Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA / 11882/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 May 2017	**On 25 May 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

A--- S--- N---
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox, Counsel instructed by Malik & Malik Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order even though the appellant has not established his claim to international protection because there is a chance that publicity could create a risk for him in the event of his return.
2. The appellant appeals with permission granted by Upper Tribunal Judge Coker a decision of the First-tier Tribunal on 13 February 2017 to dismiss his appeal against the decision of the Secretary of State refusing him leave to remain on

asylum, humanitarian protection and human rights grounds arising from the European Convention on Human Rights.

3. The grounds of appeal do not challenge the decision of the First-tier Tribunal to dismiss the appeal on any ground except those raising Article 8 of the ECHR. Judge Coker said:

> "…The grounds assert that the First-tier Tribunal Judge misdirected himself in his assessment of the appellant's private and family life with his father, with whom he has lived since the age of 15 i.e. the last five years.
>
> 2 It is arguable that the First-tier Tribunal failed to have regard to the possible family life the appellant has established with his father. It is not clear what evidence to this effect was called and this may be an issue [when] deciding whether there is a material error of law by the First-tier Tribunal Judge."

4. The First-tier Tribunal Judge dealt with the claim based on Article 8 starting at paragraph 39 of the decision. There the Judge comments on the positive reference from the Croydon College where the appellant was pursing a BTEC in sports science. The Judge explained why he did not find there would be "very significant obstacles to [the appellant's] integration into life in Afghanistan". The main reason given was that the appellant was 20 years old at that time and had lived in Afghanistan for the first fifteen years of his life.

5. At paragraph 41 that the Judge accepted that the "appellant has established private life in the UK given he has lived here for more than five years". At paragraph 43 the Judge expresses satisfaction that the appellant can speak English and at paragraph 44 found that the appellant was not financially independent but was "reliant upon his father for financial support".

6. The Judge then went on to say that the Tribunal was under a statutory obligation to accord little weight to "private life established at a time when immigration status is precarious" and went on to dismiss the appeal.

7. These findings are criticised at ground 2 of the grounds of appeal seeking permission to appeal to the Upper Tribunal which state:

> "At paragraph 44 of the FTT determination, it was noted that the Appellant was financially dependent upon his father. There has been a failure to consider the mental and emotional dependency of the Appellant upon his father having resided with him since he came to the UK since the age of 15 years and having regard to the fact that the Appellant as a young adult has no family, community or other support network in Afghanistan. As his father cannot return to Afghanistan due to ongoing fears for his safety, it is submitted that the Appellant's extremely close family life would be irretrievably broken if he was forced to return to Afghanistan. The FTT failed to consider the impact of return to Afghanistan holistically having regard to the emotional and moral dependency of the Appellant."

8. The grounds also criticise the Secretary of State for not accepting that there was family life between the appellant and his father.

9. Although there have been attempts to simplify the Article 8 balancing exercise it is trite law that cases are intensely fact-specific and the extent to which the First-tier Tribunal Judge erred in this case, if he did, might be distilled to some extent from considering how the case was put for him to decide.

10. I have seen Counsel's skeleton argument from the First-tier Tribunal. It is drawn by Mr Mark Blundell of counsel who has considerable experience in immigration and human rights cases and can be expected to make full use of the available points. Most of the skeleton argument was devoted to the question of whether the appellant was a refugee. Paragraph 18 states simply:

> "In the alternative, the appellant will submit, in reliance of the material in [AB3] in particular, his appeal should be allowed on Article 8 ECHR grounds."

11. This appears to refer to the Further Bundle for the Hearing on the 19.1.17 as the Bundle for the Hearing on the 19.1.17 is entirely made up of background material. The document AB3 is a letter from Wendy Goldie who works as a Curriculum Administrator at Croydon College. It confirms that the appellant is a student at Croydon College but says nothing more that is relevant.

12. The same ("Further") bundle includes a reference from Karianne Ford, a PE and Sport Lecturer at Croydon College praising the appellant's attitude to his studies and confirming that he has made friends and there are supporting letters from friends.

13. I have considered the evidence before the First-tier Tribunal Judge on 19 January 2017. I am presently concerned with the relevance of that evidence to the claim for leave to remain on "article 8 grounds".

14. The appellant made a statement on 13 January 2015. There he explained how his brother had been taken by the Taliban and had not been seen since and how the appellant was well-settled in the United Kingdom having friends at college and how his father was working, as he was entitled to do, as a minicab operator.

