



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10472/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

**Decision & Reasons
Promulgated
On 3 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAJ

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Miss J Isherwood, Senior Presenting Officer
For the Respondent: Miss H Foot, Counsel, instructed by J D Spicer Zeb Solicitors

DECISION AND REASONS

1. MAJ had appealed on various protection grounds against the refusal of his claim by the Secretary of State. The hearing of his appeal had come before First-tier Tribunal Judge Crosfill sitting at Taylor House on 1 September 2015. The Judge's decision apparently "allowing" the appeal was promulgated on 26 October 2015. The Secretary of State appealed against the Judge's decision. This is my extempore decision following the hearing before me this morning.

2. In a very detailed and conscientious decision the Judge set out why it was that the evidence was accepted and where relevant, not accepted. There was a detailed consideration of the expert evidence and there was a detailed analysis of the case law including of Country Guidance. The Judge decided in the penultimate subheading on page 20 of the decision that the appeal was being allowed on asylum grounds and being dismissed on grounds relating to humanitarian protection, the Immigration Rules and Articles 2, 3 and 8 of the Human Rights Convention.
3. This morning Miss Isherwood has very helpfully taken me through the determination where it is plain to see that the Judge in very many paragraphs found against the Appellant and it was said in very clear terms that the basis of the Appellant's claim was not made out. For example, it is said towards the end of paragraph 67: "Even on the lower standard of proof I do not accept that he would be targeted by the Taliban in Kabul".
4. At the end of paragraph 68 the Judge said, "As I have found it to be I do not accept that he would be of any particular interest to the authorities."
5. At paragraph 69 the Judge considered internal relocation and concluded that same was a viable option in this case. The Judge at paragraph 74 referred to the applicable Country Guidance and saw no reason to depart from it. At paragraph 77 the Judge explained that the appeal under humanitarian protection and Articles 2 and 3 was being dismissed.
7. Therefore it is quite understandable why Miss Foot today on behalf of the Appellant takes a stance whereby she agrees that there appears to have been a slip on the part of the Judge where it says under the subheading of "Decision" that the appeal was being allowed on asylum grounds. As Miss Foot points out, there is no cross-appeal by the Appellant against the Respondent's application. It is said it is agreed that the Judge meant to say that the appeal was being dismissed on asylum grounds and not being "allowed".
8. Miss Foot makes clear that, neither she nor her client, like the adverse findings which had been made but nonetheless she is not in a position to challenge those before me today.
9. This however raises quite an interesting procedural issue. For whatever reason the slip was not acted upon at the First-tier and instead the case has come for hearing before me. Although Rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states as follows:
 - "The Upper Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision or record of a decision by -
 - (a) sending notification of the amended decision, or a copy of the amended record, to all parties; and
 - (b) making any necessary amendment to any information published in relation to the decision or record"

I am not persuaded that that necessarily applies to decisions of the First-tier Tribunal once permission has been granted and once a substantive permission application is before the Upper Tribunal. Therefore if the clerical mistake cannot be corrected by virtue of Rule 42 and through an abundance of caution I go on to apply the more usual approach to cases here at the Upper Tribunal. On that basis I assess whether or not there has been a material error of law in relation to the Judge's decision where she appeared to allow the appeal on asylum grounds. It is my clear judgment that there obviously has been a material error of law in respect of the appeal being allowed on asylum grounds. The appeal should have been dismissed on asylum grounds as it was in respect of the other grounds and as the findings clearly indicated would be the case. The parties were content for me to take this approach.

Notice of Decision

11. Therefore my decision is that there was an error of law in respect of the decision of First-tier Tribunal Judge Crossfill. I set it aside. I remake the decision by allowing the Secretary of State's appeal and I thereby dismiss the claimant's asylum appeal. There was a direction regarding anonymity made by the First-tier Tribunal and because this is a protection claim then the direction in respect of anonymity remains. There was no fee award and in the circumstances no fee award is made.

Signed

Date

Deputy Upper Tribunal Judge Mahmood