



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06937/2016

THE IMMIGRATION ACTS

Heard at: Manchester
On: 31st January 2018

Decision & Reasons Promulgated
On: 2nd February 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AKM
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Warren, Counsel instructed by Duncan Lewis & Co
Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Afghanistan whose given date of birth is the 1st January 1993. He appeals with permission the decision of the First-tier Tribunal (Judge C. Greasley) to dismiss his protection appeal¹.

¹ Permission granted on the 21st September 2017 by First-tier Tribunal Judge Murray

Anonymity

2. This case concerns a claim for international protection. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders and I consider it appropriate to make an order in the following terms:

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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The Appellant claimed asylum on the 13th May 2016 having been transferred to the UK from Belgium under Dublin Convention procedures.
4. The substance of his claim is that he is from a village in Nangarhar, and that he and his family have been caught in the hostilities between the government and the Taliban there. Specifically he asserts that in the summer months of 2015 an injured Talib was brought to their family home in the night. The Appellant’s father allowed the injured man and his friends to wait for medical assistance in the guest room and the Appellant was dispatched to fetch a doctor. Whilst the Appellant was away from the house government troops arrived and arrested the Taliban. Now the Taliban blame the Appellant, believing that instead of getting the doctor he alerted the Afghan army. A senior commander has personally issued a decree saying that the Appellant should be killed. Because he failed to surrender to them they have taken his father. For their part the Army accuse the Appellant and his family of assisting the Taliban.
5. In her letter dated the 28th June 2016 the Respondent rejected this account for want of credibility. The central plank of the Respondent’s case is that the Appellant was not in Afghanistan during the summer of 2015 and so the narrated events cannot have happened. The Respondent deduces this from the following chronology:

26.09.08	Eurodac records show that the Appellant was encountered in Greece
15.12.08	The Appellant was encountered in the back of a lorry at Dover Docks. He claimed asylum. The Respondent accepted that he was a minor and granted Temporary Admission. The Appellant was released into the care of Kent Social Services

- 29.12.08 Kent Social Services inform the Home Office that the Appellant has disappeared from care and he is listed as a missing person
- 09.06.09 The asylum claim is treated as withdrawn after the Appellant fails to attend an interview
- 16.03.12 The Appellant is listed as an absconder
- 20.11.14 Police encounter the Appellant at an address in Tottenham, North London. Once enquiries had established that he was an absconder, he escaped and ran away
- 21.01.16 The Appellant claimed asylum in Belgium
6. The Respondent notes the Appellant's claim that he returned to Afghanistan some time during early 2012 because his mother was ill. The Appellant claims to have travelled to France, where he made himself known to the French authorities and agreed to be repatriated. The Respondent rejected this account because it is not supported by any evidence. Protection was therefore refused.
7. On appeal the Appellant produced various documents, accompanied by certified translations, to establish that he was in fact in Afghanistan at the material time. These included:
- Marriage certificate showing that on the 10th August 2014 the Appellant (or someone of his name) married a woman [H] in Hesarak district
 - Community Health Worker identity card issued by the Public Health Directorate on the 2nd March 2013
 - Prescriptions issued to the Appellant (or someone of his name) in March 2014
 - A letter from a Commander in the Afghan Army, who identifies himself as the Appellant's cousin and states that he has provided him with support and money to get out of Hesarak where his life is in danger. The writer states that the Appellant's father is missing. Two telephone numbers are provided, as well as a copy of the Commander's Ministry of Defence officer's certificate.
 - A 'night letter' from the Taliban ordering the Appellant's father to surrender the Appellant to them, dated 27th April 2015
 - A second 'night letter', dated 6th May 2015, ordering the Appellant's father to attend
 - A letter from the staff of Jokan High School (the Appellant's father's place of work) stating that the Appellant's father was taken by the Taliban on the 7th May 2015 and has not been seen since. This document is signed by the Principal, the Headteacher, four teachers and the Head of Administration

- A letter from the Maliks of Hesarak District stating that to their knowledge the Appellant's father was abducted by a Taliban commander named Abid and there is to date no information about his whereabouts
8. These documents (and others) were supported by four individual verification reports by a Mr Jawad Hassan Zadeh, a PhD student researching Afghan legal history at Birkbeck University. Mr Zadeh has a postgraduate diploma in document examination and has over 22 years practical experience in handling and assessing Afghan documents. He concluded that the documents relied upon by the Appellant were genuine.
 9. The Appellant gave oral evidence himself and called a further witness. British national Mr Shenwari averred that he has a good friend who had known the Appellant in the UK and seen him regularly from 2009. Towards the end of 2011 the Appellant told him that he was compelled to return to Afghanistan because his mother was ill. Mr Shenwari did not see the Appellant again until 2016. He received a telephone call from him that year stating that he was in Belgium, and then a further call saying he was being held in immigration detention in the UK.
 10. For her part the Respondent produced on appeal the two CID notes which she had relied upon to conclude that the Appellant was in Tottenham on the 24th November 2014. The reliability of these documents was challenged by the Appellant.

