



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09596/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7 February 2019

Decision & Reasons Promulgated
On 20 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTE

Between

KM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Nizami, counsel.
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 8 November 2018 dismissing his appeal against the respondent's decision of 20 July 2018 refusing his claim for asylum.

Background

2. The appellant is a citizen of Afghanistan born on 8 November 1992 in Sharana in Paktika province. He arrived in the UK on 16 January 2018 making a clandestine entry in the back of a lorry. He claimed asylum on 31 January 2018.
3. The basis of his claim is that over a two-year period he was engaged in an adulterous relationship with a married woman but on 22 August 2017 he was caught engaging in sexual activity with her in the back of his store by her sister-in-law. Once he had been discovered, he fled to his village and then went to a friend in Ghazni. He left Afghanistan on 24 August 2017 travelling on foot to Pakistan. He then travelled through a number of unknown countries and, eventually, an agent hid him in a lorry telling him that it would take him to the UK. He feared that he would be at risk from both the authorities and the Taliban as someone who had committed adultery.
4. The respondent's decision is set out in the Reasons for Decision annexed to the decision of 20 July 2018. The respondent accepted that the appellant was a national of Afghanistan but was not satisfied that he had been discovered committing adultery or that for this reason he was wanted either by the Taliban or the Afghan authorities. The respondent found that the appellant did not qualify for humanitarian protection; he did not come within the private life of requirements of the Rules and there were no exceptional circumstances justifying a grant of leave outside the Rules.

The Hearing before the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. He gave oral evidence and was cross examined. However, the judge said that, having regard to the totality of the evidence, he had come to the conclusion that the appellant's story was a fabrication [40]. He described a number of aspects of his account as highly implausible and in particular his claim that he would be able to maintain a sexual affair with a woman over a two-year period without having got caught earlier, the fact that a married woman would have been permitted to leave home on as many occasions as he claimed simply to be with him and his claim that on the last occasion when he was caught, he got his employee off the scene to prevent him informing the authorities of the affair [42].
6. The judge went on to say that, even taking the appellant's claim at its highest, he agreed with the respondent that any prosecution was unlikely to result in a conviction because four men had not witnessed the activity [47] and that the appellant could, in any event, relocate to another part of the country if his fear was of the Taliban [48]. He said that he found it highly implausible that the Taliban would take upon itself the responsibility of punishing the appellant when they had other targets to worry about and he had committed no wrong to that organization, such that they would seek to track him down in another part of the country [48]. In summary, the judge did not accept that the appellant had engaged in an adulterous

relationship nor that he would be the subject of adverse interest either from the authorities or the Taliban. The asylum claim was accordingly dismissed. The judge dealt briefly with the issue of humanitarian protection, saying at [56] that, given his factual conclusions, the appellant had not shown that he was entitled to such protection.

The Grounds of Appeal

7. In the grounds of appeal, it is argued in ground 1 that the judge erred in his approach to credibility by focusing excessively on plausibility and in ground 2 that he erred in his assessment of the risk on return by failing to consider the objective evidence and in particular the UNHCR Eligibility Guidelines on the risk of ill-treatment in situations of accusations of adultery. In ground 3 it is argued that he erred by failing to consider internal relocation properly, failing to apply country guidance and again by focusing on plausibility and in ground 4 that he erred by failing to make any findings, adequate or otherwise, in relation to the claim for humanitarian protection.
8. Permission to appeal was granted by the First-tier Tribunal for the following reasons:

"The judge concluded that the appellant's evidence was not credible and that he would not be at risk on return to Afghanistan. The grounds take issue with the findings made by the judge contending over reliance on inherent implausibility. There may be some arguable merit in this given the content of paragraphs 42-46 of the decision".

