



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

Appeal Number: AA/08217/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2015**

**Decision & Reasons Promulgated
On 25 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

N S

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. G. Lee, instructed by Times PBS Ltd

For the Respondent: Mrs Willocks-Briscoe, Home Office Presenting Officer

DECISION & REASONS

1. The Appellant is a national of Afghanistan, born on 15 November 1992. He arrived in the United Kingdom in October 2011 with a Tier 4 student visa issued on 22 September 2011. On 31 August 2014 the Appellant left the United Kingdom and travelled to Afghanistan for a family visit, returning to the United Kingdom on 25 September 2014 when he claimed asylum. The basis of his claim is that he had accompanied a driver from his father's transport company and for part of the journey there was a boy in the back of the truck who the driver stated was his sick nephew who he was taking to Kabul for medical treatment. The Appellant decided to visit his aunt in Pilcharkhi en route to

Kabul and phoned his mother to tell her this. His mother subsequently telephoned him to state that his father had been arrested because the truck in which the Appellant was travelling had been linked to a suicide bomb in Pilcharkhi and the Appellant was also being sought. The Appellant left his aunt's house and went to stay with another relative. The police then went to his aunt's house to look for him and his uncle made arrangements for him to leave the country with the assistance of an agent.

2. On 13 October 2014, the Respondent refused to grant the Appellant asylum and refused him leave to enter the United Kingdom. He appealed against this decision and his appeal came before First-tier Tribunal Judge Cohen for hearing on 22 April 2015. In a decision promulgated on 21 May 2015, he dismissed the appeal essentially on the basis that he did not consider the Appellant to be credible.

3. The grounds in support of the application for permission to appeal asserted that the Judge's approach to credibility and his reliance on adverse plausibility assertions was unreasonable/unlawful and his failure to consider the witness, expert and documentary evidence additionally amounted to material errors of law. The Judge's findings at [27]-[40] were subjected to detailed challenge.

4. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Perkins on a renewed application on the basis that the grounds make out a reasonably arguable case that the First-tier Tribunal Judge did not engage with the evidence and/or made findings for inadequate reasons.

Hearing

5. At the hearing before me, Mr Lee stated that a number of points had been taken in the grounds of appeal and he wished to highlight a few specific errors as to credibility and plausibility. He made detailed submissions and argued that individually and cumulatively the errors amounted to a material error of law. In her equally detailed response, Ms Willocks Briscoe submitted that the Judge had found that there were discrepancies, but these were not the only factor taken into account by the Judge, who was entitled to consider the overall credibility of the Appellant as well as overall factors on which he relies. In her submission it does not demonstrate the Judge's approach is flawed but these were one of a number of elements that make up the decision as a whole. She submitted that the grounds were merely a disagreement with the Judge's findings.

Decision

6. I reserved my decision, which I now give with my reasons. The First-tier Tribunal Judge's analysis of the Appellant's claim is set out at [27]-[44] of the decision. The Judge asserts at [27] that there were "numerous discrepancies" in the Appellant's evidence and that this damaged the credibility of the claim. The discrepancy identified at [27] was with regard to whether the Appellant's family relocated from Pakistan back to Kabul in September 2012, as he stated

in his oral evidence or December 2012 as his statement records. This is, in fact, incorrect as it was recorded in the Appellant's interview and statement that his family relocated in September 2014, which was around the time that the events in question took place. The Judge notes this at [18] of his decision and also states the Appellant's explanation as being "*it was written incorrectly*" but has failed to give any further explanation as to when it was written incorrectly and also why it was written incorrectly. Moreover, the Judge has recorded the wrong date at [27]. Given the lack of clarity and apparent confusion by the Judge I do not consider that this particular discrepancy can properly be held against the Appellant.

7. At [28] the Judge records the Appellant's response that he did not have any uncles in Afghanistan but then indicated that "his mother's husband" remained in Afghanistan and he had lived with him when hiding from the authorities. The Judge finds that this is a further discrepancy, however, given the lack of clarity by the Judge as to who exactly was being referred to, I do not find that this point can be properly held against the Appellant either.

8. At [29] the Judge finds a discrepancy in respect of the oral evidence of the Appellant's sister, who stated in re-examination that when she had spoken to her mother she did not mention that the Appellant was wanted by the authorities however, in response to questions by the Judge she stated that her mother had told her that he was wanted by the authorities. The Judge's record of the Appellant's sister's evidence is at [22] of the decision which provides: "*In re examination the witness indicated that her mother called her on 22 or 23 September 2014 to advise of the appellant's problems.*" It is also recorded at that paragraph that she subsequently stated: "*Her mother would call every two to three weeks. She then said that neighbours had called her. They advised that her father had been arrested. Her mother was very upset. Her mother did not say anything about the appellant.*" Whilst this appears to be contradictory, this record of the witness' evidence is also arguably unclear in that it would appear that her mother told her in a telephone conversation on 22 or 23 September 2014 that her brother had problems (these are not defined) but did not talk about her brother again in subsequent conversations following the arrest of her father which caused her mother to be very upset. Given the lack of clarity and given the witness' initial response to the question, I do not find the Judge's finding that this is a "significant discrepancy" and damaging to "the appeal as a whole" to be sustainable and to amount to a material error of law.

