Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00948/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 July 2017	**On 13 September 2017**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

B H

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(ANONYMITY DIRECTION MADE)

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:

For the appellant: Ms D. Revill, Counsel instructed by Duncan Lewis & Co.
For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The respondent refused the appellant's original protection claim in a decision dated 31 January 2013. His appeal was dismissed by First-tier Tribunal Judge Baldwin in a decision promulgated on 25 April 2013. The First-tier Tribunal decision was set aside by the First-tier Tribunal and remade by Deputy Upper Tribunal Judge Hall in a decision dated 17 January 2014. Deputy Upper Tribunal Judge Hall dismissed the protection claim but found that the appellant was a minor. Pursuant to the respondent's policy on unaccompanied minors contained in paragraph 352ZC of the immigration rules the appellant was subsequently granted a period of Discretionary Leave to Remain (DLR) until 29 July 2014.

2. On 20 May 2014 the appellant applied for further leave to remain. The respondent refused the application in a decision dated 22 December 2014. It appears that there were delays in the appeal following the appellant's conviction for a criminal offence and then subsequent acquittal on appeal. Further delays occurred in order to obtain medical evidence.

3. First-tier Tribunal Judge Buckwell dismissed the appeal in a decision promulgated on 23 May 2017. He set out the background to the case and the content of the evidence in some detail in the decision [1-46]. The relevant parts of the judge's conclusions are as follows:

> "58. I have set out above details of the evidence given by the Appellant's cousin, [F H]. Significant cross-examination was posed to him. I note that he has found himself able to return to Kabul, the capital of Afghanistan. He stated that it was to visit an aunt, but the reality is that the witness clearly judged that he would be able to return to Kabul on those three occasions.
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> 59. The witness gave evidence concerning the obtaining of stated documents, to which I am urged to give weight, consequent upon which I am then urged to accept that a different view of the account of the Appellant should be accepted. The witness was specifically asked questions about the production of the documents, which appear in copy form and with translations in the Appellant's supplementary bundle. I am guided by the decision in Tanveer Ahmed in relation to a consideration of the documents, as also presented to me at the hearing. Ms Parr asked a number of questions of the witness, particularly relating to the timing of the production of the documents and to the involvement of the witness in seemingly obtaining the same. Having considered the documents and the evidence of [F H] I am not persuaded that weight should be given to the documents. I do not believe that he gave a credible account and I note also that he had given evidence before Judge Hall in the Upper Tribunal.
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> 60. Considering the evidence in the round in relation to the asylum grounds, together with the relevant documentation, I find that the views concluded by Judge Hall must stand. I do not find that the Appellant has established that he comes within the terms of the Geneva Convention. If for whatever reason he wishes to relocate on return, I would not find it to be unduly harsh, taking all circumstances into account, if the Appellant sought to reside in Kabul which is the capital city where the aunt of the Appellant's cousin resides.
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> 61. With respect to the claim that the Appellant would face a risk to his Article 3 ECHR rights on return due to suicidal tendencies, I am of courses guided by the Court of Appeal judgment in J (above). Ms Parr was of the

view that the relevant consideration was whether the Appellant would face a heightened risk of suicide on return. I have taken into account all medical correspondence which has been provided, including that which relates to the consequences of the accident on 20 November 2016 in which the Appellant was clearly the victim. In relation to medical issues generally the threshold is high in relation to establishing Article 3 ECHR entitlement to leave (N [2005] UKHL 31). Notwithstanding the detail within the documentation before me I am not persuaded that the risk to the Appellant would be heightened on return to Afghanistan. Further, I am not persuaded that, in any event, the degree of risk would reach the threshold for the engagement of Article 3 ECHR in relation to suicidal tendencies.

