



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11819/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7 September 2018

Decision & Reasons Promulgated
On 19 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

AK (AFGHANISTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Heidar, Solicitor, AA Immigration Lawyers
For the Respondent: Mr Tom Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal dismissing his appeal against the decision by the respondent to refuse his protection and human rights claims which he had brought on the basis that he had a well-founded fear of persecution by the Taliban. The appellant claimed that he was a target of the Taliban

due to his work as a bodyguard for the Director of the Internal Security Commission of the Afghanistan National Assembly.

The Initial Refusal of Permission to Appeal

2. Permission to appeal was initially refused by First-tier Tribunal Judge Ford. She addressed two asserted errors of law. The first was an alleged error in the Judge finding, contrary to the objective evidence, that the appellant was not targeted by the Taliban. She said the reason why the appellant was not believed was not because it was inconsistent with the background evidence that someone in his employment would be targeted, but because he had said that the purpose of the kidnapping by the Taliban was to get him to kill the MP rather than to intimidate the appellant into not working for the MP. The Tribunal's finding was that if the Taliban had wanted to kill the MP they would have done it themselves and this was in no way inconsistent with the background evidence.
3. Secondly, it was asserted that there were factual errors. In her opinion, the factual errors highlighted were not factual errors. The appellant never said that his family was targeted, and the fact that they were not was inconsistent with the way in which the Taliban operated when a person of interest to them disappeared. There were no errors in the inconsistencies between the medical reports which the Judge noted.

The Reasons for the Eventual Grant of Permission to Appeal

4. On 14 July 2018 Upper Tribunal Judge Lindsley granted permission to appeal for the following reasons:

The grounds of appeal contend, in summary, that the First-tier Tribunal failed to consider central evidence that the appellant had been targeted by the Taliban from his employer even though his employment as a bodyguard for an Afghan MP was accepted, that evidence being further supported by a memo from the police about his kidnapping and a police report about this matter. In addition, the First-tier Tribunal found the appellant not to be credible on a point not put to him or raised by the respondent about his family not being targeted, and it is contended that errors were made in finding that the two medical reports said different things about his injuries when this was factually incorrect, and this further led the First-tier Tribunal erroneously to reject photographic evidence of the appellant's injuries. The grounds are arguable.

Relevant Background

5. The appellant is a national of Afghanistan, whose accepted date of birth is 1 August 1994. He was fingerprinted in Bulgaria and Germany in January 2016, and made his way to the UK where he claimed asylum on 7 September 2016. His claim for asylum was based upon his professed fear that if he returned to Afghanistan he would face mistreatment from the Taliban due to his imputed political opinion. He claimed that he was employed as a bodyguard by [MN], a prominent lawyer and the Director of the Internal Security Commission of the Afghanistan National Assembly.

6. The appellant claimed that due to his job, the Taliban kidnapped him on 14 October 2015 and ordered him to assassinate his employer. They beat him and tortured him until he agreed to do this. He next recalled finding himself in hospital where he remained for two days. When he left hospital he went to his employer and told him what had happened. The employer told him that he could not help him, and gave him a letter to take to the police when he reported the matter. The appellant said that when he reported the matter to the police, they also told him that they could not help him. Two days later, he received a call from the Taliban telling him to kill his employer, and in response to this he contacted his employer who told him that he could only help him to get out of the country. [MN] gave him US \$3,000 to help him leave Afghanistan.
7. While the respondent accepted that the appellant was a national of Afghanistan, she rejected the rest of his claim. She did not accept that the appellant had worked for [MN] because she did not find it credible that he would have recruited the appellant as his bodyguard, as the appellant was untrained and had never worked previously as a bodyguard. She also did not accept that the appellant was kidnapped, as there were several inconsistencies in his account - particularly about dates. She also did not find it credible that [MN], as Head of Security, would have told the appellant that he could not help him and would have instead given him money to leave the country.

