Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08507/2016**

THE IMMIGRATION ACTS

Heard at Glasgow
On 31 August 2017

Decision & Reasons Promulgated
On 1 September 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ABDUL JALIL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L McCrorie, of Loughran & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. First-tier Tribunal Judge Porter dismissing the appellant's appeal against refusal of asylum by a decision promulgated on 22 June 2017.

The grounds of appeal to the UT

2. The grounds, all centred on ¶26 and 27 of the decision, in summary are these:

(i) absence of reasoning for adverse conclusions reached;

(ii) acceptance of reasoning in the respondent's refusal letter and submissions, constituting a failure to assess the facts;

(iii) founding on a change in the appellant's evidence about when he was pressed by his father to become a suicide bomber, without considering his explanation;

(iv) findings made on state protection, without consideration of background evidence of inability of the state to provide such protection;

(v) finding on internal relocation, reached without consideration of background evidence of circumstances of IDP's;

(vi) not accepting appellant would become an IDP, based on family connections, when his family was the source of risk;

(vii) failure to make a finding on whether appellant's father and uncle were members of the Taliban;

(viii) cumulatively, errors such as to require a rehearing.

Respondent's rule 24 response to the grounds of appeal

3. The judge set out the challenges to the appellant's credibility at paragraph 13, and the responses on his behalf at paragraphs 16 to 18.

4. The judge carefully recorded all the evidence on which she made her findings.

5. At paragraph 26 she addressed the credibility issues and the submissions made on the basis of the cross-examination.

6. Having heard and noted the evidence, the judge was entitled to make a finding on what she considered the core of the claim, "the change in testimony relating to when [the appellant's] father first asked him to be a suicide bomber".

7. Having heard the appellant's answers to the challenges in cross-examination, the judge was entitled to find those answers inconsistent, evasive and highly implausible.

8. It was trite law that the judge need not make findings on all aspects so long as she addressed the core of the claim and relevant country guidance.

9. The judge found the appellant not credible on the core of his account.

10. Alternatively, the judge had found internal relocation open to Kabul, as the background evidence did not point against the country guidance.

Submissions for appellant

11. Grounds (i) – (iii) overlap. The overriding error was the adoption of the reasoning of the respondent, a one-sided approach. The judge failed to give her own reasons. Submissions made for the appellant were recorded, but not dealt with. The judge founded upon inconsistency in the appellant's evidence, without addressing his explanation, a matter which went to the core of the claim.

12. In respect of a medical report, the judge put the cart before the horse. She evaluated the report after stating an adverse credibility finding.

13. Grounds (iv) – (vi) were also interrelated. They disclosed a failure to deal with the background evidence. It was accepted that for those grounds to become relevant, the appellant would firstly have to show error in terms of grounds (i) – (iii).

14. At paragraph 27, the judge appeared to base her decision on matters which she had previously rejected. She could not have it both ways.

Submissions for respondent

15. The rule 24 response was well made.

16. It was not best practice but not necessarily an error for a judge to adopt submissions by one party. The issue had to be examined in the context of the case. The judge fully set out the positions of both sides, and the evidence. The decision made it clear why she decided as she did.

17. The challenge to the treatment of the medical evidence was not covered by the grounds of appeal. The order of approach to the medical evidence was unfortunate and the wording perhaps imperfect, but in any event the medical evidence had not gone above showing a level of consistency, which the judge recognised.

18. The alternative conclusions would stand even if the challenge to the credibility assessment was made out.

19. No reason was shown to set aside the decision.

Reply for appellant.

20. The submission about the medical report was sufficiently grounded in the challenge to the adequacy of the judge's reasoning.

21. The judge said that she founded on evasive answers given by the appellant, but she attached no examples to her reasoning. She did not refer back to the evidence which she set out.

22. In reaching conclusions in the alternative, the judge did not refer to the background evidence about the reach of the Taleban, or about difficulties facing IDP's. The issues of sufficiency of protection and internal relocation were inadequately addressed.

Discussion and conclusions.

23. Reading grounds (i) – (iii) and only paragraph 26 of the decision, those grounds have some apparent force; but that dissipates on reading the decision as a whole.

24. The discrepancies and weaknesses in the appellant's evidence are fully narrated, and the judge was entitled to find that they were not merely elaborations, as submitted on his behalf. Little further needed to be said.

25. The essence of the appellant's case was that his father tried to press him into becoming a suicide bomber. Paragraph 7 of the decision brings out clearly the central self-contradiction, which was over whether that pressure was applied over the appellant's lifetime (for about 20 years), or not until the moment when he saw a suicide belt at home (when he was aged 22 or 23). The appellant's explanations are set out and so are the competing submissions. The judge found there to be no sensible explaining away of the contradiction. That finding was properly reached.

26. Whether to state which submissions she preferred, or to re-frame the reasons as her own, was a matter of choice and of style, rather than of substance.

27. The judge had the advantage of hearing the evidence, and was entitled to consider how the appellant dealt with questions. It would have been better to quote examples, or to

specifically cross-refer to passages of evidence recorded, but that is another counsel of perfection.

28. Reading the decision fairly and as a whole, the appellant is left in no doubt why his evidence has fallen short of persuading the judge.

29. The "cart before the horse" challenge is not foreshadowed in the grounds.

30. The appellant does not disagree with the assessment that the medical report disclosed only scars consistent with his account, but non-specific, and attributable to a number of other possible causes. It was not going to take the appellant any further than the judge said: "no significant bearing on my assessment of credibility".

31. The extent to which the medical report supported the appellant's account should have been set out before turning to credibility. It should not have been evaluated in a way which reads as if credibility was decided, and then it was asked if the report made a difference. However, the report contains nothing which suggests any chance of a different outcome if the matter had been approached the right way around.

32. To succeed on grounds (iv) – (vi), the appellant would have to show that he made a case on background evidence which required the judge to go beyond country guidance on sufficiency of protection and internal relocation. Background evidence was filed, but no case was developed that these were materials of a nature different to those considered in the country guidance cases, so as to require departure from authority (cf. Practice Direction 12).

33. In absence of any such analysis by the appellant, the case was bound to fail in any event on the alternative conclusions, even if grounds (i) – (iii) had been made out.

34. The decision of the FtT shall stand.

35. No anonymity direction has been requested or made.

Hugh Macleman

31 August 2017
Upper Tribunal Judge Macleman