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62. With respect to paragraph 276ADE(1) it is maintained that the Appellant would face very significant obstacles on return. Reference is made to the judgement of the Court of Appeal in Kamara (above). The Appellant is a vulnerable individual and that is relevant to the assessment. In that regard whilst I accept that the Appellant is a vulnerable individual I do not find that there would be very significant obstacles as to his integration on return. The Appellant had lived all his life in Afghanistan before he left the country and ultimately made his way into the United Kingdom. Although he would face challenges on return I do not find that such challenges would constitute very significant obstacles. In relation to his medical condition, particularly his mental health, a Home Office response has been received, dated 6 April 2017, which sets out certain information confirming the availability of facilities in Kabul. As I have indicated above I find that if the Appellant on return does not wish to live in Nangarhar Province then he would be able to relocate to Kabul. The relevant medical facilities are stated to be within the capital city.

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66. It is important in undertaking the proportionality assessment that all aspects of the evidence are taken into account. In that regard I refer to the various reports and views expressed in relation to the Appellant. Quite clearly the accident which occurred on 20 November 2016 is a matter which is dealt with in some detail within the correspondence before me. That of course had an effect of the Appellant and his cousin's evidence was that there were significant consequences for the Appellant. I note, as evidenced by the Letter from Lambeth College (at page 321 of the Appellant's main bundle of documents), that the Appellant was congratulated on his good attendance and quality of work. The letter is dated as recently as 10 April 2017 and indicates that the appellant remains able to undertake studies. Indeed, notwithstanding the accident which the Appellant suffered, he has had the benefit of education in this country. I find that that will have assisted the Appellant in terms of his ability to return to Afghanistan, where he may be in a position to pursue further studies within his home country. Despite the challenges which the Appellant has faced, he has been able to pursue his education.

67. I appreciated that Freedom from Torture have expressed concerns as to the ability of the Appellant to cope in Afghanistan. In this country has had support and assistance, including from his local authority, Croydon LBC. Nevertheless the fact that the Appellant may receive greater assistance in this country than might be the case on return to Afghanistan is not a factor which significantly advances the Appellant's position with respect to proportionality. Taking all factors into account I find that the balance favours the respondent's contention with respect to the strong weight which should be accorded to immigration control and the public interest in maintaining such procedures."

4. The appellant appeals the First-tier Tribunal decision on the following grounds:

   (i) The First-tier Tribunal judge failed to conduct a proper assessment of the six-stage test outlined in the case of *J v SSHD* [2005] EWCA Civ 629 and failed to give reasons to explain his finding that removal would not amount to a breach of Article 3.
   (ii) The First-tier Tribunal failed to make findings on evidence that was material to a proper assessment of the appellant's vulnerability on return for the purpose of a human rights assessment under Article 8.

5. The respondent argues that the judge directed himself appropriately. The claimed catalyst for the appellant's mental health problems was rejected and there could be no causal link between removal and the inhumane treatment the appellant alleged would happen on return. The appellant has family members in Kabul who would be able to assist him. The judge gave sufficient reasons to justify the decision.

Decision and reasons

6. After having considered the grounds of appeal, the written response, the oral submissions and the documentary evidence I am satisfied that the First-tier Tribunal decision involved the making of an error of law.

7. It is trite law that a Tribunal must give reasons to explain the findings that are made. A bare statement that a witness was not believed or that a document is afforded no weight is unlikely to satisfy the requirement to give reasons: see *MK (Duty to give reasons)* [2013] UKUT 641.

8. It seems clear that the judge took some time to set out the background to the case and the evidence that was before the Tribunal, including the oral evidence and the submissions made at the hearing. Whilst the evidence was set out in the decision, the fact that the judge considered it is not in itself sufficient reason to justify conclusions if they are not supported by reasons. In this case a series of medical evidence over a period of time showed that the appellant was diagnosed with PTSD, had reported suicidal ideation and had made attempts, albeit reported to be fairly superficial, to harm himself. Nothing in the judge's summary of the evidence [15-16] or in his statement that he had considered Dr Hall's report [52] indicates that any findings were made, at that stage, as to what weight should be placed on the evidence. The only place in which the judge makes findings in relation to suicide risk is at [61] of the decision. As can be seen from the findings outlined above, it is apparent that no assessment was made of the evidence, no findings were made as to what weight should be placed on the evidence. Although the judge directed himself to the correct case law there is no assessment of the evidence within the context of the six-step test outlined by the Court of Appeal in *J v SSHD*. The findings in [61] amount to a bare conclusion and do not satisfy the duty to give adequate reasons to explain the decision.

