



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

Appeal Number: PA/07568/2016

THE IMMIGRATION ACTS

Heard at Field House
On 20th December 2017

Decision and Reasons Promulgated
On 17th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

WAHDAT OMAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E Anyene (Counsel)

For the Respondent: Ms N Willocks -Briscoe (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's asylum application was refused by the Secretary of State for the reasons given in the Refusal Letter of the 7th of July 2016. His appeal against the decision was heard by Judge Miller at Taylor House on the 1st of February 2017 and dismissed for the reasons given in the decision promulgated on the 22nd of February 2017. The Appellant sought permission to challenge the First-tier Tribunal decision and permission was granted on the 28th of September 2017 by First-tier Tribunal Judge Landes.
2. The Appellant's claim was that he was at risk in Afghanistan after he refused to allow his work car to be used in an attack, he was beaten losing consciousness, his car was used in attack in which a Police officer was killed

leading to his being suspected by the Police of being involved. The Taliban also held him responsible for one of their members being injured. On release from hospital the Appellant's father arranged his journey to the UK.

3. The Judge rejected the Appellant's claim to be in danger for a number of reasons. The Appellant said that he had been in hospital for 3 months, the Judge did not accept that if he was of interest they would not have left him alone with only one visit. The Judge did not accept that anyone in the car during the attack would have been able to get away. His injuries from his beating would have been obviously different from those who had been shot. The letter from the Police confirmed that there was no further interest in him. Further documents submitted were not originals and for a number of reasons, including the absence of features seen on genuine documents, they were not accepted as reliable. The Appellant had been physically able to travel to the UK and it was not accepted that his symptoms demonstrated that he could not be returned.
4. The grounds would have benefitted from being concise. It is suggested that at paragraph 36 the Judge was applying a raised standard of proof. It is also argued that the Judge had considered the Appellant's credibility outside the context of the evidence, his claim overall and the evidence for Afghanistan. Paragraph 37 was not evidence based. In paragraph 38 the rejected documents on the basis the originals had not been produced when they had been sent to the First-tier Tribunal. Paragraph 40 risk on return had not been properly assessed. The Appellant's medical condition had not been properly assessed in paragraphs 41 and 42 and the article 8 assessment was flawed.
5. Permission was granted although Judge Landes noted that the position was not entirely as depicted in the grounds. It was arguable that credibility had not been assessed in the round having regard to the consideration of the medical evidence. She observed that there were powerful points telling against the Appellant's credibility.
6. At the hearing the representatives made submissions in line with their respective positions. The submissions are set out in the Record of Proceedings and are referred to where relevant below.
7. With regard to assessing a decision the document has to be read as a whole and narrow textual analysis is to be avoided. The Judge set out the burden and standard of proof correctly at paragraphs 3 to 5. The reference to Horvath [2000] IMM AR 452 in paragraph 36 is apt, in paragraph 27 Stuart-Smith LJ observed "There is no doubt that to constitute persecution a high threshold has to be crossed." There is no merit in the complaint which relies on taking the observation out of context and ignoring the Judge's earlier appropriate self-direction.
8. In paragraph 37 the Judge discussed the Appellant's account. There was evidence that the Appellant was not of interest to the Police in the form of a letter at page 29. In any event given that on his account was that he was in

hospital for 3 months the Judge's finding that the police would not have been easily put off and would have investigated the matter further were entirely justified. The matters discussed in paragraph 37 were not dependent on an assessment of the Appellant's medical condition but were observations on the circumstances that the Appellant described and taken at their highest. The findings made were open to him for the reasons given and cannot be criticised for not being evidence based, they were based on the Appellant's evidence and rejected the claims of danger that he had made and not based on inconsistencies or missing details.

9. When considering the documentation the judge one document at page 29 the validity of which was not questioned and which supported the contention that the Appellant was not of interest to the police, consistent too with his not being visited in hospital after the first and only occasion. The other documentation was to be assessed in the round and the judge had made pertinent observations about the Appellant's case as discussed above. As Judge Landes noted in the grant of permission the later documents purporting to show that the Appellant was of interest "lacked the main features of reliable Afghan police documents." With evidence of that nature the judge was entitled to find that the documents were not reliable. It may be that he did not refer to Tanveer Ahmed but the findings was open taking into account the evidence overall.
10. The Judge considered the Appellant's journey to the UK in the context of what it would have taken him to get here. He had a brief period in Italy but over a year and a half in France where he received a great deal of assistance from others. Section 8 of the 2004 Act required the Judge to consider the Appellant's failure to claim on route and given his circumstances, particularly with regard to France, it was open to the Judge to find that the Appellant's failure to claim could properly be held against him.
11. The Judge did find that the medical report was wrong with the diagnosis of the Appellant's medical condition but that was in the context the Judge had noted the Appellant's travel history and his not claiming asylum during his lengthy time in France. For reasons unconnected with his medical conditions the Appellant's claim to be in danger in Afghanistan had been rejected and as indicated above those findings were available to the Judge. The decision at paragraph 43 was brief but the evidence was fairly summarised and private life was not argued. Given the family that the Appellant has in Afghanistan the evidence did not show that the Appellant could not return.
12. The decision has to be read as a whole and with regard to the evidence that was presented and the decision was open to the Judge for the reasons given. The decision of Judge Miller did not contain an error of law and remains as the disposal of this appeal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing the appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 15th January 2018