The Decision of the First-tier Tribunal

11. The Tribunal disbelieved the Appellant. It found the CID printouts to be "reliable and credible" and determined that the Appellant was indeed in Tottenham in November 2014. This conclusion could not be gainsaid by Mr Shenwari who was unable to say what the specific whereabouts of the Appellant were in that period. This finding obviously had a substantial impact on the Tribunal's assessment of the Appellant's claim to have been in Afghanistan in the relevant time frame. The determination goes on to identify a number of discrepancies / implausibilities in narrated events. The "three reports" of Mr Zadeh attract no weight because the country background material shows that forged documents are widely available in Afghanistan, and because Mr Zadeh does not specify, when listing his experience, how many Afghan documents he has examined over the years, or how many reports he has prepared for courts or tribunals. The Tribunal concludes that it is unable to place any weight on the documents produced by the Appellant. In light of its negative credibility findings and the Appellant's appalling immigration history, the Tribunal finds no reasonably likelihood that the Appellant faces a real risk of harm in Afghanistan and the appeal is dismissed.

The Challenge

12. It is submitted on behalf of the Appellant that the decision of the First-tier Tribunal must be set aside for the following material errors in approach:
- i) Failing to give reasons, make findings or take the Appellant's submissions into account when assessing the weight to be attached to the CID printouts. One of the documents did not refer at all to the Appellant. The second one bore a different Home Office reference number. The records were based on second-hand information and it was not clear how that information was gathered. Counsel for the Appellant mounted a forensic challenge on this basis which the determination failed to address.
 - ii) Failing to give reasons, failing to take material evidence into account in respect of the verification reports supplied by Mr Zadah. The central reason given for rejecting those reports - and thereby the supporting documents - was that the author had not demonstrated sufficient experience; his experience was clearly set out in the reports and had not been challenged by the Respondent.
 - iii) Failing to assess material matters, making irreconcilable findings of fact. The determination appears to reject the Appellant's account that he left the UK, travelled to Afghanistan and then returned through Europe in favour of a conclusion that he has been in the UK the entire time. It also appears to accept that having had a recorded presence in the UK he then claimed asylum in Belgium in 2016.
 - iv) Failure to address Article 15(c) of the Qualification Directive. Specific submissions were made, and specific evidence adduced on this matter on which the determination contains no findings at all.

Discussion and Findings

- 14 The Tribunal begins its analysis of the evidence [at §62] by finding that the CID printouts are "reliable and credible" evidence that on the 24th November 2014 the Appellant was apprehended along with nine other Afghan nationals. The determination reads

"the computer entry provided to me describes that the appellant simply fled the scene and escaped from the property concerned. I have no reason to doubt the reliability and authenticity of this computerised documentation and find that this seeks to expose the appellant's claims that he was in Afghanistan and mainland Europe between 2011 and 2016 respectively"

- 15 The grounds take exception to that reasoning. Whilst it was never the Appellant's case that the CID printouts were not authentic, extensive submissions were made about their reliability as documents going to the matter in issue. These submissions do not appear to have been addressed at all in the determination. Having seen the documents myself I would have to accept that the Appellant's forensic challenge was not so fanciful or worthless that it could safely be ignored.
- 16 There were two documents before the First-tier Tribunal. The first is a 'screenshot' from the Home Office computer records system which bears the Appellant's full name and correct port reference number. This shows that on the 27th October 2016 a person unknown entered the following into the "note text" box:
- "Hi
- I hope that you are well. I have had a look and the only reference details I have is for the following two people [names redacted - agreed by Mr Diwnycz not to be the Appellant].
- At the time there were many people in that house which was spread over 3 floors but one of the males from what I remember was fairly young, tall and slim gave me his details which showed him as wanted for immigration but I do not have any documents in relation to this.
- Many thanks"
- Counsel for the appellant had submitted in relation to this document that a) there is no indication as to who wrote that note b) it nowhere on its face identifies the Appellant and indeed it is implicit in the text that to do so would not be possible c) the note itself is written some two years after the alleged event.
- 17 The second CID note was produced only on the morning of the First-tier Tribunal hearing. This is a note of a telephone call, apparently made on the 20th November 2014, by PC Esmaily from Wood Green police station. This states that "the subject" was encountered at a property in Tottenham along with nine other Afghan nationals, and that once enquiries were made, he ran away. The primary objection to this record was that although it does bear the Appellant's name it shows a different port reference number from that seen on all other documentation (the grounds also point out that the note appears to predate the claimed event but I think this arises from a mistake by the First-tier Tribunal).
- 18 None of the submissions made by counsel appear to have been addressed. I accept that in the circumstances this amounted to an error of law and that grounds (i) is made out. Whether it would be an error such that the decision should be set aside depends on the strength of the remaining grounds.

