



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11190/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7th January 2019 and
15th February 2019

Decision & Reasons Promulgated
On 25th February 2019

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

RD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy (instructed by Duncan Lewis & Co Solicitors)
For the Respondent: Mr S Khotas (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the appellant, with permission, in relation to a Decision and Reasons of the First-tier Tribunal (Judge Freer) promulgated on 26th October 2018.
2. The appellant is a national of Afghanistan born on 15th September 2002 and thus a minor. He arrived in the UK in January 2018, clandestinely and claimed asylum on 7th March 2018. His protection claim was refused by the Secretary of State on 5th

September 2018 but because of his minority he was granted leave until the age of 17 ½ in accordance with the Secretary of State's policy.

3. The appellant appealed the refusal of his protection claim and that is the appeal which came before Judge Freer sitting at Taylor house on 19 October 2018.
4. In a Decision and Reasons promulgated on 26th October 2018 Judge Freer dismissed the appeal.
5. Judge Freer noted that the Secretary of State accepted the appellant's age and nationality. It was also accepted that his father had been kidnapped by the Taliban in or around 2015/2016 and that after that the family moved to Jalalabad to live with an uncle for five months prior to the appellant and his brother leaving the country with the aid of an agent. His brother and the appellant became separated on the journey to the UK. Judge Freer noted that the issue to be decided was whether the appellant could safely relocate elsewhere in Afghanistan, in particular to either Jalalabad or Kabul.
6. Judge Freer did not believe the appellant's claim to have lost contact with his family.
7. Judge Freer noted that he had an expert report before him which he analysed in paragraphs 44 to 59 of the decision. At paragraph 55 Judge Freer said:-

"It is not likely that when the appellant actually returns to Afghanistan he will resemble his current appearance or that in 2016 I find. He will be expected like all male Pashtuns to grow a beard. It is therefore not likely that a purely visual recognition will occur by chance. In Kabul it is agreed that nobody will search for him by his full name, with its geographical associations. When he is fully grown, he may relocate to Kabul and work there but he can also be protected by his uncle in Jalalabad, which is not a situation closely scrutinised in the report, with its emphasis on living alone."

8. At paragraph 57 the judge found that the appellant would have skills from his time in the UK so that he could find work outside the Taliban and outside Bacha Bazi.
9. The judge went on at paragraph 63 to find that the appellant could return to Jalalabad to stay with his uncle or go on to Kabul with skills he will have acquired or developed in the UK.
10. At paragraph 68 the judge said that there are no substantial grounds shown for believing in a serious risk on return. The appellant will return with an education and will not easily be detected in a city. At his age on return, it is not shown to the low threshold or above that he will be useful as a suicide bomber. As he would wear a beard like any other Pashtun, it is not shown that he would be noticed as a westernised person if he lives in a city.
11. When the matter first came before me in January I found the decision contained a material error of law in that the judge had failed to consider risk on return as at the

date of hearing but rather look forward to the date of actual return. That is illustrated by the paragraphs I have referred to above. As it is risk on return which is the essence of the appeal, the entire decision had to be set aside. As there was no interpreter at the hearing in January the matter was adjourned for a resumed hearing.

12. Thus the matter came before me in February.
13. As the historic claims are accepted by the Secretary of State it was agreed by both representatives that the only oral evidence that I needed to hear from the appellant and his foster carer was with regard to his contact, if any, with members of his family in Afghanistan. Mr Khotas helpfully conceded that if I were to find the appellant was not in contact with his family then he is a refugee and the appeal should be allowed on that basis.
14. I heard evidence first from the appellant who adopted his two witness statements of 30th May and 9th October 2018 as true.
15. The appellant told me that when he and his brother left Jalalabad to travel to the UK his older brother did not travel because he has a long-term illness and his other brother did not travel because he was only little. He did not know why his uncle did not travel but did indicate that the family did not feel safe in Jalalabad. He was unable to say whether the rest of the family had discussed leaving. He did not know anyone in Kabul and he did not know the address that the family had been living at in Jalalabad. He said that the Red Cross had not been able to help him find his family and that none of them were on social media such as Facebook. He said he had tried to find them by searching on Facebook and that he contacted the Red Cross three months ago. He had not been questioned at all by the Home Office with regard to the whereabouts of his family and does not know whether the Home Office had been actively looking for them.
16. In answer to questions from Mr Khotas the appellant confirmed that his father was a farmer and his mother did not work. The family was quite poor and his uncle in Jalalabad worked in a shop. It was his uncle who had paid for him and his brother to leave Afghanistan. His uncle was not wealthy. He did not know where the money came from. He has not had any contact with his family since he arrived in the UK, the last time he did was a year before he arrived, when he was in France. His family therefore do not know whether he is safe or not. They did not give him a sim or a contact number. He confirmed that he had always known he was coming to the UK. When asked why he was trying to find his family on Facebook if they had never been on Facebook, he said he could not think of any other way. The first time he looked on Facebook was 4 to 5 months ago. When asked why it had taken him so long to look he said he had no mobile and no number for his family. He said that he has no family at all in the UK. He is not receiving any regular medical treatment nor any counselling or treatment for mental health issues.