15. The appellant said:

> "I get on really well with my father and talk with him about everything. I hope I am not made to separate from him as he is the only person who truly understands and supports me. I wish to say that it is difficult enough living without my mother and siblings. To be separated from my father would be devastating."

16. He then went on to say how his father was doing his best to reunite the family.

17. The appellant had also made a statement dated 23 May 2016. Appropriately much of that was concerned with his unsuccessful claim for asylum. However he did talk about his own "private and family life". He referred to his commitment to his college course and being very close to his father. He said "there would be a devastating impact upon my father if I was separated from him. Both of us would feel like I would be being sent back to my death".

18. The appellant's father made a statement dated 23 May 2016. He said there that the appellant had been living with him since the appellant came to the United Kingdom and continued "I want to be able to continue to look after him and offer him moral, financial and emotional support".

19. The appellant's statement of 5 January 2017 repeated his appreciation of the moral, financial and emotional guidance given to him by his father.

20. Mr Wilcox's submissions followed the Grounds Supporting the Application for Permission to Appeal to the Upper Tribunal.

21. I reject the contention that was any material deficiency in the First-tier Tribunal's arguments concerning the appellant being alone in Afghanistan. He has not been able to show that he risked serious ill treatment in Kabul so that he was entitled to leave on refugee, humanitarian protection or article 3 grounds. This appeal is limited to article 8 points and although conditions on return are not irrelevant to the balancing exercise they could not in this case amount to sufficient reason to allow the appeal. Indeed it is difficult to think of circumstances that fall short of a need for international protection that would tip the article 8 balancing exercise in favour of the appellant remaining. A degree of disruption, loneliness and isolation are innate rather than disproportionate consequence of removal.

22. It seems that little was made of the "article 8" point before the First-tier Tribunal. Nevertheless, having considered Mr Wilcox's submission, and with respect to the First-tier Tribunal Judge, I find that it would have been more helpful if the First-tier Tribunal Judge had had more to say about the evidence concerning the appellant's private and family life in the United Kingdom.

23. The judge focused particularly on "private life" and, if I may say so, this may have been part of the problem. The European Convention on Human Rights, which the Judge was obliged to apply, refers distinctly to "private and family life" where the word "and" is clearly conjunctive. It is sometimes described as a person's "physical and moral integrity". The Immigration Rules and Section 117A–D of the Nationality, Immigration and Asylum Act 2002 tend to divide "private life" and "family life" as though they were two separate and distinct concepts with precise and exclusive meanings. If that is what they do, then they are not applying the Convention properly.

24. I am satisfied that the Judge should have decided that there is a degree of "family life" between the appellant and his father. This is because the appellant lives with his father and is financially dependent on his father and emotionally dependent on his father in a difficult time. There is no reason to doubt any of the evidence to this effect and it would be remarkable if a close bond had not developed between a father and son who live together and are separated from their country of nationality and their other relatives and who, on any version of events, have been through trying times.

25. I am satisfied that the bond is something over and above the usual ties of emotion. I am confident that there are more than the usual bonds here because the appellant is still a relatively young man and I accept that his father is a stabilising and importance influence in his life in a way that is more than usually the case for young men of his age still living in the family home. This is not to imply that the appellant is in particular need of guidance. Rather the evidence points to his being more than ordinarily responsible for his age. However, although he clearly has friends outside the home he has no close emotional support. Further there is no evidence that his father has any special relationships in the United Kingdom except with the appellant. His efforts have been focussed on doing all the he properly can to unite his family in the United Kingdom. Put simply, neither the appellant nor his father have anyone else that really matters to them in the United Kingdom.

26. I am satisfied that on the proper application of the decision in Kugathas v SSHD [2003] INLR 170 the appellant has established "family life". This is consistent

with the decision of the Court of Appeal in Etti-Adegbola v SSHD [2009] EWCA Civ 1319 which emphasised that "family life" does not stop when a person reaches his majority. Further, although it was not argued before me, I have the benefit of the decision of the Court of Appeal in Rai v ECO New Delhi [2017] EWCA Civ 320. It is quite clear to me that the First-tier Tribunal Judge should have decided that there was "family life" between the appellant and his father.

27. It does not follow from this that the First-tier Tribunal Judge erred materially.

28. I have read the First-tier Tribunal Judge's decision carefully and it is quite clear that he did have regard to all of the evidence. He reminded himself, correctly, of the strong public interest in upholding immigration control but did say at paragraph 45 that although he was, in his judgment, "bound to accord little weight to private life established at a time when immigration status is precarious" he went on to say:

> "although the provision requires me to apply little weight I assess the strength of the private life established by the appellant (if I may use the phrase) at the higher end of little".

