Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09195/2016

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 27th September 2017	**On 10th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

FF
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S Tettey; Counsel instructed by Broudie Jackson & Canter
For the Respondent: Mr. J Harrison; Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction

applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This is an appeal against a decision by First-tier Tribunal Judge Brookfield promulgated on 7th February 2017.

Background

3. The appellant is a national of Afghanistan. She arrived in the UK on 4th August 2011 with her husband ("HF"), her son ("AS") who was born on [ ] 2010, and her brother-in-law ("DF"). She has a daughter ("SF") who was born in the UK on [ ] 2013. The appellant's husband has previously claimed asylum and the appellant and her son were named as dependant's. That claim for asylum was refused by the respondent on 16th June 2014. The appeal against the refusal of that claim was dismissed by F*t*T Judge Birrell following a hearing on 30th October 2014, but HF was granted permission to appeal to the Upper Tribunal. For the reasons set out in a decision promulgated on 16th September 2015, Deputy Upper Tribunal Judge Lever found there to be no material error of law in the decision of F*t*T Judge Birrell, and upheld the decision of the F*t*T Judge. Permission to appeal to the Court of Appeal was refused by Upper Tribunal Judge Kebede on 9th November 2015.

4. It is useful to note at this stage that a summary of the claim made by the appellant's husband is to be found at paragraph [16] of the decision of F*t*T Judge Birrell. The account relied upon by HF included a claim that on 2nd April 2011, the appellant here, was given what appeared to be a wedding invitation but it was a warning letter saying that they knew who her husband was, and that he worked in the UK Embassy. The letter also claimed that they knew that the appellant's brother-in-law DF was also working for foreigners, and that they should resign and await punishment. The appellant did not give evidence before F*t*T Judge Birrell. The findings and conclusions of F*t*T Judge Birrell are to be found at paragraphs [33] to [48] of her decision. For present purposes, it suffices

to note that F*t*T Judge Birrell accepted, at paragraph [43] of her decision, that the appellant's husband had received a letter from the Taliban dated 29th August 2008 and then another one on 2nd April 2011. F*t*T Judge Birrell found that the claim made by the appellant's husband that he also received threatening phone calls between the two letters, to be an embellishment. At paragraphs [44] to [46] of her decision, F*t*T Judge Birrell stated:

> *"44. I am therefore satisfied that between the dates of these two letters the Appellant had no direct or indirect contact from the Taliban in spite of the fact that he continued to work for the British Embassy, apparently travelled on public transport to work and did not change his address. Given the background material above and the number of people who worked for ISAF I am satisfied that the Taliban did indeed view people such as the Appellant as low-level collaborators and therefore did not take direct action against him although clearly they had the opportunity to do so.*
>
> *45. I also note that although the Appellant states that he received a second threatening letter from the Taliban in April 2011 he nevertheless continued to work at the Embassy until 18 July 2011 without incident and took the time to sell his property before fleeing. Again I am satisfied that the Taliban had the opportunity to take direct action against the Appellant during this period but did not do so which suggests that the Appellants profile is not such as to lead to the Taliban to carry out their threats.*
>
> *46. I also note that those members of the Appellant's family who have remained in Afghanistan have had no problems from the Taliban and therefore the Appellant and his family would have support on return."*

5. I pause at this juncture to also note that the appellant's brother-in-law, DF, had also made separate a claim for asylum. His claim for asylum was refused by the respondent and an appeal was dismissed by F*t*T Judge Turquet on 2nd September 2011. He was removed from the UK on 20th September 2011.

6. On 19th February 2016, the appellant claimed asylum in her own right, naming her husband and their two children as her dependants. The claim was refused on 12th

August 2016. It is the decision of F*t*T Judge Brookfield in which she dismissed the appellant's appeal, that is the subject of the appeal before me.

