



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

Appeal Number: PA/04930/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 23 January 2018**

**Decision & Reasons
Promulgated
On 12 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**SS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iain Palmer, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. SS is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the

appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant is a national of Afghanistan who appealed to the First-tier Tribunal (“FtT”) against a decision of the respondent dated 17th May 2017 refusing his claim for asylum. His appeal was dismissed for the reasons set out in the decision of First-tier Tribunal (“FtT”) Judge Oliver promulgated on 25th July 2017.
3. Permission to appeal was granted by FtT Judge Page on 30th October 2018. At the conclusion of the hearing before me, I announced that in my judgement, the decision of the FtT is not infected by a material error of law and the appeal is dismissed. I said that I would give the reasons for my decision in writing. This I now do.
4. The appellant is a single Afghan male who arrived in the United Kingdom on 28th July 2015 and made his claim for asylum the following day. The appellant fears being persecuted because he would be killed by the Taliban after refusing to be recruited by them.
5. The background to the appellant’s claim for asylum is set out at paragraphs [12] to [17] of the decision of the FtT Judge. At paragraph [13], the Judge records the account of events that was given by the appellant during his screening interview that was completed in December 2015. At paragraphs [14] to [17], the Judge sets out the relevant parts of the appellant’s evidence as set out in the appellant’s witness statement of 12th January 2016. The Judge refers to the appellant’s evidence as to the death of the appellant’s father and brother, noting in particular that the appellant had not been present when his father and older brother were killed by masked men in 2012. The Judge noted that the appellant had heard from others that the masked men were probably linked to the Taliban. At paragraphs [15], [16] and [17], the Judge sets out the appellant’s evidence of the numerous occasions upon which the appellant and his friends were approached by the Taliban, and how the appellant

had been caught by them on at least two occasions. The Judge sets out the appellant's evidence about the last occasion when the appellant claimed to have been playing with friends and five masked men and armed members of the Taliban approached them and surrounded them. The Judge records the appellant's account of how he had got away from the Taliban, his account of his departure from Afghanistan and arrival in the United Kingdom. At paragraphs [20] to [25], the Judge sets out the evidence that was given by the appellant during the hearing of the appeal.

6. The findings and conclusions of the Judge are to be found at paragraphs [27] to [29] of the decision. The Judge found that the appellant has failed to show, even to the lower standard, that he has a genuine well-founded claim to fear persecution on return because he would be recruited by the Taliban. The Judge found that the Taliban have no interest in the appellant and they would not be looking for him either in his home village or if he moved to Kabul, in the capital. The Judge found, at [28], that the appellant came to the United Kingdom for a better life.

The appeal before me

7. In the grounds of appeal, the appellant claims that the Judge's treatment of the risk upon return and the appellant's human rights claim, fails to engage with the evidence and arguments that were relied upon by the appellant. The appellant claims that the Judge failed to consider the substantial volume of evidence that was put before the FtT including background material as to the conditions that the applicant would face upon return, and in particular, failed to assess the degree to which the appellant has absorbed "western culture" and the risk to which "westernisation" might expose the appellant to, upon return.
8. Before me, Mr Palmer reminds me that when the appeal was heard by the FtT, the appellant was a minor. The appellant had given an explanation of how the problems with the Taliban were avoided. He submits that the Judge failed to make any finding as to whether the appellant's brother and

father had in fact been murdered, as the appellant claims. Mr Palmer submits that the Judge refers to some of the evidence but fails to make findings upon relevant matters. Findings upon matters such as whether the appellant's father and brother were killed, were necessary for the Judge to properly assess the risk upon return. He submits that the issue in the appeal before me, is whether the Judge's finding that the appellant is not at risk upon return to his home village, is sustainable. He accepts that the question of whether the appellant is at risk because of "westernisation", only becomes relevant if it is established that the Judge's reasoning as to the risk posed to the appellant by the Taliban, is flawed.

9. In reply, Mr Avery submits that the Judge correctly notes at paragraph [27] of the decision that the appellant was a minor at the time when he arrived in the UK, and that is plainly taken into account when approaching the account of the appellant. He submits that although set out briefly, the Judge gives adequate reasons for his findings and conclusions and that it was open to the Judge to dismiss the appeal for the reasons that he has given. Mr Avery submits that the fact that there is no finding as to whether the appellant's father and brother were murdered, is immaterial. The Judge carefully considered the account being advanced by the appellant and it was open to the Judge to find that the Taliban have no interest in the appellant, and would not be looking for him either in his home village, or elsewhere.

