



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13266/2018

THE IMMIGRATION ACTS

Heard at: Royal Courts of Justice
On: 22nd July 2019

Decision & Reasons Promulgated
On: 22nd August 2019

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

HS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Head, Montague Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan whose year of birth is agreed to be 2002. He appeals with permission the decision of the First-tier Tribunal (Judge JC Hamilton) to dismiss his protection and human rights appeal.

Anonymity Order

2. This case concerns a claim for international protection, made by a minor. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders we therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The basis of the Appellant’s protection and human rights claims was that he faced a well-founded fear of persecution in Afghanistan for reasons of his membership of a particular social group (children/young person) and imputed political opinion (persecution by the Taliban because family regarded as ‘collaborators’). The Appellant states that his father worked for a company who were contracted to supply parts to the American led coalition, and that as a result he was shot and injured in 2014. The Appellant himself was then kidnapped and held in a Taliban training camp before managing to escape. The family were subsequently threatened, and the family home attacked. The whole family fled Afghanistan, but were separated on the journey.
4. The Respondent, by his letter dated the 11th November 2018, had not challenged the evidence that the Appellant left Afghanistan sometime in 2016 (when he was 14). It further appears to have been accepted that the Appellant is from Paktia, and that he is Shi’a. Beyond that the claim was rejected for want of credibility.
5. On appeal to the First-tier Tribunal the Appellant relied on his own oral evidence, and that of his maternal uncle, ‘AS’. He further relied on a series of documents which he said had been provided to him by his relatives in Afghanistan. The Appellant asserted that these documents were:
 - (a) Letters from the two companies where his father was employed (AMS and OKS);
 - (b) Evidence downloaded online about those two companies (found in the ‘supplementary bundle’);
 - (c) A threatening letter from the Taliban dated 4th August 2015;

- (d) A letter from the Ministry of the Interior dated 7th November 2015, giving detail about the Appellant's father's employment;
 - (e) A photograph of his father with some westerners including a soldier;
 - (f) A photograph of his father after he was shot in 2014;
 - (g) A photograph of members of the family, including the Appellant and his father;
 - (h) A 'discharge summary' relating to his mother's hospitalisation after the attack on the family home;
 - (i) A letter from a witness 'SR' who avers that he travelled to Afghanistan in August 2018 and met with the Appellant's cousin who provided him with document (h) above.
6. The Tribunal's findings begin at paragraph 65 of the determination. It properly directed itself to bear in mind, at the outset, the Appellant's young age, and the fact that many of the events narrated occurred when he was only 12/13. For this reason the Tribunal found many of the adverse credibility submissions made by the Respondent to be without foundation. It was satisfied, for instance, that little turned on the fact that the Appellant was vague about the nature of his father's employment, or who exactly he had worked for [see §67-68].
7. The Tribunal nevertheless went on to dismiss the appeal having found the account overall to be "contradictory and implausible" and rejecting the claim that the Taliban targeted the Appellant and his family [§112].

The Grounds of Appeal

8. The Appellant contends that the decision of the First-tier Tribunal is flawed for the following material errors of law:

- (I) Failure to consider material objective evidence in the 'supplementary bundle' (item (b) above). *In particular:*

The Appellant supplied objective evidence to confirm that AMS had a presence in the Appellant's home town of Gardez, Paktia, and that they supplied vehicle parts and were contracted to maintain vehicles for the Afghani National Police. He further supplied a 'LinkedIn' profile relating to a man named Wahidullah Radmanish, this being the claimed signatory to the document confirming the Appellant's father's employment (one of items (a) above). Other documents relied upon in this bundle confirmed that the American army has a presence in Gardez, that 'Ranger' vehicles are used there, as mentioned by the

Appellant at his interview, and that there is a high rate of insurgent activity in Paktia.

It is submitted that the Tribunal erred in failing to take any of this material into account.

- (II) Failure to consider the country background material relating to forced recruitment by the Taliban. *In particular:*

The Appellant had placed reliance on the UNHCR eligibility guidelines which demonstrated that the Taliban use a variety of means to recruit young people. It is submitted that had that evidence been considered, it is likely that the First-tier Tribunal would have regarded the Appellant's account as positively consistent with the objective material, as opposed to inconsistent or unlikely.

