



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01796/2018

THE IMMIGRATION ACTS

Heard at Birmingham
On 1 July 2019

Decision & Reasons Promulgated
On 23rd July 2019

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

SZ
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard (Solicitor)

For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 14 March 2018, following a hearing of 7 March 2018, and which it sent to the parties on 27 March 2018. The tribunal decided to dismiss the claimant's appeal from the Secretary of State's decision of 26 January 2018 refusing to grant him international protection. The claimant was granted anonymity by the tribunal and, although nothing was said about that one way or the other before me, I have decided it would be appropriate to maintain the status quo and to continue that grant.

2. The claimant is a national of Afghanistan and he was born on 30 December 1998. He obtained a student visa whilst abroad and entered the United Kingdom (UK) on 2 February 2017 with leave until 26 October 2020. In September 2017 he travelled to Afghanistan and returned on 3 October 2017. On that date he claimed asylum asserting that he was of adverse interest to the Taliban because they believed he had converted to Christianity and was a spy. He said that his father had been taken by the Taliban from the family home in Logar Province, but that he (the claimant) had been able to flee and had flown back to the UK.

3. The Secretary of State disbelieved the claimant but the tribunal, having heard from him and on the basis of a thorough and balanced written evaluation, accepted the truth of the account he had given. Having made it plain that it did believe him the tribunal went on to indicate, at paragraph 47 of its written reasons, that it was *“satisfied that the appellant has proof to the lower standard that he is a refugee as defined by regulation 2”*. Further, the tribunal said at paragraph 53 of its written reasons that it thought *“the Afghan authorities are unable, though willing, to provide effective protection in Afghanistan”*. It then observed at paragraph 55 of its written reasons *“the only way the appellant might safely be returned to Afghanistan is if he returned to an area where he could not be located by the Taliban”*. At paragraph 56 it went on to make it clear that it did not consider he could be safely returned to his home area. But it did ask itself whether he would be able to live safely in Kabul and whether requiring him to internally locate there would be unduly harsh or unreasonable. At paragraph 59 it expressed a view that if he were to relocate to Kabul *“it would be more difficult for the Taliban to track him”*. At paragraph 61 it noted that the Taliban had not been able to track the claimant down after he had fled his home area and added *“nor were they able to do so when his brother returned to Kabul on October 02 2017 after collecting the appellant’s belongings”*. It noted the Country Guidance decision of the Upper Tribunal in *AK (Article 15(c) Afghanistan CG [2012] UKUT 00163 (IAC)* to the effect that, in general, a return to Kabul would not be unsafe or unreasonable. At paragraph 63 of the written reasons it said *“in my judgment, for the reasons I have identified above, the appellant would not have a well-founded fear of persecution in Kabul. He has not proved that to the lower standard”*. Then, at paragraph 64, it said this:

“64. I next considered whether he can reasonably be expected to stay in Kabul. Whether, in effect it would be unduly harsh to require him to relocate. I am not satisfied that the appellant has proved to the lower standard that he could not reasonably be expected to stay in Kabul and that it would be unduly harsh to require him to relocate for the following reasons:

- (i) He is a healthy young man of nineteen years of age;
- (ii) He has shown the capacity to relocate to a foreign country, the UK. He could deploy that capacity to relocate to Kabul;
- (iii) He is well-educated and speaks several languages (he gave evidence in Pushtu and answered questions in his Tier 4 interview in English);
- (iv) His family appear to have access to considerable financial resources (they were able to pay £9000 tuition fees and maintain an account with a balance of £26307.00 as recorded on the Tier 4 application form);

(v) The appellant has at least one relation in Kabul, the uncle he stayed with in 2017; and

(vi) The appellant mentioned in his Tier 4 interview that there was a demand for educated individuals in the workforce in Afghanistan.

65. In summary, I am not satisfied – even though I have found that the appellant meets the definition of a refugee – that the appellant has discharged his burden and proved that his removal from the UK would breach the UK’s obligations under the Refugee Conventions as set out in the IR”.