9. At [33] the Judge found a significant discrepancy between the Appellant's account at his screening interview at 4.1 that the authorities were looking for the truck and his subsequent statement that the boy was found in the truck at the checkpoint. This point was put to the Appellant at the hearing and at [15] it is recorded that he stated that before he arrived in the UK he had not slept properly for 2 days; it was not what he intended to say and he did not have an interpreter. He was told to keep his answers brief and he would be given the opportunity to provide full details in his substantive interview. Paragraph 15 of the grounds of appeal makes the point, correctly in my view that "*it is trite that the Tribunal must be cautious in placing too much weight on the content of the screening interview since it is a very brief summary, there is no read back and*

no representative in attendance – the accuracy is often open to doubt.” In his asylum interview the Appellant stated in response to Q. 34 that the truck had been taken by the authorities. His asylum interview took place only 9 days after his screening interview. Given the particular circumstances of this Appellant’s screening interview coupled with the points made at [15] of the grounds of appeal I find that the Judge erred materially in placing substantial reliance on the Appellant’s response at 1.4 of the screening interview.

10. At [34] the Judge found a further discrepancy between the Appellant’s answer in his asylum interview at in response to Q. 117 that upon hearing that a suicide bomber had been in the area he called his mother and his witness statement where it is recorded that he called his father, which he denied in his oral evidence. It was submitted on behalf of the Appellant that the Judge simply got this wrong in that, in response to Q.119 of the asylum interview the Appellant stated that he called his father and at the hearing before the Judge the Appellant did not deny calling his father. It is the case that there is no record in the decision of the Appellant’s evidence in this respect and I consider that the Judge did err materially in fact in this respect.

11. At [35] the Judge noted that in his witness statement the Appellant claimed that his aunt’s house had been raided on 20 and 23 September 2014 and in his oral evidence that his mother’s house had been raided on 4 or 5 occasions but had failed to raise the issue of multiple raids in his asylum interview. It was submitted that the reason for this was that the Appellant did not know at the time of his interview that there had been further raids, not least because he had not been in contact with his family since his arrival in the UK [Q.125] and this point was not put to the Appellant to give him the opportunity to respond during the hearing. I find that as a matter of procedural fairness the point should have been put to the Appellant in order to provide him with the opportunity to comment on the reason why he did not give details of further raids in his interview whereas he did at the hearing and the failure so to do renders reliance on this discrepancy a material error of law.

12. At [38] the Judge noted that the Appellant had produced business documentation and a partially translated police warrant, to which he applied the test set out in Tanveer Ahmed and in light of his adverse credibility findings attached little weight to the documentation. It was submitted that the Judge was simply wrong in that there is no police warrant and the only “police” document is a petition by the Appellant’s mother to the police regarding her husband’s whereabouts and this document was fully translated. Mrs Willocks Briscoe did not take issue with this interpretation. I find that the Judge materially erred in fact in placing no weight on the petition to the police and consequently in placing no weight on the documentation as a whole.

13. At [40] the Judge makes a general finding that there were numerous discrepancies in the Appellant’s account and held: *“I find that the appellant has been unable to maintain a consistent account because he has fabricated the same and has sought to blame others for his own discrepancies.”* This finding is disputed on the basis that the Judge failed to have any regard to a statement from a caseworker for the Appellant’s representative, Mahmood Osmani, dated

29.10.14 in which he sets out a limited number of issues of concern in the asylum interview. That is not sufficient in itself to find a material error of law, however, in light of my decision that the Judge materially erred in law in respect of his findings as to purported discrepancies, set out at [6]-[12] above, it follows that this finding is also unsustainable.

14. Paragraphs [30]-[32], [36]-[37] and [39] of the decision are concerned with implausibilities in the Appellant's account, however, I accept the points made in the grounds of appeal at [7]-[14] which challenge the Judge's findings of implausible in light of the judgment of Neuberger LJ in HK [2006] EWCA Civ 1037 at [27]-[30] that the fact that some, or even most of the Appellant's story may seem inherently unlikely does not mean that it is untrue and, following the decision of Lord Brodie in Awala [2005] CSOH 73, that to reject an Appellant's account merely on the basis that it is not credible or plausible was improper. [13]-[14] of the grounds of appeal in particular assert, correctly in my view, that it was impermissible for the Judge to find the nature of the Appellant's departure from Afghanistan to be implausible without having given any consideration to the addendum report of Dr Guistozi which expressly addressed this issue and which was expressly drawn to the Judge's attention in submissions.

Notice of Decision

15. For the reasons set out above, I find that the First-tier Tribunal Judge materially erred in law in his approach to the Appellant's credibility and in his approach to the expert and documentary evidence and his decision cannot stand. I allow the appeal and remit it to be heard *de novo* by a Judge of the First-tier Tribunal other than First-tier Tribunal Judge Cohen or First-tier Tribunal Judge Greasley.

Deputy Upper Tribunal Judge Chapman

21 January 2016