



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11595/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 17th September 2015

Decision & Reasons Promulgated
On 1st October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

S S S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Saleem of Counsel
For the Respondent: Mr. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 30th December 1996 is a citizen of Afghanistan. The Appellant had come to the United Kingdom on 10th October 2012 and claimed asylum on 18th January 2013. The Respondent refused his application on 19th May 2014 but by

virtue of his age he was granted discretionary leave to remain until 29th June 2014. On 24th June 2014 he made further application for leave to remain in the United Kingdom. That application had been refused by the Respondent on 4th December 2014.

2. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Sullivan sitting at Hatton Cross on 1st April 2015. The judge had allowed the appeal on both asylum and human rights (Article 3) grounds.
3. The Respondent had made application to appeal that decision on 24th April 2015. Essentially the Respondent asserted that the judge had erred in law in making findings that the Appellant would be at risk in his home area or unable to relocate internally.
4. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 7th May 2015 saying that it was arguable that an error of law had been made in the manner referred to within the Grounds of Appeal. The matter comes before me in accordance with directions to firstly determine whether an error of law was made by the First-tier Tribunal or not.

Submissions on behalf of the Respondent

5. Mr Tarlow made submissions based on the Grounds of Appeal contained within the application stressing the fact that the Appellant was now an adult and not a child.

Submissions on behalf of the Appellant

6. It was submitted that the judge was clearly aware that the Appellant was an adult and that a reading of paragraphs 54 to 56 indicated the judge considered a risk on return and had also considered relocation elsewhere. It was agreed by both representatives that elsewhere in Afghanistan essentially meant Kabul.
7. At the conclusion of the hearing I reserved my decision to consider the submissions and the evidence. I now provide that decision with my reasons.

Decision and Reasons

8. The judge was criticised within the Grounds of Appeal for apparently applying the wrong test in terms of return to Afghanistan, namely applying "reasonableness" rather than risk. Permission granting appeal adopted the same approach.
9. The judge had carefully noted and assessed the Appellant's evidence and had for the most part found him to be credible and consistent. There is no challenge to those findings made by the judge and indeed they are reasonable and sustainable.
10. The judge had concluded that the Appellant as a teenager and within the last three years had been subject to sexual abuse in a practice known as bacha bazi within his home area. She had accepted the perpetrator was a man of power and influence at that stage but as noted at paragraph 54 was uncertain as to his level of power and influence now. However she also made clear findings at paragraph 54 that the man

(referred to as CS) had links to the government and had abused the Appellant's family since the Appellant left and as recently as 2014. The judge also noted at paragraph 55 that it would not be reasonable to expect the Appellant to return to his home area of Afghanistan. It is unfortunate the judge used the word "reasonable" because regrettably it is easy to cherry pick words or phrases out of context but a reading of the decision as a whole presents in a different picture.

11. A reading of paragraphs 53 to 57 provides the context of the judge's findings. The judge had concluded that CS had links to the government, had abused the Appellant's family since the Appellant's escape and would still have an interest in the Appellant. She concluded that within his home area his family had not and would not in the future be able to protect the Appellant. She had concluded that because of his age he would not be at risk of sexual abuse, however found that there were other risks posed that his family could not protect him against (paragraph 56).
12. It seems clear when also reading paragraph 54 that the judge had in mind the risks faced by the Appellant from CS as someone who would regard the Appellant as an individual potentially able to inform against CS and thereby place him at risk of arrest or at least exposure. The risk to the Appellant on return to his home area was not therefore of potential further sexual abuse but essentially of being silenced because he would be perceived as a potential witness or informant against a powerful individual. That was a conclusion that the judge was entitled to reach and the narrative of the decision when read fully demonstrates a logical process for her arriving at that conclusion.
13. It seems clear therefore that the judge had found a risk on return to his home area and thereafter the judge had correctly looked at the potential of relocation elsewhere in Afghanistan. As conceded by Mr Tarlow that essentially meant Kabul.
14. In terms of relocation within his home area the applicable test is whether such relocation would be unduly harsh. The judge had already identified a risk to the Appellant from CS who she had found had links to the government. She found the Appellant had not lived independently before, nor would relocation provide family support. She further found a vulnerability within the Appellant given his exposure of sexual abuse within the last three year period. The judge referred to factors within AA [2012] UKUT 0016 which deals with the return of unattended children. The Home Office criticised the judge pointing out the Appellant is an adult. The judge was aware that the Appellant is an adult. The judge referred to "combination of circumstances highlighted in AA, and the Appellant's particular circumstances as a young adult who has been the victim of sexual abuse as a child within the last three years". That does not suggest the judge was unaware the Appellant was now an adult nor necessarily relied solely on AA but regarded the features within AA as useful and pertinent given the particular circumstances of the Appellant. Those were matters the judge was entitled to consider in the context of this case and her findings on fact and credibility. When the decision is read as a whole it does not disclose any material error of law.

Notice of Decision

15. I do not find a material error of law was made by the judge in this case and uphold the decision of the First-tier Tribunal.
16. Anonymity direction is made.

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.

Signed

Date

Deputy Upper Tribunal Judge Lever