The decision of the First-tier Tribunal

7. The appellant attended the hearing of her appeal before the First-tier Tribunal. She was represented and gave evidence. The appellant's husband was not called to give evidence. The Judge sets out the background to the appeal before her at paragraphs [1] to [3] of her decision. A summary of the appellant's claim and the evidence before the F*t*T is to be found at paragraph [9] of the Judge's decision. The Judge records at paragraphs [9(ii)] to [9(iv)] of her decision as follows:

> *"The appellant claims that her family have warned her that they will kill her, her husband and their children if they return to Afghanistan because they believe she and her husband have converted to Christianity because her husband used to work for the British embassy. She claims her father believes that the UK authorities have brought the appellant and her family to the UK as spies and that they are in the UK on a mission.*
>
> *The appellant also claims that her family have threatened to kill her because she sent two photographs of herself and with her husband to her sister in Kabul, which her sister showed to their father. The appellant's father has noted that she is not wearing a hijab in either photograph and she and her husband are standing outside a church in the UK. He has concluded the appellant and her husband have converted to Christianity. The appellant claims her father is very religious and would kill her on her return to Afghanistan.*
>
> *The appellant claims that she and her husband would be unable to rely on support from her husband's family, as they have been shown the photographs and have reached the same conclusion as her family."*

8. The Judge records her findings and conclusions at paragraph [10] of her decision. The Judge found that the appellant is a national of Afghanistan and upon return, would have the protection and support of her husband. She would not therefore be at risk of gender based harm on return at the hands of her father or anyone

else. The Judge found that the appellant's claim that her father wishes to kill her husband because he believes he has converted to Christianity as a result of his work as an interpreter at the British Embassy, lacks credibility and merit. She did not believe it.

9. As for the photographs that the appellant claimed to have sent to her sister, the Judge found, at [10(xi)], that it was implausible that she would send two photographs to her sister in which she is not wearing a hijab or that she would write on the back of the photographs that she is at a party and standing outside a church. The Judge found the appellant's account to be incredible and did not believe it. The Judge concluded the appellant has failed to establish there is a reasonable likelihood that she sent photographs to her sister in Afghanistan which show the appellant without a hijab outside a church in Liverpool, or at a party. The Judge rejected the claim that the appellant's father has seen these photographs, or threatened to kill her and her husband, or that he believes she and her husband are Christian converts. The Judge went on to find that even if the appellant's father has seen the photographs, it is not credible that he would reach the conclusion that the appellant and her husband are Christian converts. The appellant and her husband remain Muslims and have not converted to Christianity and whilst her father might not accept what is said by the appellant, there is no evidence to suggest that the appellant's father would not accept the word of the man that he had selected to marry the appellant.

10. At paragraph [10(xvi)], the Judge states:

> *"I noted that the appellant and her husband sold their home in Kabul before they came to the UK. I find this strongly suggests that the appellant has never had any intention of returning to Afghanistan with her family, even when her husband's asylum appeal rights were exhausted in late 2015. I therefore cannot discount the probability that this appellant has invented an asylum claim simply to prevent or delay her and her family's removal from the UK."*

The appeal before me

11. The appellant contends that the F*t*T Judge has made a number of material errors in paragraph [10] of her decision that have adversely affected the outcome of the appeal. It is said that in a number of respects, the Judge has omitted to give adequate reasons for the findings made, and she has misdirected herself in relation to legal and factual matters relating to the appeal. The errors relied upon by the appellant are identified in paragraphs [6] to [13] of the appellant's Grounds for permission to appeal, dated 21st February 2017.

12. Permission to appeal was granted by First-tier Tribunal Judge Mailer on 5th June 2017. He noted that it is arguable that the Judge did not properly consider the evidence as to the current risk to the appellant given the passage of time that has passed since her husband's earlier appeal, and that it is arguable that there was inadequate reasoning supporting her finding that the appellant's family would be supportive on their return to Afghanistan.

13. The respondent has filed a rule 24 response dated 16th June 2017. The appeal is opposed. The respondent submits that the F*t*T Judge has given sufficient reasons as to why she concludes that the appellant would not be at risk from her family and that in any event, as the Judge found, it is open to the appellant and her family to internally relocate in Afghanistan. The respondent submits that the appellant's grounds of appeal amount to a disagreement with the outcome of the appeal.

Discussion

14. 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."