Discussion

10. The appellant challenges the findings made by the Judge and the adequacy of his reasons for dismissing the appeal. I remind myself of the observations made by Mr. Justice Hadon-Cave in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**;

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a

proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

11. I have also had regard to the decision of the Upper Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC** where it was stated in the head note that:

"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision makes sense, having regard to the material accepted by the judge."

12. It is in that context that I have considered the grounds of appeal and the submissions that have been advanced on behalf of the appellant. The core of the appellant's account was not particularly complex. It is set out at paragraphs [13] to [17] of the decision of the FtT Judge, and at paragraphs [22] to [25] of the decision.
13. As to the Judge's consideration of the appellant's account, at paragraph [27] of his judgment the Judge states "*I bear in mind when approaching the account given by the appellant that on any view he was a minor at the time when he arrived in the United Kingdom and claims that before arrival he was not provided with an interpreter in any of the countries that he passed through*". In my judgment, the Judge plainly acknowledged that the appellant was a minor when he arrived in the UK and that previously, the appellant had not been provided with an interpreter in any of the countries that he passed through. The hearing before the FtT was conducted with the assistance of an interpreter and the Judge records at [21], that no difficulties were encountered in the interpretation of the proceedings.

14. Mr Palmer submits that the Judge does not expressly make a finding as to whether the appellant's father and brother were killed by the Taliban. At paragraph [14] of his decision, the Judge noted that the appellant's own account is that he was not present when his father and older brother were killed. The appellant had heard from others, that they were killed by masked men and the masked men were probably linked to the Taliban. The Judge notes at paragraph [22], that in his evidence before the Tribunal, the appellant was unable to substantiate that it had been the Taliban that had killed his father and brother.
15. The lack of a finding as to whether the appellant's father and brother were killed is, in my judgement, immaterial. The core of the appellant's account was not concerned with the killing of the appellant's father and brother, but those that were trying to recruit the appellant and his friends. The appellant's claim was that he knew it was the Taliban that was trying to recruit him because they were teaching him about Jihad and they dressed as the Taliban do. The core of the appellant's claim was not that he was being recruited after the Taliban had killed his father and brother, but that he was at risk of being recruited because he was now the same age as his brother when his brother had been killed.
16. The Judge of the FtT, rightly in my judgement, focused upon the risk upon return based upon the appellant's account of how he and his friends had been approached by the Taliban. The focus was upon the threats that were specific to the appellant, in particular, the threat of being recruited to the Taliban. It was in my judgement, on the evidence, open to the Judge to find that the appellant has failed to show, even to the lower standard, that he has a genuine well-founded claim to fear persecution on return because he would be recruited by the Taliban for the reasons identified at paragraph [27] of the decision.
17. In light of the prior findings, the Judge went on to consider whether the appellant would be at risk upon return. The Judge found that the Taliban

have no interest in the appellant and would not be looking for him either in his home village or, if he moved to Kabul, in the capital.

18. At paragraph [28], the Judge referred to the expert report relied upon by the appellant. The Judge noted that the “..expert report relied on, deals largely with the position of those who are of interest to the Taliban.”. The appellant could gain little support from the expert report in light of the Judge’s finding that the Taliban have no interest in the appellant.
19. I reject the claim that the Judge did not have proper regard to all of the material that was before him. The judge refers in his decision to the expert report and notes that the difficulties described on relocation to Kabul, do not reach the level triggering the need for humanitarian protection. The decision of the F&T Judge 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. Here, the Judge found, at [28], that the appellant does not need to relocate. The Judge noted, at [28] that in coming to his conclusions he had considered all the evidence in the context of the guidance in **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163**.
20. In my judgment, the conclusions that were reached by the Judge, were open to him on the facts as he found them. Overall, in my judgment, the Judge’s finding that the appellant is not at risk upon return to his home village, is sustainable,
21. Although the Judge’s consideration of the Article 8 claim is brief, in my judgement, it was open to the Judge, on the evidence to conclude that the appellant’s family life remains in Afghanistan. At paragraph [23] of his decision, the Judge set out the evidence of the contact that the appellant had with his maternal uncle and mother whilst the appellant has been in the UK, albeit the appellant claims that he has now lost the mobile phone on which he had spoken to his family. It was in my judgement open to the Judge to conclude overall, that the private life that the appellant will have

developed in the UK cannot compare with the extent of the private and family life that the appellant has in Afghanistan. In light of the findings previously made, it was in my judgement open to the Judge to find that there are no significant obstacles to the appellant's return to Afghanistan.

22. The decision of the First-tier Tribunal Judge does not disclose a material error of law and I dismiss the appeal

23. An anonymity direction is made.

Signed

Date

16th March 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

16th March 2018

Deputy Upper Tribunal Judge Mandalia