- (III) Failure to have regard to the Appellant's evidence about his father's employment. *In particular:*

The First-tier Tribunal identified what it regarded as a discrepancy in that items (a) indicated that the Appellant's father ceased employment in 2013 whereas the Appellant said that he was still supplying parts to the American forces as late as 2015. There was in fact no discrepancy in the evidence, which was that the Appellant's father had his own spare parts shop and continued this self-employment after he had ceased paid employment

- (IV) Failure to address submissions made that the security situation in Kabul had further deteriorated since the promulgation of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC).

Error of Law: Discussion and Findings

9. For the Respondent Mr Bramble accepted that the decision was flawed for material error of law. In particular he accepted that the First-tier Tribunal had overlooked more contemporary evidence on the likelihood of adolescent boys being forcibly recruited by the Taliban, and that the determination appears to overlook the materials contained in the supplementary bundle. He further accepted that ground (III) was made out: the Tribunal has not addressed the Appellant's evidence that his father continued to supply car parts in self-employed capacity.

10. Given the Secretary of State's concession we can be brief in stating our reasons.
11. In respect of ground (I) We accept that none of the material at item (b), ie the objective material in the supplementary bundle, appears to have been considered by the First-tier Tribunal. That evidence was important because it went to whether or not the Appellant's father did actually work for the 'Americans' (we use this term loosely, recognising that some of the departments concerned may in fact have been Afghani security services). The First-tier Tribunal does express "concerns about the reliability" of the letters at item (a) but beyond that there is no clear finding on whether the Appellant's father was so employed. Indeed it went on to accept that the man pictured in the family photographs at item (g) was the Appellant's father, and that he was the same man posing with westerners including a man in military fatigues at item (e). Having made that link it failed to proceed to make a clear finding one way or the other. That was a material omission. The assertion that the Appellant's father is perceived as a 'collaborator' was central to the Appellant's case.
12. In respect of ground (II), and the Appellant's account of kidnapping by the Taliban, the Tribunal directed itself to past reviews of the evidence on this point by the Upper Tribunal. In HK and Others (minors - indiscriminate violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 378 (IAC) the Tribunal had concluded that whilst forced recruitment was not unheard of, it was not the primary source of manpower for the Taliban, who mainly relied on indoctrination and poverty to entice new fighters. The recent decision in AS confirmed as much. Having directed itself to these authorities, the Tribunal accepted that forced recruitment of a minor would be unusual, but not that it was implausible. Ms Head asked us to consider the August 2018 UNHCR guidelines that had been before the First-tier Tribunal. These stated that in areas of high 'AGE' activity, these groups use a "variety of mechanisms" to recruit fighters, including children to be used as suicide bombers and human shields. This, it is submitted, amounted to evidence that the account was positively supported by the country background evidence. Given Mr Bramble's position we need not explore this further beyond agreeing that the guidelines were relied upon, and they are not addressed.
13. As to ground (III) the relevant part of the Tribunal's reasoning is found at its §74. It found there to be an inconsistency between the documents at item (a) and the Appellant's own evidence about when his father ceased working for the Americans/pro-American forces. We accept that the Tribunal here appears to have overlooked the Appellant's evidence in his witness statement that his father had also owned his own shop selling spare car parts. As this was evidence capable of reconciling the identified discrepancy, it was plainly material.
14. We are satisfied, having regard to grounds (I) to (III), that the decision of the First-tier Tribunal, as detailed as it is, must be set aside for a failure to have

regard to material evidence, and a failure to make clear findings on matters in issue. If the Appellant could demonstrate that he was a minor from Paktia, an area of high insurgent activity whose father was regarded as a collaborator, that would go some way to discharging the overall burden of proof, regardless of whether the remainder of the account were to be accepted.

15. In view of our overall decision we need not address ground (IV). In view of the Court of Appeal's decision in AS (Afghanistan) [2019] EWCA Civ 208, it will be open to the Appellant to advance any arguments about the general security situation upon remaking.
16. Having had regard to the nature of the errors, and the extent of judicial fact finding required, we are satisfied that the most appropriate course of action would be for the matter to be remitted to the First-tier Tribunal.

Decisions

17. The determination of the First-tier Tribunal is set aside for error of law.
18. The decision in the appeal is to be remade following a *de novo* hearing in the First-tier Tribunal.
19. There is an order for anonymity.

Upper Tribunal Judge Bruce
22nd July 2019