



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11663/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 25 November 2015

Decision and Reasons Promulgated
On 15 December 2015

Before
The President, The Hon. Mr Justice McCloskey and
Upper Tribunal Judge Finch

Between

F M

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr S Vokes, of Counsel, instructed by Coventry Law Centre

Respondent: Mr T Wilding, Senior Home Office Presenting Officer

ANONYMITY

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) I make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DECISION AND REASONS

1. This appeal has its origins in a decision made on behalf of the Secretary of State for the Home Department (hereinafter the "*Secretary of State*"), dated 03 December 2014, whereby the application of the Appellant, a national of Afghanistan aged 21 years, for further leave to remain in the United Kingdom was refused. By its decision promulgated on 17 July 2015, the First-tier Tribunal (the "*FtT*") dismissed the Appellant's appeal on all grounds. Permission to appeal to this Tribunal was granted (in summary) on the basis that the decision of the FtT failed to consider certain pieces of important evidence, adequately or at all and, linked to this debility, failed to provide a properly reasoned decision.
2. The Appellant's application for further leave to remain in the United Kingdom was made on 15 February 2012. Previously, he had departed his country of origin, Afghanistan, around August 2010 and had subsequently travelled through and remained in certain other countries until arriving in the United Kingdom on 23 November 2010, whereupon he claimed asylum. This application was refused by the Secretary of State on 21 February 2011, accompanied by a grant of discretionary leave to remain until 01 March 2012, upon which date the Appellant would attain the age of 17 ½ years, giving effect to the Secretary of State's then published policy. There was no appeal against this decision.
3. The next material event was the Appellant's application for further leave to remain in the United Kingdom, which was made timeously, on 15 February 2012. The decision letter rehearses that the application was considered in accordance with, firstly, the "*asylum instruction on discretionary leave*", Article 8 ECHR and Articles 2 and 3 ECHR. The application was refused on all grounds. The refusal also purported to consider the Appellant's case under paragraph 353B of the Immigration Rules.
4. The decision of the FtT is couched in somewhat formulaic terms in the setting of a pro-forma structure and, above all, is noticeably lightweight as regards findings. Indeed, the conclusionary character of the decision is unmistakable by virtue of its format and structure which, under a series of headings, gave consideration to the substantive issues under appeal; the law; the ECHR; the proceedings; the Appellant's case; and the Tribunal's conclusions. The stark absentee is findings, sufficient and properly reasoned.
5. Under the rubric of "*Conclusions*", one can identify a limited number of findings, namely:
 - (a) The Appellant was not considered credible.
 - (b) The Appellant's fear of his father's business partners did not constitute a persecution reason under the Refugee Convention.
 - (c) The Appellant was not of adverse interest to anyone in Afghanistan.
 - (d) The Appellant could relocate internally in Afghanistan.

These passages in the decision of the FtT are notable for their conclusionary character and their simple adoption of the Respondent's refusal reasons - without analysis, reflection, particulars or elaboration. This analysis of the decision of the FtT is

reinforced by the mechanism employed by the Judge of simply and without elaboration or reasoning adopting substantial passages of the refusal decision.

6. On behalf of the Secretary of State, Mr Wilding acknowledged most of the infelicities of the decision of the FtT, as outlined above. He sought to argue, nonetheless, that these were not material and developed his submissions accordingly.
7. Given the nature and depth of the shortcomings highlighted above and for the further reasons expressed in our *ex tempore* decision, we do not possess the confidence necessary to conclude that, absent these vitiating elements, the decision of the FtT would have been the same. There are several errors of law and their materiality has been demonstrated to our satisfaction.

Decision

8. We set aside the decision of the FtT. It will be remade within the forum of the Upper Tribunal. It will not be necessary to reconstitute the same panel of Judges for this purpose.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 24 November 2015