29. It is quite clear to me that the judge was conducting essentially the same balancing exercise that he would have conducted if he had not limited himself to "private life".

30. Just as it is clear that the "family life" element of a person's "private and family life" does not normally have bright line boundaries it is clear that not all components of "family life" carry equal weight. Although I am satisfied that the relationship between the appellant and his father should have been recognised as part of the "family" life of both the appellant and his father disrupting that relationship is not analogous to disrupting the relationship between, for example, a mother and a small child.

31. The First-tier Tribunal Judge may have been slightly facetious when he coined the phrase "the higher end of little" but his meaning is clear enough. He was recognising that the quality of private and family life (he described it only as private life) between the appellant and his father was rather more than usual and deserved respect.

32. He also reminded himself, correctly, of the importance of maintaining immigration control which necessarily means the importance of enforcing decisions that sometimes would be distressing to the people concerned.

33. He commented favourably on the steps the appellant had taken to establish himself in the United Kingdom and his ability to understand English. These are factors in favour of permitting him to remain.

34. What the judge did not identify, and I find this is because it is not there to be identified, was any factor which permitted the appeal to be allowed on article 8 grounds after the matters set out under Section 117A-D had been considered or at all.

35. I find no material error.

36. Nevertheless, out of an abundance of caution, I have looked at the additional evidence provided before the hearing before me.

37. The medical report of Dr Tabe, dated 5 May 2017 finds marks on the Appellant's body and symptoms of stress that she attributes to the Appellant having been tortured. The report also notes that an appointment has been made with a psychotherapist. These things do not illuminate the article 8 balancing exercise. The appellant might want to suggest that Dr Tabe's report and any report from the therapist support a fresh claim. That is entirely a matter for him.

38. There is a written report from an organisation identified as "Talk To Us Off The Record". It is prepared by someone described as a "counselling coordinator" and is dated 12 April 2017. This report outlines the organisation's role and clearly identifies the appellant as its subject matter. It commented on the fear the appellant expressed about return to Afghanistan. It offers the opinion (without indicating any clinical expertise to justify it) that the appellant was showing "moderate to severe levels of anxiety and depression" and also referred to a "high level of suicidal ideation". It then said that the appellant is displaying some symptoms of post-traumatic stress disorder and was unable to sleep for more than one or two hours per night.

39. The appellant had identified his father as the only "protective factor" in his life and the writer identified the father as the stable figure who offered personal support to the appellant and appeared to give the appellant the money he needed to attend college. It also said the appellant was supported by his college teacher.

40. Behind that in the bundle is a report from "Young Roots" and dated 28 April 2017 by a "caseworker". It describes the appellant as a "very vulnerable young person" and comments on him having a "very good relationship with his father, who has looked after him since he arrived in the UK". The author added that comment "I believe he would be unable to cope if he was to live without his support".

41. The writer who claimed to have had experience with vulnerable migrant children and young people in Italy and France and the United Kingdom said that:

> "While most young people we work with are unaccompanied and for this reason soon become quite independent, he has always had the support of his father here in the UK and would not be able to deal also with simple daily tasks without his help.
>
> His father helps him in everything, from waking him up in the morning to go to college, in helping him reminding him appointments, looking after him in the house, preparing or buying his meals, helping him to enrol in education, etc.
>
> A young person that is so mentally fragile and that has been looked after by his father for all this time and did not develop independent living skills would be absolutely devastated if he was to be taken away from this."

42. Again I note that although the writer refers to his or her experience, there is no reference to professional qualifications that would put the comments in context.

43. I cannot attach much weight to the unexplained quasi medical opinions of community workers even though they are, no doubt, sincere.

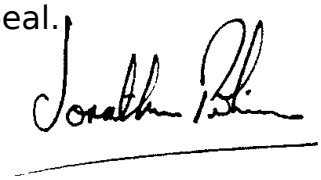
44. I do attach weight to their description of the relationship between the appellant and his father. This additional evidence, taken at its highest, can only confirm that refusing the appellant leave will hurt him and his father. It interrupts their relationship and will leave each of them isolated and unhappy.

45. It cannot support a finding that refusal would be disproportionate.

46. Enforced immigration control is unpleasant sometimes but Parliament has decided that there is a strong public interest in upholding it and although this case does not fall tidily within the Rules there are no particularly telling elements in it which would support a finding that removal is disproportionate.

47. It follows therefore that I find no material error in the First-tier Tribunal Judge's decision and I dismiss the appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 24 May 2017