



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04142/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Centre
On 8th June 2017**

**Decision & Reasons
Promulgated
On 22nd June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR S A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Samra (Solicitor)
For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Ghani, promulgated on 19th January 2017, following a hearing at Birmingham, Sheldon Court on 24th October 2016. In the determination,

the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, who was born on [] 1990. He appealed against the decision of the Respondent dated 14th April 2016, refusing the Appellant's claim for asylum and refusing his application for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he lived in a village. He has one brother in the UK who has refugee status. However, when he was 9 years of age, his father worked for Commander Shiragha in the Afghan military and was killed by the Taliban. He had no dealings with the Taliban until 2015 when he claimed he was abducted from his home with three others and taken to Chardehi. He was interrogated about his father's whereabouts and kept for two nights. He then escaped from the Taliban during an attack by Daesh. The Respondent, for her part, has only accepted the Appellant's nationality and his identity. She does not accept that the Appellant's father's position was with the Afghan military, because this is inconsistent with the Appellant's other claims. The Respondent also does not accept that the Appellant's father was a high profile military target for the Taliban.

The Judge's Findings

4. At the hearing before Judge I J Ghani, the Appellant maintained that his father worked for the Karzai Government and assisted them in the fight against the Taliban. He was not sure what his father's exact role was. However, his father worked under Commander Shiragha but would not tell him specifically what he did. He claimed that he was not safe in Afghanistan, and this was confirmed by the fact that his own brother had been granted refugee asylum status.
5. The judge held that the fact that the Appellant's brother has been granted refugee status "does not necessarily mean that he is also entitled to refugee status" because when his brother came to the United Kingdom he was age 14 or 15 years and would have been granted discretionary leave under the relevant policy in respect of minors (see paragraph 21). However, the judge then went on also to say that, "it is not clear as there is no evidence before me whether his asylum application was refused but he was granted discretionary leave as a minor" (paragraph 21). This apparent inconsistency between the two statements, is a matter that is now taken up by Mr Samra, on behalf of the Appellant in appealing the decision of Judge Ghani. The judge went on to explain how, after the Appellant's father was killed, the family moved to Pakistan in 2007, where they remained until 2012. There they remained with his uncle. The

evidence then is that when the uncle passed away, “his mother did not feel safe anymore in Pakistan and they decided to move back to Afghanistan to the same village where he started to work for a neighbour”. The judge deemed this to be problematic for the Appellant because, “on the one hand it is the Appellant’s claim that they felt unsafe even in Pakistan because of the Taliban, yet the whole family decided to move back to the same village where his father was shot at. I do not find this credible” (paragraph 21).

6. Moreover, the judge went on to say that from 2012 until 2015 nothing appears to have happened to the Appellant or his family. It was accepted that they had changed their names, but “his family would have been recognisable by the villagers” and when in 2012 he and his family returned to their village, “he would have been about 14. As such he would have been a due target for Taliban recruitment” (22). The judge went on to say that, “it is simply not credible that the Appellant did not know that they had returned” (paragraph 22).
7. For all these reasons, the claim was deemed to be lacking in credibility and the appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge erred in the following respects. First, he failed to consider the witness statement of the Appellant’s brother. He also failed to give adequate reasons as to why he did not attach weight to it. Furthermore it was rational that he failed to accept that the Appellant’s brother was acknowledged by the Respondent as a refugee.
9. On 13th February 2017, permission to appeal was granted by the Tribunal. First, because the manner in which the judge deals with the position of the brother at paragraph 21 is inconsistent because the judge goes on to say that, “it is not clear as there is no evidence before me whether his asylum application was refused but he was granted discretionary leave as a minor”. Second, the judge did not give tenable reason for failing to attach weight to the brother’s statement.
10. A Rule 24 response was entered on 21st February 2017. It was stated that at paragraph 21 the judge does observe that the fact that the Appellant’s brother was given refugee status does not necessarily mean that the Appellant will be given the same status. The judge had made it clear that at the time that the Appellant’s brother had been given refugee status he was a minor and was entitled to discretionary leave. It was open to the judge to so conclude. Second, the judge made various adverse credibility findings which were detailed and reasoned in the body of the determination for why this particular Appellant could not succeed.

