



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

Appeal Number: PA/05651/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12 September 2018**

**Decision & Reasons
Promulgated
On 12 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**MUHAMMAD [U]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fazli, Counsel for Sohaib Fatimi Solicitors, Edgware

For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Afghanistan born on 27 December 1995. He appealed the respondent's decision of 18 April 2018 refusing him asylum and humanitarian protection in the United Kingdom and on human rights issues. The appeal was heard by Judge of the First-Tier Tribunal Bart-Stewart on 1 June 2018 and was dismissed on all grounds in a decision promulgated on 6 July 2018.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Buchanan on 31 July 2018. The grounds state that the First-Tier Tribunal Judge found that the appellant's evidence is broadly credible and accepted the core issue in the case. In spite of this she did not accept that the attack took place on the appellant's family guard which led to the family fleeing to Pakistan so the First-Tier Tribunal Judge finds that the appellant does not have a well-founded fear of persecution in Afghanistan. The grounds state that the Judge failed to consider important documentary evidence, in particular the evidence of the appellant's British sister and failed to consider the appellant's father's affidavit, the affidavit from Mr Gul and the statement of Mr Khalil. The Judge then proceeded on the basis that corroboration is required and made this determinative of credibility. The grounds state that the Judge made an irrational finding about the newspaper article and that the appellant cannot be reasonably expected to substantiate why the newspaper article contained all the details it did and the Judge made a factual error that contributed to her adverse findings, about the appellant's father withdrawing the first claim which the appellant maintains is not the case. The grounds refer to inadequate consideration of Dr Giustozzi's report and the fact-specific evidence contained therein. The grounds state that the situation following the attack turned into a blood feud and there is no exaggeration in the expert report as alleged.
3. There is no Rule 24 response.

The Hearing

4. This is the appellant's appeal and Counsel for the appellant made his submissions, submitting that with regard to the first ground the Judge finds at paragraph 34 that the appellant's father may have a land dispute given that he has business interests in property. The Judge however does not believe that this dispute led to the appellant's family fleeing to Pakistan.
5. At paragraph 30 of the decision the Judge refers to the statements on file and the affidavits. Counsel submitted that there is medical evidence giving reasons why the appellant's sister could not attend the hearing and he submitted that the sister's account supports the appellant's account. He submitted that the key issue in this case is rejected by the Judge at paragraph 34 but the Judge does not give proper reasons for not accepting the evidence that there was an attack on the appellant's father's business premises by people with whom he is in dispute and this caused him to have to flee. He submitted that the Judge does not give proper weight to the affidavits although they are mentioned at paragraph 30. One affidavit is at page 60 of the appellant's bundle and refers to the appellant's father's guard and at page 58 there is a national identity card which, he submitted, is a key document and supports the appellant's account of his family fleeing to Pakistan, but this was not considered by the Judge. He submitted that the Judge made findings but gave no reasons for these findings.

