IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal Nos: UI-2024 001469
First tier number: PA/51062/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

IS

(anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs T Skindran, Counsel, instructed by Legal Justice Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer.

Heard at Field House on 19 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify any of them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

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1. The appellant unsuccessfully applied for protection, with his wife as a dependent. His claim was that he is a Sikh national from Afghanistan who faces the risk of religious persecution from the Taliban if returned there. He stated that his wife is also an Afghan national. He claimed to have left Afghanistan in January 2022 with the help of an agent, travelling to India where he remained for nine months. On arrival in India, he said the agents locked them in a room until November 2022 whilst arrangements were made for their onward travel. They then flew from Delhi to London Heathrow. His account was that they were assisted by agents in Afghanistan, India and in the United Kingdom. In support of his claim, he provided an identification document in the name of the registration authority in Afghanistan.

2. The respondent took the view that he was an Indian national and that his claim about living in Afghanistan was untrue. The refusal referred to inconsistencies in his account and the documentary evidence as indicating his presence in India, including salary payments and ATM transactions when he claimed to have been locked up.

3. His appeal before Ft T Judge Chana was dismissed. The judge found that he was a national of India and there was no identifiable risk for him there. Ft T Judge Chana identified several factors supporting this conclusion. Firstly, he applied for his UK visit visa with his Indian passport which was issued in Delhi on 7 February 2022. Background information indicated that to obtain a passport applicants are required to submit bank statements and tax returns. The judge referred to country information indicating that Afghan Taskiris cannot be relied upon to prove nationality.

4. In applying for his visa, he also submitted various documents indicating he was an Indian national who had been residing in the Punjab since 2017. He provided bank statements showing the withdrawal of money at ATMs in India indicating his presence since 5 November 2021. He had submitted two Indian income tax returns, including a self-declaration of truth. The documents also confirmed he had no foreign income or foreign assets. He also submitted a document indicating he was a partner in a business registered with the Indian government and that he had lived in the Punjab since 2017. There was a reference to property which he had owned since 1996 and a statement that it had no assets in Afghanistan. Covid 19 certificates issued in India indicated he received vaccinations in India on 19 July 2021 and 19 August 2021.

<u>Permission to appeal.</u>

5. The appellant was granted permission to appeal to the Upper Tribunal by UT Judge Norton-Taylor. This was on the basis the application demonstrated arguable errors of law. The first ground was delay in promulgation of the decision. The appeal was heard on 3 November 2023 and the decision promulgated on 5 February 2024. The second ground was that the judge unfairly refused two adjournment applications. The ground stated that his representatives were arranging an expert opinion on his nationality, but this was not available. The further challenge under this heading related to a subsequent adjournment request which was refused. It was made by his counsel on the basis the appellant's wife was not feeling well. A third ground is that the judge made no comment on the evidence given by the appellant's wife, cousin, uncle, and aunt. The fourth ground is at the judge should have

considered evidence that agents are known to provide complete packages of fake documents, something the intended expert could have commented on.

6. In granting permission U T Judge Norton Taylor gave directions that all evidence relating to the adjournment applications be provided, including Counsel's note in relation to the applications as well as details of the steps taken to instruct an expert. If there was a dispute as to occurrences at the hearing the parties must request the audio recording. The respondent was to provide a rule 24 response.

<u>Consideration</u>

7. Within the bundle is a note from Ms Evin Atas,Counsel. who appeared at the First tribunal hearing. Counsel refers to a renewed adjournment application based on the unavailability of an expert report which had been commissioned. It records at the judge queried what the expert would be commenting on, and the judge apparently stated the representatives had had adequate time to instruct an agent. The note records that shortly before the appeal was to commence at 2:15 she was advised that the appellant's wife was six months pregnant and feeling unwell. She goes on to say that one of the witnesses indicated they would have to leave at 3 PM because of childcare arrangements. Counsel recalls the appellant's wife, cousin, aunt, and uncle giving evidence.

8. There is a rule 24 response dated 17 June 2024. In it the respondent accepts there was a renewed application for an adjournment at the hearing on the basis an expert report was outstanding, and that the appellant's wife had back pain. It also acknowledged that the determination does not record either adjournment application albeit Counsel's note indicates some oral comment was made by the judge at the hearing. The rule 24 response referred to a prehearing application made at a late stage in relation to the expert report. This was refused on 1 November 2023. That refusal referred to considerable delay in the preparation for the appeal and the need for non-compliance directions to have been issued. It states the first indication an expert being instructed was on 31 October 2023 and it was not explained how a report would advance matters.