Submissions

11. At the hearing before me on 8th June 2017, Mr Mills handed up the decision of 17th August 2010 by the Secretary of State with respect to the Appellant's brother. It is here asserted (at paragraph 26) that the Appellant's claim was accepted as being entirely credible in every respect.
12. This decision (see Home Office reference G1166054) that the Appellant's brother "was generally consistent throughout his various accounts" and that these accounts "do not contain any significant contradictions either within any single account or across his accounts" (paragraph 18). In this respect, submitted Mr Mills, the judge was wrong to have concluded that there was no evidence to show that the brother had claimed and had acquired refugee status.
13. Mr Samra submitted that, given that this was the case, the judge had engaged in a factual error. The Appellant makes his fears plain, both at paragraph 6 when he explains how his father was killed working in the Afghan military by the Taliban (paragraph 6) and how "his other brother Turgul Albikhil is currently in the United Kingdom who has been granted refugee status" (paragraph 9). Second, the facts of both brothers were the same. They came from the same family, gave the same evidence, and put forward identical claims. Indeed, the evidence before the judge was that, "Mr Turgul Albikhil adopted his statement of 29th August 2008 and 10th October 2016. He is the Appellant's brother. He maintains that his father was involved in a fight with the Taliban and his commander was killed" (paragraph 18). That aspect of the evidence, as given by the Appellant's brother was simply overlooked by the judge. Furthermore, at paragraph 20 of the determination, the judge again refers to the evidence of the Appellant's brother, concluding that "it is probable that they are related as brothers" (paragraph 20). Third, where the judge then goes wrong is at paragraph 21 where she concludes that the Appellant had been granted discretionary leave to remain as a minor, when the Home Office decision, produced today by Mr Mills, confirms that he was granted full refugee asylum status. Given that the fear was that of the same commander, and the claim was the same, the judge at the very least ought to have given adequate weight to the brother's evidence, and the failure to do so rendered the decision to be erroneous in law. Mr Samra submitted that I should make a finding of an error of law and remit this matter back to the First-tier Tribunal.
14. For his part, Mr Mills submitted that, even though there were various errors in the approach taken by the judge, these were not material to the ultimate decision because the judge makes it clear that, "the fact that the Appellant's brother has been granted refugee status does not necessarily mean that he is also entitled to refugee status" (paragraph 21). This was entirely sustainable as the conclusion. What is, however, problematic was what is then said about four lines down in that paragraph where the judge states that, "it is not clear as there is no evidence before me whether is asylum application was refused but he was granted discretionary leave as a minor" (paragraph 21). This was factually incorrect. The Appellant's brother had been granted refugee asylum status and not discretionary

leave to remain. Accordingly, it was accepted that there was an error in this respect.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, the judge failed to have regard to the evidence of the Appellant's brother, Turgul Albikhil, who had adopted his witness statement of 29th August 2008 and 10th October 2016 at the hearing (see paragraph 18 of the determination) and whose claim was identical to that of the Appellant. Second, the judge expressed himself confusingly in relation to whether the Appellant's brother had been granted full refugee asylum status or simply had been granted discretionary leave to remain "as a minor" (see paragraph 21). Third, the claim that the Appellant and his brother, together with their family, had fled the area was plainly established before the judge below (see paragraph 21), but everything that happened thereafter still needed to be determined, from the period 2007 onwards when they had left to go to Pakistan. All in all, the errors complained of by the Appellant in this matter are fundamental and that being so, this matter is remitted back to be determined by a judge other than Judge Ghani at the First-tier Tribunal.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Ghani, under Practice Statement 7.2(a).

17. An anonymity order 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 their 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 Juss

21st June 2017

Appeal Number: PA041422016