6. I was referred to the appellant's bundle and the witness statement of Abdul Khalil (the guard) which refers to the appellant and the attack on him, Mr Khalil. Reference is made in this to the petition which Mr Khalil lodged about the attack against him by Mr Sayyaf's men. Counsel submitted that this document was not properly considered by the Judge and he submitted that if the appellant's father's guard was attacked it is likely that the family is in danger of attack and again the Judge has failed to give adequate reasons for her findings.
7. Counsel then referred to the second ground which is corroboration. I was referred to paragraph 31 of the decision. The Judge states that in the appellant's brother's statement there are details about the appellant's father and he mentions his office being attacked but the Judge states that there is nothing in the statement about the guard being shot, or the names of the attackers. The brother's second witness statement mentions this but at paragraph 32 of the decision the Judge states that this omission makes her doubt that the attack occurred. At paragraph 32 the Judge refers to the newspaper report and he submitted that the Judge has given too much weight to the omission in the brother's first statement and that this is disproportionate. He submitted that the Judge found that the appellant's brother's evidence goes against what is stated in the newspaper article. At paragraph 34 the Judge questions how, the newspaper could have all the details in the article along with a photograph of the guard and Counsel submitted that corroboration is not required in asylum claims and the appellant cannot answer what has been printed by the newspaper. He submitted that the newspaper article gives the guard's name but the Judge, in spite of this, does not believe that the guard was beaten and shot although this is perfectly plausible and no proper reasons have been given by the Judge for not believing this.
8. With regard to the factual error made by the Judge he submitted that this is at paragraph 29 of the decision. The Judge states that the appellant's father withdrew the proceedings he raised to recover the land in 2009 and then commenced the proceedings again in July 2016. Counsel submitted that the appellant's father did not withdraw the proceedings but he did not pursue the claim as the persecutors had considerable influence in Pakistan. He submitted that the petition was always there, it was just not processed by the appellant's father. He submitted that if the appellant's father had pursued the claim at that time the whole family would have been put in danger and the reason his father took up the claim again, which was mentioned at the hearing, was that people who had taken actions against land grabbers were succeeding and this gave the appellant's father the courage to go ahead. He submitted that this was a matter of honour and when the people against whom the action was being taken realised they were going to lose against the appellant's father, they attacked. Counsel submitted that there are no inconsistencies here and the petitions are on file as well as the land documents.

9. Regarding the expert report Counsel submitted that the Judge inadequately considered this. At paragraph 39 the Judge refers to the expert who states that Sayyaf, against whom the appellant's father was taking the action, probably receives a share of the profits made by his associates which he might use for funding his political activities or save for himself. There is no evidence of payments made by Mumtaz and others to Sayyaf and the Judge states that this aspect of the report is based on speculation. Counsel submitted that a senior warlord like Sayyaf will not leave traces of his criminality. Payments will be made to him but it is unlikely that there will be any evidence of these. Sayyaf's motivation is purely to get rich and have political influence and land grabbing in Afghanistan is not an uncommon thing. Counsel submitted that the expert report supports the appellant's account about blood feuds and at paragraph 40 of the decision, which refers to the expert stating that if anyone is hurt in the violence, the land grabbing operation will turn into a blood feud and put the appellant at risk, the Judge finds that this exaggerates the appellant's claim and is speculative. Counsel submitted that based on the expert report the appellant, on return to Afghanistan, will be at risk. Although he has been in the United Kingdom when all this has been happening he was in Afghanistan when it started and he submitted that when the Judge states that the expert appears to have been exaggerating the claim this finding was not open to the Judge. The expert was merely suggesting what could happen in this situation. He submitted that blood feuds in Afghanistan are a reality and in this case, after the attack, the situation turned into a blood feud when the guard was attacked.
10. I was referred to paragraph 41 of the decision and the last sentence thereof - "On his own evidence land grabbing is not state sanctioned and the authorities have announced an intention to stop it so I find that the appellant does not have a well-founded fear of persecution under the Refugee Convention." Counsel submitted that land grabbing is a major problem in Afghanistan and the background evidence shows that the authorities cannot protect against this and there can be no peaceful resolution. Counsel submitted that it was only when Sayyaf realised that the appellant's family were going to succeed in their claim that the situation became serious and the family had to flee to Pakistan.
11. The Presenting Officer made his submissions, submitting that the Judge did not consider some of the evidence but with regard to the appellant's sister and her statement, she has been in the United Kingdom since 2009 and does not have first-hand knowledge of the situation in Afghanistan.
12. The Presenting Officer referred to the affidavit by Mr Gul which states that the appellant's family are living with him in Pakistan and have been since August 2017 as has the guard Mr Khalil. The Presenting Officer submitted that this is not a material piece of evidence and the fact that the Judge has not specifically mentioned this is not material. He submitted that the Judge has considered the material evidence and given satisfactory reasons for his findings.

