



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/06708/2018

THE IMMIGRATION ACTS

Heard at Field House
On November 9, 2018

Decision & Reasons Promulgated
On November 19, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR S K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Jarvis, Senior Home Office Presenting Officer
For the Respondent: Ms Ryan, Solicitor

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person who the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.
2. Whilst the respondent is the appellant in these proceedings before me I have hereafter referred to the parties using the terminology used in the First-tier Tribunal. The appellant in the First-tier Tribunal will hereafter be referred to as the appellant in these proceedings and the respondent will be referred to as the respondent.

3. The appellant is a national of Afghanistan. The appellant entered the United Kingdom clandestinely in February 2016 and claimed asylum on May 13, 2016. On May 14, 2018 the respondent refused his claim for asylum and humanitarian protection.
4. The appellant appealed that decision under section 82 of the Nationality, Immigration and Asylum Act 2002 on May 25, 2018. The grounds argued that the respondent should have granted his application on the basis that he was a son of a Taliban commander and would face possible recruitment to the Taliban if returned.
5. The appeal came before Judge of the First-tier Tribunal Scott on June 27, 2018 and in a decision promulgated on September 19, 2018 the Judge concluded:
 - (a) The appellant had maintained a consistent and plausible account and any inconsistencies were satisfactorily explained having regard to his age at the time of his interviews.
 - (b) The appellant was neither trained nor did he try on a suicide vest when he visited the Taliban camp.
 - (c) Any apparent contradictions around the circumstances of events which led to the death of his siblings and mother were explained by the different possible interpretations of the word "bombari".
 - (d) No adverse finding should be made against the appellant by his failure to claim asylum in France due to his age and the fact he was under the control and direction of an agent.
 - (e) The Judge accepted the report provided by Dr Giustozzi. He stated the appellant would face a real risk of persecution if he was to return to his home area of Nangarhar where his father was a Taliban commander as he would seek to punish him for running away and/or he would be forcibly recruited into the Taliban.
 - (f) The appellant could relocate to Kabul because any threat from the Taliban would not go beyond his home area but it would be both unreasonable and unduly harsh to expect him to relocate to Kabul in light of his age, lack of a support network in Afghanistan, no connection in Kabul, lack of work or vocational skills, lack of accommodation and the fact he would be viewed as "westernised" in light of his time here
6. The respondent submitted grounds of appeal arguing the Judge had erred by accepting into evidence and explanation provided by the court interpreter in relation to an interpretation of the word "bombari", failed to engage with issues raised in the decision letter and by misapplying the decision of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) in which the Tribunal rejected the approach taken by the Judge when considering return to Kabul.

7. Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchinson on October 9, 2018 who found it arguable the Judge had had erred for the reasons given in the grounds of appeal.

SUBMISSIONS

8. Mr Jarvis adopted the grounds of appeal and submitted that the Judge had materially erred. The Judge had erred by accepting as evidence what the interpreter had stated as this ran contrary to what the Tribunal had said in Mohamed (role of interpreter) Somali [2011] UKUT 00337. The interpreter cannot give evidence or be drawn into a situation where he is giving evidence. He further argued that the Judge failed to give adequate findings why he rejected the respondent's submissions set out in the decision letter. It was always open to him to reject the respondent's reasons but the Judge had to explain to the losing party why he had lost. Finally, he submitted the Judge erred by departing from AS when finding the appellant could not reasonably relocate.
9. Ms Ryan opposed the application and relied on the Rule 24 statement dated November 2, 2018. She submitted that any error involving the interpreter was a minor error and was not material to the outcome and that the Judge had made reasoned findings in paragraph 22 of the decision. With regard to departing from AS she submitted that the Judge had regard to his age as he was entitled to do so and his lack of ties and found relocation would be unreasonable.

FINDINGS

10. Having heard the submissions and after considering the papers, I indicated to the representatives there was an error in law.
11. Allowing the interpreter to give evidence and then using that evidence as a reason for making a finding in the appellant's favour is an error in law. The Judge should have ignored that evidence because the interpreter was not a witness in these proceedings. The appellant could have called his own evidence to address this issue but chose not to and he cannot rely on the interpreter's opinion. This is a material error in law.
12. The Judge's findings are limited. The Judge accepted his account in paragraph 21 but failed to address any of the concerns set out in the decision letter. Another Judge hearing the evidence may come to the same conclusion, but the Judge had to give reasons for preferring the appellant's evidence. Simply overlooking any inconsistencies, because of his age, is insufficient. This also amounts to an error in law.
13. The final issue concerned the issue of internal relocation. The Judge gave a number of reasons for rejecting relocation and whilst the Judge clearly was aware of the decision of AS I accept Mr Jarvis's argument that the Judge failed to apply the guidance issued in that case. These very issues had been considered by the Tribunal in AS.

14. This is a case that must be reheard as credibility findings will need to be made afresh.
15. Section 12(1) of the Tribunals, Courts and Enforcement Act 2007 sets out the procedure where a case is to be remitted back to the First-tier Tribunal. I am satisfied that this is a case that will have to be remitted back to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Scott.
16. The First-tier Tribunal needs to make findings on:
 - (a) The credibility of the appellant's account; and
 - (b) Whether the appellant is able to return to his home area.
17. If the Tribunal concludes this is not possible then the Tribunal will have to consider the issue of internal relocation against the decision of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC).

Notice of Decision

18. There is an error of law.
19. I set aside the original decision and I remit the matter back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 09/11/2018



Deputy Upper Tribunal Judge Alis