The Hearing Before, and the Decision of, the First-tier Tribunal

8. The appellant's appeal came before Judge C.A.S. O'Garro sitting at the First-tier Tribunal at Hatton Cross on 7 February 2108. Both parties were legally represented. Ms Heidar appeared on behalf of the appellant.
9. In her subsequently decision, the Judge noted from the objective evidence that due to a significant military and Government presence in Kabul, there were employment opportunities in the Armed Forces and Civil Service. On that basis, she found it plausible that the appellant was able to get employment as a bodyguard through a friend. However, having regard to the background evidence, she did not accept that the appellant would have been kidnapped by the Taliban to kill his employer because the Taliban were equipped with trained operatives who were able to kill civilians in the capital city, including high-ranking Government employees.
10. She also did not consider it credible that the Taliban would kidnap the appellant to demand that he kill his employer, and then allow him to return home - with the likelihood that he would go to the police, or better still leave the country, without doing what they wanted him to do. It made no sense, because once the appellant was out of their presence, they would have no control over him.
11. The Judge also found that, if the Taliban had an interest in the appellant as he claimed, then, based on the objective evidence, his family would be targeted as well by the Taliban in an effort to find the appellant once he had disappeared without carrying out their instructions.
12. Accordingly, having considered the objective evidence, she found that the appellant's claim that he was targeted by the Taliban was a fabrication.

13. At paragraph [43], the Judge observed that the appellant had provided several documents to support his claim. She went on to give express consideration to two medical reports that the appellant had provided. At paragraph [47] she summarised her conclusions for not giving the medical reports any evidential weight.
14. The Judge continued at paragraph [48]: *“Furthermore, in the light of my finding that the appellant’s claim is a fabrication, I will apply the guidance given in **Tanveer Ahmed [2002] UKIAT 00439** and place no evidential weight on any of the documents he relies on.”*

The Hearing in the Upper Tribunal

15. At the hearing before me to determine whether an error of law was made out, Ms Heidar developed the case advanced by her in the renewed application for permission to appeal to the Upper Tribunal.
16. Mr Wilding responded that the Judge had directed herself appropriately, and no error of law was made out.

Discussion

17. Ground 1 is that the Judge failed to take into account crucial documentary evidence submitted by the appellant. The evidence in question is as follows: (a) a letter purportedly issued by his employer confirming that he had been kidnapped; (b) a purported police report confirming the appellant’s report of the kidnapping; and (c) a personnel memo purportedly sent by the employer to the police.
18. Ms Heidar’s submission is that the Judge erred in law in not giving specific consideration to these documents as they constituted powerful corroboration of the core claim. Another way of putting it is that by not making specific findings on these documents, the Judge has not, she submits, given adequate reasons for concluding that the core claim is a fabrication.
19. In **South Bucks District Council v Porter (2) [2004] UKHL 33** Lord Brown said at [26]:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. *Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision* (my emphasis). The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. *The reasons need only refer to the main issues in the dispute, not to every material consideration* (my emphasis).
20. As I established with Ms Heidar’s assistance and from perusal of the file, the documents in question were not produced by the appellant to the Home Office at the time when his asylum claim was under consideration, but were produced very late by

way of appeal. Moreover, the appellant's evidence was that they had been procured by a family member in Kabul.