13. With regard to ground 2 and corroboration he submitted that the fact that the Judge sought an explanation of the appellant's brother's omission in his initial statement, about the guard being shot, was not a request for corroboration. Because this was omitted in the initial statement the Judge had reason to find that perhaps this did not happen. This is made clear by the Judge at paragraph 32 of the decision. Proper reasons are given and he submitted the Judge was entitled to reach this finding.
14. The grounds refer to a perverse finding by the Judge when she requests an explanation for the newspaper having so much detail about the incident. She wonders how this information is in the public domain and if it can be relied on but the appellant cannot give an explanation. The Judge states that it is for the individual claimant to show that the newspaper article is reliable in the same way as any other piece of evidence put forward on which she seeks to rely. The Presenting Officer submitted that the appellant was unable to give an explanation and the Judge was entitled to her finding, including her finding about the photograph in the newspaper, particularly in view of the injuries mentioned in the newspaper which are different from the details in the witness statement. He submitted that the Judge was not using too high a threshold and found the newspaper article and photograph to lack credibility.
15. With regard to the ground relating to a factual error, the Presenting Officer submitted that at paragraph 20 of the appellant's witness statement there is mention of a second petition which indicates that the first petition was no longer valid. In Mr [U]'s original statement at C27 in the respondent's bundle he refers to his father renewing his application. Based on this the Judge did not make any factual error. The evidence was clear.
16. Regarding the expert report the Presenting Officer submitted that the Judge considered this extensively and I was referred to paragraphs 38 to 45 of the decision. The Judge is critical of the expert report but the Judge did not make speculative findings. At paragraph 11 of the expert report the expert states that Sayyaf does not get directly involved in land grabbing and other crimes. The expert states that Sayyaf probably receives a share of the profits made by his associates which he might use for funding his political activities or save for himself, but there is no evidence of payments made by Mumtaz and others to Sayyaf. He submitted that as this is in the expert report it was open to the Judge to consider this aspect of the report but she has not given this much weight. The word "probably" is significant in the report. Also regarding the blood feud the expert refers to the situation not yet being a blood feud and he submitted that the expert is speculating and it is up to the Judge what weight she puts on this report. She has given adequate reasons for giving it little weight.
17. The Presenting Officer submitted that there is no material error of law in the Judge's decision. She has given proper explanations for her findings.

18. Counsel for the appellant submitted that the error of law in ground one is that the Judge did not mention parts of evidence and gave inadequate reasons for her findings on the parts she did mention. I was asked to consider the evidence of the appellant's father at pages 31 to 34. His father refers to many petitions, refers to the land mafia and then refers to the attack and fleeing to Pakistan as a result of this. His father refers to the first petition and refers to Sayyaf as a famous warlord and he submitted that there is no explanation for the Judge not accepting this evidence, particularly when the appellant's father's affidavit is taken into account and there is evidence of the family now being in Peshawar in Pakistan. The appellant's father's evidence is that he and his family fear for their lives. He submitted that this goes to the heart of the matter and the Judge has not given proper reasons for finding this evidence to be incredible. He submitted that there are no reasoned findings about these documents and the Judge is not disputing one document but is disputing a range of relevant documents.
19. With regard to the newspaper article and photograph he submitted that the Judge's reasons are not well made out. Her reasons for not accepting that the guard was shot, based on the photograph in the paper, are flawed.
20. Counsel withdrew the ground about the factual error but with regard to the expert evidence he submitted that the expert at page 109 of the appellant's bundle states that the appellant's family will be at risk from Mumtaz as long as they do not hand over the land titles to his associates, so Mumtaz and by extension Sayyaf cannot give in on such a claim, as failing to enforce their power would encourage others to resist. He submitted that this is an important finding by the expert and must be taken into account by the Judge but she did not do so. He submitted that land grabbers are into political power, prestige and money and they cannot afford to be shamed or dishonoured and he submitted that while the appellant's family hold the title deeds for this land the family, including the appellant will be in danger in Afghanistan.
21. I was asked to find that there are errors of law in the decision and allow the appeal.

Decision and Reasons

22. I have to decide if there is a material error of law in the First-Tier Tribunal's decision relating to the appellant's asylum claim. There was a lot of evidence before the Judge being affidavits, statements and objective evidence, a newspaper article and an expert report. The appellant's application is based on a land dispute in which his family and a well-known warlord are involved. There are credibility issues as the appellant came to the United Kingdom on a Tier 4 Student visa and it was only when that visa was almost at an end that he claimed asylum. His evidence is that his father and his family have had to flee to Pakistan as they fear for their lives from this warlord Mr Sayyaf. The appellant's reason for not claiming

asylum earlier is that his father was not attacked until 15 August 2017. The appellant claimed asylum the next month.