Consideration of the Issues

9. I shall deal with each ground in turn. In ground 1 it is argued that the judge erred when assessing credibility in the way he focused on plausibility. In her submissions Ms Nizami argued that the judge had viewed credibility solely through the lens of plausibility and had fallen into the errors described in Y v Secretary of State [2006] EWCA Civ 1223 and HK v Secretary of State [2006] EWCA Civ 1037. Mr Tufan referred me to Gheisari v Secretary of State [2004] EWCA Civ 1854 and in particular [14]. He argued that the judge had reached a clear decision on credibility and had been entitled to take into account the aspects of the evidence which he regarded as implausible.
10. The Court of Appeal in Y and HK have set out the dangers of an over-reliance on inherent implausibility. They warn against making assumptions based on a subjective view of what is or is not plausible. In HK, Neuberger LJ said that in many asylum cases some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story and the story as a whole have to be considered against the available country evidence, reliable expert evidence and other familiar factors such as consistency with what an appellant has said previously and with other factual evidence where there is any. In Gheisari, the Court of Appeal again made the point that the fact that something is inherently unlikely does not mean that it must be untrue ([16] per Thomas LJ) but that what is

required is an assessment of the truthfulness and reliability of an appellant's evidence against the background of the evidence as a whole ([20] per Pill LJ).

11. I am not satisfied that the judge erred by making his assessment of credibility solely through the lens of plausibility or that he relied or reached his credibility findings simply on implausibility or inherent implausibility. At [39] the judge reminded himself that when making findings on credibility, he was required to look to the background evidence relating to the country concerned and he noted that there was nothing inconsistent with the appellant's claim. At [41], he said that having regard to the totality of the evidence he had concluded that the appellant's story was a fabrication and he gave his reasons in the following paragraphs.
12. Firstly, he said that he shared many of the reservations of the respondent whose reasons are set out at §40-65 of the Reasons for Decision. There was no need for the judge to repeat these and, in any event, he had summarised the respondent's decision at [3]-[26] of his decision. The judge went on to say that he found it highly implausible that the appellant would maintain a sexual affair with a woman over a two-year period without being caught earlier and that it was highly implausible a married woman would have been permitted to leave home on as many occasions as the appellant claimed simply to be with him.
13. The judge also commented [43] that such a relationship was likely to be a source of shame for both the appellant and the woman involved that it would have been plausible had the appellant claimed that both she and he might be the victim of an honour killing. He also commented that in a society where sexual activity taking place outside marriage was so frowned upon, an aggrieved person's first point of call would not be to the police as reporting the incident was likely to bring greater shame than not doing so. These were comments properly open to the judge and, in any event, indicate that his assessment of what may or may not be plausible was in the context of society and culture in Afghanistan.
14. The judge was entitled to take issues of plausibility into account when assessing credibility. It is clear that he was making his own evaluation of the veracity of the account, taking into consideration not only plausibility but also consistency [39]. He was entitled, having considered the evidence for himself, to agree with some of the concerns raised by the respondent. I am satisfied that the judge reached findings of fact properly open to him for the reasons he gave and that he did not fall into the error of equating plausibility with credibility.
15. Ground 2 seeks to challenge the judge's assessment of whether the appellant would be at risk on return. As ground 1 does not succeed, it follows that there is nothing in ground 2 that has any material bearing on the outcome of the appeal. Even if the judge underestimated how the authorities or, more likely, the Taliban might react in response to an accusation of adultery, that issue does not arise as the appellant has failed to establish the factual basis of his claim.

16. Ground 3 seeks to challenge the findings on internal relocation but, in the absence of any need to relocate, any error has no material bearing on the outcome of the appeal.
17. Ground 4 argues that the judge made no finding in relation to humanitarian protection but that is incorrect as the judge did make such a finding. He gave no further reasons save that, in the light of his factual conclusions, the appellant had not shown that he was entitled to such protection. The grounds refer to §30-31 of the skeleton argument before the First-tier Tribunal which are drafted in general terms and refer to AK (Article 15(c)) Afghanistan [2012] UKUT 00163. AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 is also referred to but in the context of sufficiency of protection. However, the fact remains that, in the light of the judge's findings of fact, the appellant failed to establish any sufficient evidential basis for a finding, taking into account those authorities, that he would be at risk of ill treatment on return entitling him to humanitarian protection.
18. I am not satisfied that the judge erred in law for the reasons set out in the grounds or otherwise. He reached findings and conclusions properly open to him on the evidence for the reasons he gave.

Decision

19. The First-tier Tribunal did not err in law and the decision to dismiss the appeal stands.
20. The anonymity order made by the First-tier Tribunal remains in force until further order.

Signed: H J E Latter

Dated: 15 February 2019

Deputy Upper Tribunal Judge Latter