



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

Appeal Number: PA/01168/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12th February 2018**

**Decision & Reasons
Promulgated
On 7th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR S.A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nicholson of Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made. As a protection claim, it is appropriate to do so.

DECISION AND REASONS

1. The Appellant a citizen of Afghanistan (born [] 1990) appeals with permission against the decision of a First-tier Tribunal (Judge Plumptre) dismissing his appeal against the Respondent's refusal to grant him protection.
2. The Appellant's claim to protection is based on fear of the Taliban in Afghanistan on account of his work as a cashier at the Azizi Bank in Jalalabad City. He claims that he received threatening letters from the Taliban informing him that his employment was Haram because the bank at which he worked was responsible for paying the salaries of state officials and soldiers. In addition the bank charged interest.
3. The Appellant's claim is that at first he did not take the threats seriously. However on receipt of a third letter, which stated that a Taliban Sharia court had issued an order for the Appellant to be executed, he became concerned.
4. He took that threat seriously and reported it to his local elder. His local elder told him that he should contact his own mother who lived in the UK to help him leave. The Appellant's claim is that he reported the matter to the police who said that they could not protect him as many are threatened by the Taliban and they cannot provide protection for all.
5. Accordingly the Appellant claims he resigned his position at the bank in February 2016 and made arrangements through an uncle to leave Afghanistan. He travelled via several EU countries including Germany, Belgium and France, making no claim to asylum en route. He arrived in the UK on 1st August 2016 and promptly made his claim to asylum here.
6. The Appellant, as evidence of his claim, brought with him the three threatening letters which he said he received from the Taliban.
7. The Respondent did not accept that the Appellant had experienced problems with the Taliban as a consequence of his employment. With regard to the threatening letters produced by the Appellant, the Respondent considered that when those were set alongside the Appellant's own evidence, they added little value to the claim.
8. The Respondent added that even taking the Appellant's claim at its highest, he had not demonstrated that he would be at risk on return to Kabul and accordingly his claim to protection was refused. The Appellant appealed the refusal to the First-tier Tribunal.
9. By the time of the hearing before the First-tier Tribunal, the Appellant had obtained further evidence. This was in the form of a witness statement from his mother, who corroborated the Appellant's receipt of the second threatening letter. She was in Afghanistan visiting the country at the time that the Appellant received the second threatening letter. In addition the Appellant obtained expert evidence verifying the authenticity of the letters and confirming that the Appellant was on a Taliban blacklist.

10. The FtTJ when coming to her decision to dismiss the appeal found the central core of the Appellant's claim not credible. In particular for the purposes of this hearing, the judge found that she could not place weight on the expert evidence regarding the authenticity of the threatening letters. She found therefore that the Appellant would not be at risk on return and dismissed the appeal.
11. The Appellant sought and was granted permission to appeal to the Upper Tribunal. The grounds seeking permission are lengthy, but the focus of the ground centres on the fundamental issue of the authenticity or otherwise of the threatening letters. Permission to appeal was granted by UTJ Rintoul in the following terms:

"It is arguable that, given the centrality of the letters from the Taliban to this appeal, that First-tier Tribunal Judge Plumtre erred in her approach thereto, for the reasons set out in Grounds 3 and 4.

All the grounds are arguable."

Thus the matter comes before me to decide initially whether the decision of the First-tier Tribunal contains material error such that the decision must be set aside and be remade.

Error of Law Hearing

12. I heard submissions in the first instance from Mr Nicholson. Mr Nicholson's submission started with Ground 1 of the grounds seeking permission following which, after a response from Ms Everett, I indicated that I was satisfied that the decision of the FtTJ contained material error requiring the decision to be set aside. I now give my reasons for this decision.
13. Ground 1 is entitled "failure to take credible corroborative evidence into account in reaching findings as to whether Appellant received Taliban letters." At the hearing before the FtT, the Appellant brought a witness - his mother - who prior to the hearing had signed and dated a witness statement. In that witness statement the Appellant's mother confirmed she was present in Afghanistan (visiting) when the second letter arrived from the Taliban. Her statement outlines that the Appellant told her that he had received the first letter and that now he was being threatened with the second letter. This is essentially corroborative evidence but it is also relevant evidence and it is evidence which must be assessed when looking at the claim as a whole.
14. When dealing with the Appellant's mother's evidence the judge says this at [22]:

"The appellant currently lives with his mother who attended court but was not required to give oral evidence and two younger twin brothers."
15. It would seem that there was no challenge to the Appellant's mother's evidence, from the Respondent. However in the judge's findings of fact and credibility, I can find no reference within the decision to show that the judge has taken that evidence into account when reaching her conclusion

that the Appellant had not received any threatening letters from the Taliban. That evidence seems to have been simply sidestepped.

16. I find that the omission to analyse that evidence is a material error. It has always been the case that the central issue in this appeal revolves around the receipt or otherwise of those letters. The evidence of the Appellant's mother requires proper analysis to determine whether or not it is capable of lending weight to the Appellant's claim.
17. Following on from that, the omission was capable of infecting the judge's reasoning concerning her approach to the Appellant's credibility as a whole. This is especially pertinent in this appeal because the Appellant claims that he cannot relocate elsewhere in Afghanistan because he is on a Taliban blacklist, and the Taliban would be capable of finding him wherever he went in the country.
18. Ms Everett on behalf of the Respondent had filed a Rule 24 response. However whilst not formally conceding the matter, she did acknowledge that the Rule 24 response did not cover the point set out in Ground 1 concerning the Appellant's mother's statement.
19. At the end of submissions I indicated to the parties that I considered the omission of any consideration of the Appellant's mother's evidence, to be sufficient to make the FtT's decision unsustainable. Accordingly with the agreement of the parties, I indicated that the whole decision should be set aside for material error and accordingly remitted to the First-tier Tribunal for a full rehearing.

Decision

The appeal to the Upper Tribunal against the First-tier Tribunal's decision of 22nd August 2017 is allowed insofar as the FtT's decision is set aside for material error. The matter will be remitted to the First-tier Tribunal for that Tribunal to make a fresh decision. No findings are preserved from the original decision. The hearing should be before a judge other than Judge Plumptre.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2018

C E Roberts

Date

05 March

Deputy Upper Tribunal Judge Roberts