9. The rule 24 response referred to the decision of <u>Nwaigwe (adjournment: Fairness[</u>2014] UKUT 418 and the question of fairness and likely relevance. The rule 24 response suggested in the circumstances it was not unfair to refuse the adjournment and questioned how an expert report could have made a difference to the outcome. No merit was seen in the delay point given that it was only three days beyond the benchmark three-month period and did not indicate the findings were unsafe consequently.

10. At hearing Mrs T Skindran referred me to the grounds upon which permission had been granted. She stated that the appellant was legally assisted, and this led to some delay in the instruction of the expert. She pointed out that the appellant had provided identification from Afghanistan and there were witnesses in attendance. Mr Tufan relying upon the rule 24 response. Both representatives agreed that if an error of law were found then the appeal should be listed for a de novo hearing at Hatton Cross.

<u>Conclusions.</u>

11. Like UT Judge Norton-Taylor I see little merit in the delay point taken. Whilst ideally determinations should be promulgated as soon as possible after hearings when recollection is better, judges must deal with other demands. The appellant's credibility was in issue at this appeal. A three-month delay is a benchmark applied but it is not a rule, and each case will turn on its facts. The question arising is whether the delay between hearing and promulgation renders the decision unsafe. In this instance, I see no features that can be attributed to any delay which would render the decision unsafe. The three months is not a rule and in this case has been exceeded only by a matter of days.

12. The refusal of the adjournment is a much stronger point. Ft Judge Chana referred to ample evidence that the appellant is a national of Indian and very little evidence that he is a national of Afghanistan. Much of this is attributable to the documents. The appellant has sought to explain this on the basis the agents used produced a complete package including documentation to falsely suggest he was Indian.

13. Nwaigwe (adjournment: Fairness[2014] UKUT 418 refers to the procedural rules as they then were. It refers to the need to show why an adjournment is necessary and the interest in hearings being dealt with as efficiently as possible. The adjournment application to obtain an expert's report must be viewed in the context of previous delays in the progress of the appeal attributable to the appellant's representatives. I can appreciate legal aid can of itself cause delays before experts can be instructed. However, the judge was faced with an application suggesting the report was not available because of a lack of response by the expert.

14. Central to this appeal is the appellant's nationality. Presumably a suitable expert would be able to comment on the documents and possibly carry out further checks, for instance, with the Indian Embassy. In this context it seems to me that an expert report could be very helpful to the determination of the issues arising.

15. I found it surprising that there is no reference to the adjournment applications in the determination .Noting applications and occurrences at hearing is a good practice. Consequently, I have limited information about the factors the judge took into consideration in relation to the unavailability of the expert report. The appeal was not heard until the afternoon and the appellant's wife was six months pregnant and advised Counsel she was in discomfort. This could have impeded her ability to give evidence .Again ,there is no comment by the judge.

16. It is my conclusion, notwithstanding the undesirability of adjournments, unfairness may have occurred to the appellant. Determination of the appellant's true nationality was fundamental to the issues arising and the expert opinion and his wife's evidence would have been relevant. In the circumstances, I find the failure to adjourn may have caused unfairness and that it was a material error of law.

17. I find it surprising that in the determination there is also no reference to and consequently no evaluation of the relatives who gave evidence. It has been accepted they attended and gave evidence. Their evidence could be relevant. If they have been accepted as Afghans and it can be established, they are related to the appellant as claimed this is highly relevant evidence. I found the absence

of reference to their evidence and consequently the lack of any evaluation is a further material error of law.

18. The forth ground is associated with the relevance of an expert report.

19. In conclusion, I find a material error of law has been established and the decision dismissing the appellant's appeal cannot stand. Consequently, it is set aside, and the appeal is to be listed for a *de novo* hearing in the First tier Tribunal.

Directions

1. The anonymity order is to continue in the First-tier Tribunal.
2. The appeal to be relisted for a *de novo* hearing in the First tier Tribunal at Hatton Cross and not before First tier Tribunal Judge Chana.

3. The provisional time estimate is 3 hours, subject to any submissions from the parties or modification by the First-tier Tribunal.

4. A Punjabi interpreter will be required for the appellant and his wife. If possible, a Punjab interpreter with knowledge of Afghan dialect would be preferable.

5. If the appellant's representatives are to engage an expert, they should expedite the production of the report and share it with the respondent at least four weeks before any scheduled hearing. It is a matter for the appellant's representative as to what they wish to expert to comment on. Central to the appeal is the appellant's nationality and the voracity of the documentary evidence produced. As stated in Tanver Ahmed [2002 UKAIT 00439 the issue is reliability of the documents and not necessarily whether they are forged. It would seem be helpful if the Indian Embassy would give an opinion as to the genuineness of the passport and its likely reliability as to nationality. If this is pursued, then it will be necessary to make appropriate anonymity.

6. Further directions may be left to the discretion of the First-tier Tribunal.

Francis J Farrelly.

DUT Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 June 2024