



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07054/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 11 March 2016**

**Decision &
On 17 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**ZR
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Braganza, counsel instructed by Harrow Law Centre
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ Bart-Stewart, promulgated on 15 December 2015.
2. Permission to appeal was granted on 21 January 2016 by First-tier Tribunal Judge Andrew.

Background

3. The appellant, now aged 15, arrived in the United Kingdom on 7 October 2014, having entered the United Kingdom clandestinely. He applied for asylum on 20 October 2014.
4. The basis of the appellant's asylum claim before the Secretary of State was that he is from Nangahar province and lived there with his parents and three siblings. He is in contact with his mother who continues to reside on the family farm with two of the appellant's siblings. The appellant attended school for around three years, until either 2012 or 2013. His mother stopped him from attending school after receiving threatening letters from the Taliban. The appellant's father was a policeman and was killed in the course of duty approximately seven years ago. The appellant's brother Z, was shot by the Taliban because he refused to join them. Very shortly thereafter the appellant went to live with his sister and her husband and remained with them until he left Afghanistan.
5. The Secretary of State's Reasons for Refusal letter of 8 April 2015 explained that it was accepted that there was a Refugee Convention reason and that the appellant was an Afghan national. It was not accepted that the appellant's father was killed by the Taliban, owing to inconsistencies between the appellant's witness statement and his interview record. It was accepted that his brother was killed by the Taliban. The Secretary of State did not accept that the appellant was targeted by the Taliban and further, decided that the appellant would be able to return to his family network in Afghanistan for protection. It was also considered reasonable for the appellant and his family to relocate.
6. In addition, the respondent provided reasons as to why she had been unable to comply with her duty to endeavour to trace the appellant's family in Afghanistan, that being that the appellant had not provided any substantial contact details. Contact would be made and in the meantime the appellant's removal would be delayed until appropriate reception arrangements were established. Regard was also had to section 55 of the Borders, Citizenship and Immigration Act 2009 however the conclusion was that the appellant's best interests were served by him leaving the United Kingdom and being reunited with his family in Afghanistan. Consideration was also given to Article 8 within the Rules, however the appellant was said to be unable to meet any of the requirements. There were said to be no exceptional circumstances and it was considered that the appellant's removal from the United Kingdom was appropriate. The accompanying asylum decision stated that the appellant would be granted leave to enter the United Kingdom until 8 October 2017.
7. During the course of the hearing before the First-tier Tribunal, the appellant and his solicitor, Mr J Jimenez, gave evidence. The FTTJ accepted "*the entirety*" of the appellant's claim including that his father was killed by the Taliban. Nonetheless, the FTTJ did not accept that the Taliban would be targeting him, as a 13-year old boy; nor that the appellant was at real risk of ill-treatment. It was considered that it had not been explained why the

appellant's family had not relocated from the local area rather than sending the appellant to the United Kingdom.

Error of law

8. Permission to appeal was sought on the basis that firstly, that the FTTJ made no findings as to the evidence of Mr Jimenez, which went directly to the issue of the availability of relocation. Secondly, that the FTTJ provided no reasons for her finding that the Taliban would not target a 13-year old boy. Thirdly, the aforementioned finding was contrary to the evidence showing that the Taliban do target 13-year old males. Lastly, it was said that the FTTJ failed to assess whether relocation would be unduly harsh and failed to apply the evidence.
9. Permission to appeal was granted on all grounds.
10. The Secretary of State's response indicated that the respondent opposed the appeal as it was considered that the FTTJ appropriately directed herself. The grounds were said to be mere disagreement.

The hearing

11. Ms Braganza referred to the "*strikingly brief*" decision and reasons of the FTTJ in this case. She indicated that she had discussed matters with Mr Parkinson and they were in agreement that the decision of the FTTJ could not stand as it was. Ms Braganza requested that I find that the FTTJ's positive credibility findings should stand. She also intended to rely on an updated expert report and there was said to be a new development, addressed by the appellant in his further witness statement.
12. Mr Parkinson confirmed that his view was that the decision was unsafe. He was concerned with the findings of fact being retained because the issue of the solicitor's evidence was relevant to the issue of the fate of the appellant's father. There had been no clear findings on Mr Jimenez' evidence.
13. In reply, Ms Braganza disagreed, arguing that the FTTJ's positive findings could stand.
14. At the end of the hearing I allowed the appeal, finding that the FTTJ had made material errors of law for identical reasons to those given in the application and agreed by the representatives before me.
15. With regard to whether the FTTJ's finding that the appellant's father was killed ought to be preserved, I note the finding in question was made without any reference to the witness statement or oral evidence of Mr Jimenez, who spoke to the appellant's mother on the telephone. His statement, at paragraphs 6(e) and (f) reveals that the issue of the death of the appellant's father was discussed at some length.
16. Given the brevity of the decision and the errors disclosed, I declined to

preserve any of the previous findings.

17. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. “

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the FTTJ, with no findings preserved.

The appeal is to be remitted to the First-tier Tribunal for a de novo hearing before any judge except FTTJ Bart-Stewart.

Signed

Date: 12 March 2016

Deputy Upper Tribunal Judge Kamara