15. 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.*"

16. The appellant gave evidence before the F*t*T and the Judge had the advantage of hearing the evidence of the appellant. It is unfortunate that the appellant did not give evidence at the hearing of her husband's appeal, and that her husband did not give evidence at the hearing of her appeal. At paragraph [10], the Judge confirms that she has taken account of all the evidence and has considered all of the evidence in the round before making her findings. Having made that clear, there is no reason for me to believe that she did not adopt that approach.

17. The first criticism made of the decision of the F*t*T Judge is that at paragraph [10(vi)], the Judge's finding that it is implausible that the appellant's father would risk detriment to himself by harming the appellant or her family, is unreasoned. I reject that claim. At paragraphs [10(iv)] to [10(vi)], the Judge carefully considers the evidence relating to the work of the appellant's husband at the British Embassy in Kabul, the background to the appellant's marriage to her husband, and the fact that the appellant and her husband were able to live in Afghanistan in the same city as the appellant's parents until the appellant left Afghanistan. At paragraph [10(vi)], the Judge puts the appellant's claim in context, and in my judgment it was open to the Judge to conclude that that aspect of the claim is implausible.

18. The second criticism made by the appellant is that at paragraph [10(vii)], the Judge adopted the previous finding made by F*t*T Judge Birrell that the appellant's

husband is considered a low-level collaborator and would not be at risk upon return to Kabul, without undertaking her own assessment of the current risk to the appellant given the passage of time. In **AA Somalia –v- SSHD [2007] EWCA Civ 1040**, the Court of Appeal held that the guidelines in **Devaseelan**, on the weight to be attached on a second appeal by the same applicant to the findings of the adjudicator who had rejected his first appeal, had been extended by the case of **GO (Columbia) –v- SSHD [2007] Imm A.R. 225** to apply to a case where the earlier decision involved different parties but where there was "a material overlap of evidence", meaning that the applications had arisen out of the same factual matrix. In such a case, the earlier decision was not binding in the technical sense of issue estoppel or res judicata, but was the starting point and should be followed in the absence of a very good reason not to do so. In applying the guidelines to cases involving different applicants there might be a valid distinction if the earlier decision was in favour of the SSHD, as she would have been a party to the previous proceedings and the applicant may have been only a witness, and it would be unfair to prevent an applicant from relitigating the issue, if he had not been a party to the earlier decision. Mr Tettey accepts that the **Devalseelan** principles form the starting point, but submits that as this is an appeal by a different individual, it was incumbent upon the Judge to carry out her own analysis as to the risk upon return.

19. At paragraph [10(vii)] of her decision, the Judge addresses the question of whether the appellant would be at risk of harm at the hands of the Taliban. As to that aspect of the appellant's claim, there had been no new evidence and no reason for the Judge not to follow the earlier decision. The appellant's claim for protection was based upon events that did not form part of the claim made by the appellant's husband and in my judgement, a careful reading of paragraphs [10(ii)] to [10(xxvi)] demonstrates that the Judge carefully considered the claim now being made by the appellant, and by undertaking her own assessment of the current risk to the appellant and her family. It follows that I reject the criticism made by the appellant as to the Judge's approach.

20. The third criticism made of the decision of the F*t*T Judge is that at paragraph [10(xii)], the Judge provides inadequate reasons for rejecting the appellant's account on the basis that she did not find it credible that the appellant's father would not accept an account relayed by the appellant's husband. The appellant claims that the Judge erred by omitting to consider the position of the appellant's husband as to the information he could relay. The fourth criticism made by the appellant is that at paragraph [10(xii)], the Judge erred in finding that it is "highly probable" that the appellant's family would be supportive of the appellant were she to return to Afghanistan. It is submitted by the appellant that the Judge offers no reason why she finds that the appellant's family would be supportive upon their return to Afghanistan. Mr Tettey submits that the use of the phrase "highly probable" at paragraph [10(xii)] is unfortunate, and that the finding of the Judge was one that was not open to the Judge when there was no evidence that the appellant, her husband and their children would be supported by the appellant's family, and against the backdrop of a claim in which the appellant claims to be at risk from her family.

