



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10656/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 20th July 2020

Decision & Reasons Promulgated
On 10th August 2020

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

S W G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Fazli, instructed by Sohaib Fatimi Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 218 pages, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born in 1992. He appeals against the decision of First-tier Tribunal Judge Kudhail, dated 28 December 2019, dismissing his protection claim on asylum and human rights grounds.
2. The Appellant arrived in the UK in December 2009 and claimed asylum on 21 January 2010. His application was refused and his appeal dismissed on 6 August 2010. He became appeal rights exhausted on 4 October 2010. On 18 October 2018 he made a fresh claim for asylum which was refused with no right of appeal. He made a further claim on 2 April 2019 which was refused on 14 October 2019, the subject of this appeal.
3. It is the Appellant's claim that his father was a Taliban commander, preacher and child recruiter in Helmand province. His elder brother was forcibly taken from the family home by his father to be a soldier for the Taliban. His brother was killed six months later in a suicide mission. The Appellant was told he would be taken when he was 15 years old. The Appellant's uncle, who lived in Kabul, helped the Appellant leave Afghanistan with the assistance of an agent.
4. In 2010, First-tier Tribunal Judge Beg did not find the Appellant to be a credible witness. First-tier Tribunal Judge Kudhail set out Judge's Beg's reasons for coming to this conclusion at [11a)] to [11s)]. Judge Kudhail applied Devaseelan and considered the new documentary evidence in accordance with Tanveer Ahmed giving reasons for the weight he attached to it. He concluded the documents were not reliable and the Appellant was not a credible witness.
5. The Appellant applied for permission to appeal on five grounds. Upper Tribunal Judge Allen granted permission on grounds 4 and 5. It was arguable:
 - "4) The judge rejected the Appellant's father's role in the Taliban on the basis that the letters from the Moulvi and the elders were not verified by the Appellant's expert Dr Giustozzi. The judge erred in law in requiring corroboration in the form of expert verification.
 - 5) The judge erred in law in failing to adequately consider the expert report, in particular the risk on return. The expert report undermined Judge Beg's credibility findings set out at 11b and 11k of Judge Kudhail's decision."

Submissions

6. Mr Fazli submitted the judge erred in law in finding that the documentary evidence should have been verified by the expert. The Appellant had already provided corroboration of the documents. The judge erred in law in requiring further corroboration. He applied a higher threshold test than that required by Tanveer Ahmed.
7. Mr Fazli submitted the judge failed to deal with the risk on return from the authorities referred to at paragraphs 37, 40, 42, 46 and 59 of the expert report. The judge had not engaged with the expert report which undermined the credibility findings at [11b] and [11k]. The expert evidence clearly contradicted the previous

findings of Judge Beg. Judge Kudhail's failure to deal with these points demonstrated his failure to deal with the expert report in its entirety.

8. Mr Clarke submitted that the starting point was the decision of Judge Beg. She set out 19 reasons for finding that the Appellant was not credible which were listed at [11] of Judge Kudhail's decision.
9. Mr Clarke relied on ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119 and accepted that corroboration was not required in asylum appeals. He submitted the judge was entitled to draw an adverse inference from the failure to produce evidence which could reasonably have been provided. The judge was entitled to take into account a lack of evidence which the Appellant ought to have been able to produce to support his claim.
10. Mr Clarke submitted that, in considering the expert report, Judge Kudhail was entitled to look at what could have been provided to take the evidence further. The expert stated he had contacts in Afghanistan which enabled him to make enquiries. However, he did not seek to verify the documentary evidence relied on by the Appellant. Judge Kudhail was entitled to take into account a lack of such evidence. In relation to the letter from the elders, the expert undermined the credibility of the letter by stating he could not understand why they would put themselves at risk in providing such a letter.
11. The risk from the authorities referred to in the paragraphs identified in the grounds was predicated on the assumption that the Appellant's father was a Taliban commander. The matters referred to therein did not take the Appellant's case any further because they failed to identify matters capable of undermining Judge Beg's credibility findings. Judge Kudhail dealt with the expert report at [33j]. The Appellant relied on one sentence in the report to undermine the 19 credibility points set out at [11].
12. In response, Mr Fazli submitted Judge Kudhail erred in requiring corroboration and in failing to refer to the relevant paragraphs of the expert report.

Conclusions and reasons

13. At [33g] and [33h] Judge Kudhail gave three reasons for why he attached little weight to the letter from the Moulvi (page 111/2 of the Appellant's bundle). The Appellant claimed his brother had obtained this evidence and produced the envelopes in which the documents were sent but failed to produce evidence of how the document was obtained. Judge Kudhail questioned the provenance of the letter from the Moulvi. Secondly, the content of the letter from the Moulvi was inconsistent with the Appellant's evidence of when his elder brother died. Thirdly, Judge Kudhail found that the letter could have been verified by the Appellant's expert, but it was not.
14. At [33i] Judge Kudhail gave three reasons for why he attached little weight to the letter from the elders (page 116/117 of the Appellant's bundle). The Appellant's own

expert was unclear why the elders would expose themselves to the risk of writing such a letter. Secondly, the elders referred specifically to the risk to the Appellant without considering the risk to the Appellant's younger brother who, if the Appellant's account was true, would also be at risk from the Appellant's father. Thirdly, the Appellant's expert could have carried out some enquiries or checks to verify the letters but he failed to do so.

15. Judge Kudhail did not reject the letters on the basis that they were not corroborated by the expert. This lack of evidence was only one of the reasons for attaching little weight to the documents. Further the judge did not require corroboration. He was entitled to rely on a lack of evidence which the Appellant ought to have been able to produce if his account was credible. Judge Kudhail attached little weight to the letters because of their content, the manner in which they were obtained and the lack of evidence to their provenance. Judge Kudhail properly applied Tanveer Ahmed.
16. The paragraphs of the expert report relied on by the Appellant in the grounds and in submissions confirm that son's follow their fathers into the Taliban and refer to detention of relatives of insurgents, likelihood of detention at the airport, and the risks on return because the Appellant's father is a Taliban commander.
17. Dr Giustozzi did not interview the Appellant and he accepted the Appellant's account without considering the credibility findings of Judge Beg. There was nothing in the report to undermine the totality of the credibility findings. Even if [11b] and [11k] are contradicted by the report, those findings are not so significant so as to disturb the remaining 17 reasons for finding the Appellant's account not credible.
18. Judge Kudhail properly considered the expert report at [33j] and gave cogent reasons for the weight he attached to it. He was not bound by the expert's opinion that the Appellant's account was plausible. His finding that the expert report did not add further detail which would cause him to depart from the previous credibility findings of Judge Beg was open to him on the evidence before him.
19. In any event, the risk categories identified by Dr Giustozzi did not identify the Appellant to be at risk. Having rejected his claim that his father was a Taliban commander, the paragraphs relied on by the Appellant in these submissions did not put him at risk on return. Any failure to specifically mention these paragraphs in the decision was not material.
20. Accordingly, I find there was no error of law in the decision of Judge Kudhail and the Appellant's appeal is dismissed.

Notice of decision

Appeal dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 31 July 2020

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed
Upper Tribunal Judge Frances

Date: 31 July 2020