23. The appellant's evidence is that his family has been involved in a land dispute for about 10 years with this warlord. His father was unable to get his land back but after a Jirga it became increasingly clear that the appellant's father was going to win and that is when the warlord sent a threatening message to him, and although the police filed a report they did not arrest anyone. The Judge does not accept, and neither does the respondent, that the appellant and his family are involved in an ongoing land dispute resulting in the appellant having a genuine subjective fear of returning to Afghanistan.
24. The appellant's evidence is that a petition was lodged by his father about this land in 2009 but there was no result and so in June 2017 another petition was lodged and there was a Jirga on 10 June 2017. At this point Sayyaf's people realised they might lose so they raided the appellant's father's office and his home.
25. The Judge refers to statements by the appellant, his father, his brother, his father's guard and his sister along with an affidavit stating that the family are living in Pakistan and a newspaper article about the attack on the appellant's father's office. The Judge refers to some of the statements being of no relevance, e.g. his sister has been in the UK since 2009. The Judge particularly mentions the appellant brother's initial statement in which he does not state that the guard was shot but states that he was beaten. This is one of the main reasons the Judge does not believe the attack happened. The Judge is also dubious about the newspaper article and the photograph of the guard who was injured. The Judge does not understand how two days after the attack the newspaper could have all the details about the attack and the appellant was unable to explain this to her. The Judge finds that this goes against the appellant's credibility. She also notes that the appellant has never been directly threatened in Afghanistan or come into direct contact with Mr Sayyaf and his men. The Judge however does accept that land grabbing is a serious matter in Afghanistan and has gone on for a long time. There is also an expert report by Dr Giustozzi in which he deals with personal disputes, blood feuds and land grabs in Afghanistan. He speaks of the danger to those who try to reclaim their land and he is aware of Mr Sayyaf and his associates. The expert states that a land grabbing operation turns into a blood feud if there is a violent attack where somebody is hurt and in this case the appellant states that his father's guard was hurt and this led to the matter turning into a blood feud. It appears to be Sayyaf that the appellant and his family are afraid of and the appellant's account is supported by the expert report. The Judge is critical of the expert report but when the expert report is considered, if the appellant's account is true and his family have had to flee to Pakistan, then there is a real risk to the appellant if he returns to Afghanistan from Sayyaf and his associates. The explanation is that it was only when it was clear that the appellant's family were going to succeed in reclaiming the land that the attack took place

and based on the objective evidence and the expert report this, if it is true, is a strong possibility.

26. The Judge has referred to most of the evidence and has reached conclusions about it but I find that much of the documentary evidence, the statements and affidavits, although they have been referred to by the Judge, she has not given explicit reasons for her findings that there was no attack and why she does not believe that the appellant's family have had to flee to Pakistan. I do not accept that the Judge was seeking corroboration in the decision but I do find that the Judge's findings on the newspaper article may not have been open to her. She has reached a conclusion which I find, based on the evidence she was not entitled to reach. I am making nothing of the factual error but when I consider the expert report and the Judge's rejection of much of it I find that again the Judge was not entitled to reach the finding she did based on the evidence before her. The Judge does not state that she does not believe the expert



but she finds that in the appellant's case there is not a blood feud and that the expert has speculated.

27. I find that the Judge has reached conclusions that are not supported by the evidence before her. Her reasons for not believing that the attack happened are not sufficient. There are material errors of law in the decision.

Notice of Decision

As I find that there are material errors of law in the Judge's decision I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.

The members of the First-Tier Tribunal chosen to consider the case are not to conclude Judge of the First-Tier Tribunal Bart-Stewart.

Anonymity has not been directed.

Signed

Date 5 November 2018

Deputy Upper Tribunal Judge Murray