21. I reject the criticisms made by the appellant as to paragraph [10(xii)] of the decision. At paragraph [10(xi)] of her decision, the Judge concludes that the appellant has failed to establish that there is a reasonable likelihood that she sent the photographs to her sister in Afghanistan. The Judge was not satisfied that the appellant's father has seen the photographs or threatened to kill the appellant and her husband, or that he believed the appellant and her husband are Christian converts. The appellant's husband did not give evidence. At paragraph [10(xii)] of her decision, the Judge correctly notes that there was no evidence adduced before her to suggest that the appellant's father would not accept the word of the man that he selected to marry the appellant. The Judge cannot be criticised for omitting to consider the position of the appellant's husband as to the information he could relay, when he was not called to give evidence. The finding of the FtT Judge that the appellant and her husband would not be at risk of harm at the hands of her father as perceived Christians and that it is "highly probable" that the appellant's family would provide support to the appellant and her family on return to

Afghanistan was one that was, in my judgement, open to the Judge. The decision of the F*t*T Judge as to whether the appellant's family would provide support cannot be read in isolation, and must be considered in light of the prior findings made. The decision must be read as a whole, and when properly read, it is clear that the Judge rejected the appellant's claim that she is a risk because her father believes the appellant and her husband to be converts to Christianity. The Judge rejected the account that the appellant's father has seen the photographs or threatened to kill the appellant and her husband. Having made those findings as to the core of the appellant's account, the conclusion reached by the Judge that the appellant's family would provide support on return to Afghanistan, was one that in my judgement, was open to the Judge on the evidence.

22. The fifth criticism made by the appellant is that at paragraph [10(xvi)] of her decision, the Judge provides inadequate reasons for finding that the sale of the appellant's family home in Kabul before they came to the UK, strongly suggests that the appellant has never had any intention of returning to Afghanistan with her family. Again, the decision must be read as a whole. In looking at the claim as a whole, it was open to the Judge to note that she could not discount the probability that the appellant has invented an asylum claim simply to prevent or delay her and her family's removal from the UK.

23. The sixth criticism made by the appellant is that at paragraph [10(xvii)] of her decision, the Judge provides inadequate reasoning and misdirected herself as to the evidence by conflating the factual account offered by the appellant and the opinion offered by her. Again, I reject that criticism. Paragraphs [10(vii)] and [10(viii)] must be read together. It is clear that the Judge carefully considered the history of the claim and it was open to the Judge to find that the appellant's delay in making her claim undermines the credibility of her claim, when assessing the claim as a whole.

24. Finally, the appellant claims that the Judge erred in her assessment as to the availability of internal relocation. The appellant submits that the Judge does not

address the difficulties that the appellant and her husband would have, as perceived Christian converts more widely, in light of the claim that their perceived conversion has been dispersed amongst their known relatives in Afghanistan. The appellant also submits that the Judge makes no adequate finding as to whether it would be reasonable for the appellant to return to Afghanistan with her husband to areas outside of Kabul, where they may be perceived as low-level collaborators. I reject this ground too. The appellant seeks to ignore the findings made by the Judge as to the core of the appellant's account. Notwithstanding the Judge's rejection of the core of the appellant's account, at paragraphs [10(xx)] to [10(xxvi)] of her decision, the Judge carefully considered whether the appellant and her family could live outside Kabul. At paragraph [10(xxi)], the Judge expressly considered the applicant's claim that her and her husband's families would find them and kill them wherever they went in Afghanistan. In reaching her decision, the Judge had regard to the relevant Country Guidance decisions and the objective evidence.

25. In my judgement, the Judge carefully considered the evidence before her. It is now well established 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 as a whole makes sense, having regard to the material accepted by the Judge. It is equally well established that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original judge's thought process when the Judge was making material findings. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her. I am satisfied that the Judge's findings are sufficiently reasoned, and it was open to her on the evidence, to dismiss the appeal for the reasons given.

26. In my judgement, it was open to the Judge to conclude, that the appellant has not discharged the burden of proving a well- founded fear of persecution for a Convention reason. It follows that the appeal is dismissed.

Notice of Decision

27. The appeal is dismissed.

Signed Date 6th January 2018

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

No fee is payable and there can be no fee award.

Signed Date 6th January 2018

Deputy Upper Tribunal Judge Mandalia