- 19 I am satisfied that ground (ii) is certainly made out and that it goes to the heart of the decision. There were, as set out above, numerous documents adduced seeking to establish that the Appellant was in fact in Afghanistan at the operative time. The determination summarises these documents at paragraphs 34-44; when it comes to assessing and weighing that evidence the conclusions are briefly stated.
- 20 At paragraph 66 the Tribunal notes the evidence that forgery of documents is commonplace in Afghanistan and concludes that having conducted a *Tanveer Ahmed* assessment no weight can be attached to the evidence produced. Ms Warren takes issue with this limited assessment on the grounds that Mr Zadeh expressly addresses the possibility of forgery in respect of the documents he was shown and having conducted a detailed analysis and referred to academic research on forgery in Afghanistan concludes that the probability of forgery in this case is “very low”. This leads me to assess the approach taken to Mr Zadeh’s work.
- 21 Paragraphs 67-68 of the determination address the evidence of Mr Zadeh and give two reasons why it gives no support to the documents he examined. It is convenient if I take each reason, and the criticism thereof, in turn.
- 22 The first, and apparently central reason, is that the author “makes no mention of the total number of questioned Afghan documents that he has considered”. This is simply an error of fact. In all four of his reports (the First-tier Tribunal mistakenly records there to be three) the author sets out his extensive qualifications, stating *inter alia* that he has examined “over 9000 Afghan documents” and that he has in numerous cases rejected the authenticity of the evidence he has been shown, for instance on grounds of language inaccuracy or inconsistency, disguise, obliteration, additions or alterations in photographs. Insofar as paragraph 67 apparently questions the expertise of Mr Zadeh, before me Mr Diwnycz confirmed that this was not put in issue by the Respondent.
- 23 The Tribunal’s second reason is set out at paragraph 68:

“It is also relevant to my mind that the author, in relation to each of his three reports, one of which deals with the two questioned Taliban letters [*the ‘night letters’*] and the other the remaining three confirmation letters [*i.e. the letters from the school staff, the Maliks and the Appellant cousins*] concludes in his report that there are similarities both with the Taliban threat letters and the confirmation letters”

The import of this paragraph appears to be that Mr Zadeh has found there to be similarities in the five different texts, the implication being that they are all from the same author. This is again a mistake of fact. The evidence of Mr Zadeh is quite to the contrary. He expressly states that he has assessed the five documents for similarities and for possible disguise of one author: “I have compared the written words, the digits, the symbols, the signature patterns, the

inks used, the margins of the paper, the distance between the letters, between the words and the sentences. I also assessed the handwriting for possibility of disguise". He concludes that there are no similarities revealed in any of the five documents, either in handwriting, word size or spacing; none of the documents indicate any signs of disguise.

- 24 I find the reports of Mr Zadeh to be comprehensive and of a high standard. Of the reasons given for declining to place any weight on his assessment, two are based on errors of fact and one overlooks and fails to take into account his evidence about forgery in Afghanistan.
- 25 I am satisfied that taken together grounds (i) and (ii) are such that the determination must be set aside.
- 26 It follows that I need deal only very briefly with grounds (iii) and (iv). The Tribunal expressly rejects, at paragraph 62, that the Appellant was in Afghanistan and Europe between 2011 and 2016. I agree that it is difficult to reconcile that finding with the fact that the Appellant was in Belgium claiming asylum in 2016, something which at least suggests that he was in mainland Europe at that time. Mr Diwnycz conceded that the determination fails to address the evidence adduced and arguments made in respect of Article 15(c) and that ground (iv) is made out.
- 27 The parties agreed that the extent of errors were such that the determination must be set aside in its entirety. There was further agreement that given the extent of fact finding required it would be appropriate to remit this matter for hearing *de novo* in the First-tier Tribunal.

Decisions

- 28 The determination of the First-tier Tribunal is set aside.
- 29 The decision must be remade in the First-tier Tribunal.
- 30 There is an order for anonymity.

Upper Tribunal Judge Bruce
1st February 2018