21. Given their late production and their inherently dubious provenance, I consider that it was open to the Judge to take the line which she did, which was to invoke the guidance of **Tanveer Ahmed**, and to attach no probative value to these documents on the grounds that the appellant had not discharged the burden of proving to the lower standard of proof that these were documents which could be relied on.
22. The documents present as being written to order, which is consistent with them being procured by a relative rather than an inherently trustworthy intermediary such as a lawyer whose credentials are objectively verifiable. The letter purportedly emanating from the employer and the police report do not add new information to the information already given by the appellant. Thus, for example, the letter purportedly emanating from his employer replicates the same vagueness about when the appellant purportedly began his employment as a bodyguard, simply confirming that, as the appellant has consistently maintained, his employment began in 2014. The employer fails to specify the month, still less the day, when the appellant purportedly commenced his employment.
23. As for the personnel memo purportedly sent by the appellant's employer to the police, it is undated and it contradicts the appellant's core claim in two material respects. Firstly, the employer does not purport to report what the appellant says occurred, but makes a different complaint as follows: "*Recently, he was threatened and warned by various means by the Taliban terrorists on several occasions.*" Secondly, contrary to the appellant's account of the employer saying that he could not help, the employer asks the police to provide security cover for the appellant's house as well as for his route of travel, and to identify and carry out the arrest of those suspected persons who are threatening and running after him.
24. Ground 2 is that the Judge erred in making a speculative finding that his family had not been targeted by the Taliban, as this proposition had not been put to the appellant.
25. The finding was not speculative, and there was no procedural unfairness in the question not being put to the appellant in the course of his oral evidence. The Judge explained the evidential basis for her finding at paragraph [41]. At Q&136 of his asylum interview, the appellant said that he had been in contact with his family and also that people had come and asked about him. It was open to the Judge to infer from this that his family had not been targeted by the Taliban - since, if that were the case, it was reasonable to expect the appellant to have mentioned this as part of his answer.
26. Ground 3 is that the Judge made two factual errors with regard to the medical reports, with the consequence that she wrongly rejected them as furthering his case that he had been kidnapped by the Taliban and had been tortured by the Taliban into agreeing to act as an assassin.
27. As the Judge correctly held, the appellant originally relied on a medical report which purported to confirm that he had been brought into the hospital at 5pm on 27 October

2015 due to him sustaining a stab wound to his face and severe beatings, particularly on his head.

28. She noted that the information given in this medical report was inconsistent with the core claim of the appellant being taken to hospital in the early hours of 15 October 2014, having been kidnapped by the Taliban on 14 October 2015. (However, the date given in this report correlates with the date of the kidnapping which the appellant gave in his asylum interview.)
29. As noted by the Judge, on the day of the hearing the appellant produced a different medical report from the same hospital, as he said that he had noted a mistake in respect of the date and time in the original medical report.
30. The second report certified that the appellant had visited the hospital due to many injuries "*with knife in his head and his face*" at 5am on 15 October 2015. The hospital further certified that the date stated in the previous certificate was "*written wrong.*"
31. At paragraph [45], the Judge held that the two medical reports were saying different things about the appellant's injuries. At paragraph [46], she noted that in the first medical report the hospital was spelled '*Sardar-e-Kaenat*', while in the second medical report the hospital was spelled '*SARDAD-E-KAENAT*'.
32. At paragraph [47], the Judge found that, as the medical reports were not consistent about the injuries that the appellant had sustained and the spelling of the hospital was not the same, she questioned the reliability of the medical reports and she was not prepared to give them any evidential weight.
33. Ms Heidar submits that there was no real inconsistency between the two reports in terms of the appellant's injuries. I consider that it was open to the Judge to find that the medical reports were saying two different things. Although it is arguable that the reported injuries were substantially similar in both reports, it was open to the Judge to attach an adverse inference to the fact that the injuries were reported differently between the two reports in circumstances where the only ostensible justification for the issue of the second report was simply to correct the date (and time) of admission given in the first report. Moreover, it was open to the Judge to find that there was a qualitative difference between the reported injuries, and not simply a different expression of them, in that only the first report referred to the appellant having sustained severe beatings.
34. With regard to the difference in the spelling of the hospital's name, the Judge was correct so far as the two translations of the reports are concerned. Ms Heidar showed me that the translation of the second report was incorrect, and that in the original of the second medical report it is apparent that the spelling of the hospital's name is the same as the spelling of the hospital's name in the first medical report. Accordingly, I accept that, with the benefit of hindsight, this removes one of the reasons given by the Judge for discounting the medical reports. However, I do not consider that her overall conclusion is undermined. The other reason she gave is sufficient in itself to justify the conclusion. In addition, although this is not spelt out by the Judge in her reasoning,

the very fact that there were in existence two different medical reports purportedly relating to the same incident, but with admission dates some 12 days apart - as highlighted by her at paragraphs [43] and [44] - was also a matter which was sufficient in itself to negate their probative value.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their 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

Date 12 September 2018

Judge Monson
Deputy Upper Tribunal Judge