



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05284/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2017

Decision & Reasons Promulgated
On 5 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

ABDULWAKIL GHNIZADA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T S Choda (The Chambers of Mr T S Chodha)
For the Respondent: Mr P Naith (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Abdulwakil Ghnizada, a citizen of Afghanistan born 3 January 1967, against the decision of the First-tier Tribunal of 5 January 2017 to dismiss his appeal on asylum grounds, itself brought against the decision of the Respondent of 10 May 2016 to refuse him asylum.
2. The Appellant's asylum claim is summarised in the decision of the First-tier Tribunal. He is a Dari speaking Afghan of Tajik ethnicity. It seems he was originally present in the UK in 2004 in the name Abdul Wakil Majidi, and claimed asylum, his application being refused and an appeal being dismissed in his absence. He was granted entry clearance as a spouse following earlier refusals of such an application, succeeding in a

second round of appeal proceedings, arriving in November 2011, and living with his British citizen spouse S S. He applied for indefinite leave to remain as a spouse; that application was refused on 10 June 2014, Ms S S by now having written to the Respondent to say that the marriage had permanently broken down. He then made an application for leave to remain on domestic violence grounds, but the application was refused and an appeal failed, because it was found that the chronology of alleged violence post-dated the relationship's breakdown.

3. The Appellant claimed asylum on 1 November 2015, explaining that all his family now lived abroad. Many years ago he had performed military service in Afghanistan, fighting against the Mujahadeen, working as a signaller; when the time came for his military service to end, he was not released from military service, and eventually took matters into his own hands, escaping back to the family home in Kabul and then travelling on to take refuge in Pakistan. Following his arrival in the UK, from 2012 he had worked for Mabway, a company retained by the British Army to facilitate role-playing exercises in Afghanistan. He believed that history's work for the British forces would put him at risk on return given he had played the role of military and police officers in videos that were at least similar to some that had appeared on Youtube, and his brother had received a letter from the Taliban threatening the Appellant because of his work for the armed forces here. It was that letter that promoted his asylum claim.
4. The Home Office refused his application, whilst accepting his conscription in to the Afghan Army and work for Medway. They did not accept the veracity of the threats he claimed to have received from the Taliban.
5. The First-tier Tribunal found the Appellant's claim to lack credibility, because
 - a. His asylum claim was made suspiciously late notwithstanding his repeated prior contact with the UK authorities, bearing in mind that he had referenced threats in 2014 as well as 2015;
 - b. His evidence had been found wanting in previous appeal proceedings;
 - c. He had previously lived in Afghanistan without incident, for example owning a shop in Kabul and working in his father's restaurant from around 2005 to 2011;
 - d. There was no evidence that his work for Mabway would have come to the attention of the Taliban such that he would be recognisable and in danger on a return;
 - e. His evidence that the existence of the letter from the Taliban of 9 November 2015 had come to his attention around three months before his asylum claim was inconsistent with the fact he claimed asylum only around 10 days after its stated date; and his account of the letter's delivery was vague, and he had variously referred to "threats" and a single threat;
 - f. His evidence as to his brother's receipt of a death threat was undermined by his continuing to work for the same company for a year after it was made, and he had provided no evidence that his brother worked for a German NGO.
6. Somewhat diffuse grounds of appeal contended that the First-tier Tribunal erred in law in what amounts to three ways:

- a. Relying on adverse credibility findings in earlier appeal proceedings which did not take account of the Appellant's subsequent success at appeal following the hearing before Judge Woolf who accepted that his identity and marriage were genuine;
 - b. Overlooking the fact that it was the further threat made to his brother by way of a letter that led to the Appellant's asylum claim in November 2015 before which time the Appellant had no reason to claim asylum;
 - c. Making material errors of fact, for example misrecording, possibly due to an error by the Tribunal interpreter, the Appellant's evidence: the Appellant would not have said that he claimed asylum three months after learning of the letter to his brother, given it was central to his case that his claim post-dated the letter by only three weeks afterwards; there was no reference to threats being received in 2014 in the interview record.
7. Permission to appeal was granted by Judge Hollingworth on the basis that it appeared that there was no evidence regarding threats in 2014 which cast doubt on the First-tier Tribunal's approach generally given the primary weight afforded to issues such as the timing of the Appellant's asylum claim, and that excessive weight had been given to the absence of documentary evidence in the context of the Appellant's work for Mabway given the role he clearly played for them.
 8. Before me Mr Choda put forward arguments consistently with the grounds of appeal. The Appellant's credibility on his marriage application had been vindicated by Judge Woolf on appeal and so should not have clouded the approach to his present asylum claim. There was no reason for the Appellant to deviate from his consistent evidence that the letter to his brother had been received in November 2015.
 9. For the Respondent Mr Naith submitted that the decision as a whole could stand. The reference to threats materialising in 2014 may have been a slip, but was not a significant error given the numerous other reasons given for disbelieving the Appellant.

Findings and reasons

10. Permission to appeal was granted on all the grounds. I have sought to identify the salient points from the grounds of appeal.
11. The First-tier Tribunal made a fully reasoned decision with which it plainly took care. Nevertheless that does not necessarily immunise it from the presence of legal error: asylum appeals must be approached applying the appropriate anxious scrutiny, and as Carnwath LJ explained in *YH* [2010] EWCA Civ 116 that term "has by usage acquired special significance as underlining the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account."

12. The Appellant's involvement with Mabway is undisputed. There can be no doubt that were such activities to come to the attention of the Taliban, he might be at risk, at least in some parts of Afghanistan. This appeal primarily turns, however, on whether or not he has come to their attention.
13. The First-tier Tribunal took account of the Appellant's immigration history. It is true, as submitted by Mr Choda, that the Appellant was ultimately vindicated on appeal following his application to enter the UK as a spouse. It is also true that he pursued an asylum claim that was without foundation. That may very well have been on grounds unconnected to his present asserted fear of persecution: neither side has put forward evidence on the issue. However the fact that on that occasion he failed to attend his own appeal hearing does not give one much confidence in his own assessment of his case's prospects, and he apparently pursued that application in a different name to that he now puts forward. He has also pursued an unsuccessful application to remain on domestic violence grounds. It seems to me that the First-tier Tribunal was entitled to find that his immigration history was at best mixed. It was astute to direct itself that the consideration identified in section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 would be no answer to an otherwise well founded claim.
14. The timing of the Appellant's asylum claim clearly weighed heavily with the First-tier Tribunal, aside from the question of immigration history. It considered that he had given conflicting information as to when his brother had first received the letter from the Taliban threatening him. Although it may well be right that he never gave a 2014 date for the first eventuation of the threats during his interview with the Home Office, at the hearing he is recorded as having stated that there were problems in 2014 and 2015 during cross examination. Given that he was also criticised by the First-tier Tribunal for admitting that he had not considered it necessary to "look thoroughly" for online corroboration of Mabway activities, I consider that it was open to the fact-finding judge to come to the conclusion he did on this point.
15. As to the issue surrounding whether the interpreter at the hearing below may have been responsible for some degree of confusion, there was no contemporaneous criticism of interpretation raised at the hearing below; tellingly, the Appellant was not called for re-examination, as would have been expected had his answers as given at the hearing been considered inconsistent by his advocate with the case he was seeking to put.
16. Detailed reasons are provided by the First-tier Tribunal in its decision. It seems to me that this is an appeal where the enjoiner in *Pigłowska v Pigłowski* [1999] 1 WLR 1360 (endorsed in the immigration context in *EA* [2017] EWCA Civ 10 §27) is relevant: "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account ... [an] appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself".

17. I accordingly conclude that the reasoning of the First-tier Tribunal was properly open to it and I dismiss the appeal.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.
The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'MAS', with a long, sweeping underline that extends to the left and then curves upwards.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 3 July 2017