of returning to Afghanistan for the reasons stated in his original asylum claim, in particular that his father would forcibly recruit him to the Taliban and that he feared the local people from his home area, due to his father's former membership of Hezb-e-Islami and present membership of the Taliban, and feared that on return, the authorities would seek to extract information from him regarding his father's whereabouts.
4. It was noted that following the refusal of the Claimant's asylum claim on 27 October 2008, he was given a right of appeal that he did not exercise for which he provided no explanation. It was concluded the Claimant (who was now an adult) had not provided any further information or evidence as to any factor or events that had occurred since his claim to asylum was refused, that would materially affect consideration of risk upon return or necessitate further consideration and it was therefore concluded the Claimant would not be at real risk on return.
5. In his determination, the First-tier Tribunal Judge at paragraph 28, noted that an Article 8 claim was pursued on the basis that the Claimant had established a private life in the United Kingdom. Notably the Judge continued that he would "*deal with that claim first because I think it was the (Claimant's) strong claim and the standard of proof was a lower standard*".
6. In regard to the Claimant's Article 8 claim, the Judge found him to be "*a credible and an articulate witness*" and there was no doubt that he had established a private life in the United Kingdom. It was considered that a return to Afghanistan "*might undo all the good work that had been effected by the Claimant in the United Kingdom*" and that the Claimant was "*vulnerable because of his psychiatric background*".
7. Notably the Judge continued at paragraph 44, that "*the reality was that in Afghanistan, Kabul was probably the only safe place for him to go*" although he had no family or friends there and was unfamiliar with the city.
8. The appeal with reference to the guidance in Razgar, VW (Uganda) v SSHD [2009] EWCA Civ 5 and Huang was allowed on Article 8 grounds.

Assessment

9. It would appear that the First-tier Tribunal Judge simply failed to have any regard to the relevant Immigration Rules or the statutory scheme in his consideration of this appeal and in consequence I cannot be satisfied that the Judge would necessarily have reached the same conclusion had he adopted the correct approach to his assessment of the evidence. This I find in itself discloses a material error on a point of law.
10. I am further satisfied that what is in particular glaringly obvious, is that as the Secretary of State's grounds contend, the First-tier Tribunal Judge failed to make any clear findings on the Claimant's asylum or humanitarian protection claims. In that regard all that one can discern from the determination, is the Judge's recognition that in his view the claim on Article 8 should be dealt with first because he thought "*it was the (Claimant's) stronger claim*".
11. We thus do not know, whether he regarded the Claimant as a refugee or entitled to humanitarian protection. The Claimant claimed to be a refugee, alternatively, that his return to Afghanistan would be in breach of Article 15(c). As rightly submitted, these claims were challenged by the Secretary of State in her Reasons for Refusal Letter and submissions at the hearing and it was indeed incumbent on the Judge to make findings on these matters and his failure to do so is, I find, a further material error of law.
12. Further, the Judge failed to refer to the Secretary of State's challenges to the Claimant's credibility and in terms of paragraph 276ADE failed to satisfactorily explain as to why there would be very significant obstacles to the Claimant's integration into Afghanistan and why this would meet the high test set by paragraph 276ADE of the Immigration Rules to which the Judge simply made no reference.
13. In that regard the Secretary of State has appropriately referred to the guidance in Budhathoki (reasons for decisions) [2014] UKUT 00341 in which Haddon-Cave J stated inter alia that it was necessary for Judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons so that the parties could understand why they had won or lost.
14. For the reasons I have above given I find this was not accomplished by the Judge's determination.
15. It was notable that at the outset of the hearing before me, I was informed by Mr Tufan for the Secretary of State, that it was agreed between himself and Mr Wells for the Claimant, that for those reasons, the determination of the First-tier Tribunal Judge contained material errors of law as identified in the Secretary of State's grounds that I have reflected in my decision and

that in such circumstances the parties asked that the appropriate course was to remit this case to be heard afresh with no findings preserved to the First-tier Tribunal before a First-tier Tribunal Judge other than First-tier Tribunal Judge Quinn.

16. Having considered as to how the decision should be re-made and after discussion with the parties I find that I am in agreement with their proposal.
17. It was further agreed that having regard to the errors of law found, the length of the hearing (estimated at three hours), the fact that there were at least four witnesses, that there were highly compelling reasons falling within paragraph 7.2(b) of the Senior President's Practice Statement as to why the decision should not be re-made by the Upper Tribunal. It was clearly in the interests of justice that the appeal be heard afresh in the First-tier Tribunal.
18. For the reasons I have above given and by agreement with the parties, I conclude therefore that the appeal should be remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge Quinn to determine the appeal afresh to Hatton Cross Hearing Centre on the first available date. I am informed that for that purpose no interpreter will be required.
19. I have been asked by Mr Wells to record, that the Claimant will invite the First-tier Tribunal to arrange for a CMR before a substantive hearing date is fixed, as arrangements are to be put in hand for a detailed psychiatric assessment to be made upon the Claimant. That however is a matter entirely for the First-tier Tribunal's discretion.

Decision

20. The First-tier Tribunal erred in law such that the decision should be set aside and none of its findings preserved.
21. I allow the Secretary of State's appeal to the extent that I remit the making of the appeal to the First-tier Tribunal at Hatton Cross before a First-tier Tribunal Judge other than the Judge to whom I have above referred.
22. No anonymity direction is made.

Signed

Date: 23 January 2016

Upper Tribunal Judge Goldstein