17. He said that he had looked on Facebook many times trying to contact his family and has heard nothing of his brother since they were separated on the journey.
18. In re-examination the appellant confirmed that he did not know whether a telephone number had been given to his brother who was older than him.
19. I then heard from the appellant's foster carer. She had been his foster carer since 24th January 2018 and the appellant has lived with her since then. She confirmed the contents of her short statement as being true. When asked if the appellant had made any effort to contact his family she said that he had asked her to search Facebook using the family name and his brother's name. She said that she had contacted the Red Cross three months ago but they have not yet had their appointment which is due for next week. She had never heard him on the telephone to his family.
20. In response to questions from Mr Khotas she confirmed that she was not with the appellant 24 hours a day because he goes to school. He has a few friends from school but does not go out much with them.
21. Mr Khotas submitted that I should not believe the appellant's claim not to be in contact with or able to contact his family.
22. He submitted that the cost of getting individuals to the UK and the cost of agents is extortionate given the state of finances of this particular family. There is no evidence of where the money came from and the family would want to know that their investment had paid off, particularly as they always knew that the appellant was coming to the UK. The appellant is a young son so they would want to know that he is safe. On the appellant's evidence they don't even know where he is. He submitted that they could have given him a phone number or Sim. He pointed to the fact that the appellant's attempts to contact his family had been at the behest of his foster carer and only very recently. He had done nothing for several months after he arrived in the UK. He submitted that as a 16-year-old the appellant would be desperate to know about his family and it was not credible that he would wait months before trying to contact them. He pointed to the fact that the appellant is not suffering from depression or receiving any counselling.
23. He relied on paragraph 10 of EU and others (Afghanistan) [2013] EWCA Civ 32. There Sir Stanley Burton had said this:-

“Lastly, I should mention a point made by the Secretary of State which I consider to have substance. Unaccompanied children who arrive in this country from Afghanistan have done so as a result of someone, presumably their families, paying for their fare and/or for a so-called agent to arrange their journey to this country. The costs incurred by the family would have been considerable, relative to the wealth of the average Afghan family. The motivation for their incurring that cost may be that their child faces risk if he or she remains with them in Afghanistan, or it may simply be that they believe that their child will have a better life in this country. Either way, they are unlikely to be happy to cooperate with an agent of the Secretary of State for the

return of their child to Afghanistan, which would mean the waste of their investment in his or her journey here.”

24. Ms McCarthy submitted that it was entirely plausible that this appellant would not have a contact number for his family and entirely plausible that they would have given such contact number to his older brother rather than him. She pointed to the fact that the appellant was only around 13 or 14 when he left Afghanistan. She referred to the evidence of the foster carer who knows the appellant intimately and who had seen no evidence of his having any contact with his family. The foster carer actively helps the appellant try and search for his family on social media and contacted the Red Cross. In contrast, she pointed to the complete lack of any evidence from the Home Office of any attempt to trace the family. She pointed to the screening interview where the appellant had given full information giving his address in his home village and the full names and ages of his family members.

My findings

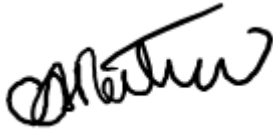
25. There is force in Mr Khotas’ arguments based on what was said in EU (Afghanistan). It is true that sending the appellant and his brother to the UK would have cost this family of limited means an enormous amount of money and it would appear to make no sense that they would have sent him halfway across the world without any way of his contacting them to let them know that he had arrived safely. It is also telling that for someone so young when he left his family, he appears to be in no way depressed or upset about a lack of contact.
26. It is true that the Secretary of State, as confirmed in the letter of refusal has made no attempt to trace the family saying at paragraph 79:-“unfortunately, we have been unable to take any substantive steps in Afghanistan to locate your family using the information and in country family tracing avenues available to the Home Office at this time.” That provides no information as to what, if any, attempts could have been made but it does make clear that the Secretary of State has in fact made no real effort to trace the family.
27. Whilst I can see force in Mr Khotas’ arguments, I am also struck by the evidence of the foster mother who suggested that the appellant was desperate to get in touch with his family which is why she was helping and that she had seen no evidence at all in the 12 months that he has been with her that he had been in contact with his family. It may be the appellant’s parents entrusted the means of contact to the appellant’s older brother rather than the appellant.
28. I bear in mind the low standard of proof and the appellant’s youth. The appellant has not failed to cooperate with the Secretary of State and has provided all the information requested of him. I accept that he is not in contact with his family and does not know where they are. That being the case, as accepted by Mr Khotas the appellant succeeds under the Refugee Convention.

Decision

29. The appeal is allowed on asylum grounds. The appellant is a refugee.
30. The First-tier Tribunal made an anonymity direction. I also make one.

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 19th February 2019

Upper Tribunal Judge Martin