9. I have considered whether this error is likely to have made any material difference to the outcome of the appeal. Amongst other evidence relating to the appellant's vulnerability, a psychological report by Dr Jane Anderson dated 09 March 2015 noted that there was likely to be an higher risk of suicide if he experienced increased hopelessness about his situation or if his appeal was dismissed and he was subject to a 'deportation order'[pg.199 AB]. Although I note that more recent evidence from Dr Jennifer Hall (Freedom from Torture) dated 14 December 2016 indicated that the appellant reported fewer suicidal thoughts this seemed to be as a result of the support provided by the organisation, which had given him "hope for future and recovery" [pg.240 AB]. Although there was no up to date assessment from a suitably qualified psychiatrist or psychologist specifically dealing with the risk of suicide if the appellant were faced with the prospect of removal to Afghanistan, the evidence before the Tribunal was at least capable of engaging with the issues outlined in *J v SSHD*. The reduction in suicidal ideation noted in December 2016 was said to be because the appellant felt supported and was beginning to have some hopes for the future. The prospect of removal would increase feelings of hopelessness, which Dr Anderson noted might increase the risk of suicide. For these reasons, I am satisfied that the error was material to a proper determination of the appeal.

10. Similarly, the First-tier Tribunal's findings relating to the appellant's vulnerability and the proportionality of removal under Article 8 fail to engage adequately with the evidence. The judge recorded the evidence given by Stefania Tomasini of The Children's Society [30-32 & 52] but made no findings on the detail of the evidence. In assessing whether the appellant has, in fact, been able to continue his education in any meaningful way after the accident the judge failed to take into account other evidence from his tutor. The letter is undated but clearly post-dates the accident. His tutor said that they were allowing him to attend the course so that he could mix with his peers, but they were in the process of deferring his qualification because he was not currently able to complete the assessment because of his brain injury. I conclude that the lack of reasoning and engagement with the evidence produced in support of the claim amounts to an error of law and that the decision must be set aside.

11. Although the point is not particularised in the appellant's grounds of appeal I note that the same error also occurred in relation to the judge's findings relating to the protection claim [59]. Nothing more than a bare statement is made about the credibility of the evidence given by the appellant's cousin and no reasons are given for rejecting the evidence he produced from Afghanistan, which post-dated the findings made by Deputy Upper Tribunal Judge Hall. Bare reference to *Tanveer Ahmed* (which in any event is not authority to say that evidence should not be given weight simply because false documents can be obtained in a particular country) is insufficient reason to reject the evidence. It was incumbent on the judge to assess the content of the evidence, which on

the face of it was material to a proper assessment of the appellant's claim that his brother was killed by the Taliban.

12. No assessment is made of the fact that the appellant was diagnosed with PTSD after Judge Hall's decision and whether this might impact on the overall credibility of the appellant's claim. No assessment is made of the deteriorating security situation in Afghanistan since the last decision as noted by the Court of Appeal in *R (HN & SA) (Afghanistan) v SSHD* [2016] EWCA Civ 123. Even if the judge concluded that there was insufficient evidence to depart from the earlier credibility findings about past events, there was no assessment of whether the appellant was likely to be at risk in his home area of Nangahar province given that it is an area of high insurgent activity. The decision fell short of giving anxious scrutiny to the protection claim.

13. For the reasons given above I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside. Although the case has been heard in the First-tier Tribunal on a previous occasion both parties considered that it was appropriate to be remitted to the First-tier Tribunal for a fresh hearing. It would no doubt assist the Tribunal if there was up to date expert psychiatric evidence specifically dealing with the likely impact of removal on the appellant's mental health.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 24 August 2017
Upper Tribunal Judge Canavan