4. Some of the above might seem confusing. I shall say more about that below. But an application for permission to appeal to the Upper Tribunal followed the issuing of the tribunal’s decision. It was contended in the grounds (in summary) that the tribunal had erred in failing to allow the appeal having concluded that he met the definition of a “refugee”; had erred in failing to allow the appeal given that it had found there to be an insufficiency of protection in Afghanistan; had erred in providing an inadequate explanation as to why it thought the claimant could relocate to Kabul; and had erred in applying the above Country Guidance decision without addressing some background country material which contained indications that it should, in fact, depart from it. Permission to appeal was initially refused but such was granted on renewal. The granting Judge relevantly said this:

“2. It is correct that the Judge found that the appellant was credible and in paragraph 47 found that he was a refugee and had a well-founded fear of being persecuted for reasons of his perceived religion. She then also found that protection would not be available and that the appellant could not return to his home area. She does appear to find that internal relocation was open to the appellant and that the appellant could relocate to Kabul and that it would be reasonable to expect him to stay there. However, in paragraph 67 the Judge again states that she is satisfied that the appellant qualifies as a refugee.

3. While it is clear that the Judge was correctly looking at a stage-by-stage approach, her terminology is confusing and although it is clear what she meant to say her repeated assertion that the appellant is a refugee is arguably an error of law. I will therefore grant permission”.

5. Permission having been granted, the case was listed for a hearing before the Upper Tribunal (before me) so that it could be decided whether or not the tribunal had actually erred in law, and if had, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative. Mr Howard relied upon all of the written grounds but, primarily, focussed upon the argument that the tribunal had said, in terms, it was finding the claimant to be a refugee yet had still dismissed his appeal. Additionally, argued Mr Howard, the tribunal had failed to properly explain its rationale for concluding that the Taliban’s reach did not extend into Kabul. Mr Mills said that the tribunal had got itself into a muddle but that it was clear what it was deciding. It was deciding he was not a refugee because he was able to take advantage of an internal flight alternative. As to the viability of internal flight it had said all that was necessary.

6. I have decided that, although it expressed itself clumsily, the tribunal did not err in law. I shall now explain why.

7. First of all, it is readily apparent from a reading of the tribunal's written reasons that it was not, in fact, deciding that the claimant fulfilled all of the criteria he would need to do in order for him to be a refugee. It was finding that he was at risk of persecution for a 1951 Refugee Convention reason (that of religion) in his home area (the Logar Province in Afghanistan). It was finding that there would not be a sufficiency of protection from the authorities anywhere in Afghanistan (I think including Kabul). It was finding, however, that the Taliban members who had antipathy towards him would not be able to locate him in Kabul. It was finding, therefore, that he would be safe in Kabul. Finally, it was finding that requiring him to go to Kabul would not be unduly harsh or unreasonable. Clearly, a person is not a refugee if that person has an internal flight alternative available to him and it is not unreasonable to expect him to avail himself of that alternative. So, despite the tribunal saying (I accept more than once) that it was finding the claimant to be a refugee it was not, in substance, doing so. That is the only way in which its written reasons can sensibly be read. Indeed, that understanding of the tribunal's meaning is consistent with the outcome of the appeal.
8. The tribunal did find, as indicated, that the claimant would not have a sufficiency of protection in Afghanistan. However, contrary to what seems to be contended in the written grounds, it did not follow from that, that the appeal should succeed. A claimant might have enemies in a particular country and might lack protection from the authorities. But if there is a part of the country to which the claimant is able to go and where his enemies will be unable to trace him, then a sufficiency of protection is not necessary for that person to be safe. Essentially, the tribunal had concluded that that was the position with respect to this claimant because his enemies would not be able to trace him in Kabul. I can understand why Mr Howard argues that the explanation as to why his enemies would not be able to track him down in Kabul was insufficient. It addressed the matter only briefly, in specific terms, at paragraph 59 of its written reasons. But at paragraph 61 it fleshed out its reasoning by explaining that his enemies in the Taliban had not been able to trace him at an earlier stage when there had been an opportunity to do so. Further, and in any event, there was nothing in the claimant's case as put to suggest he had drawn anything other than antipathy from local people. In my judgment it was open to the tribunal to find that his enemies would not be able to track him down in Kabul and its explanation as to why it was so finding was adequate if not obviously very much more than that.
9. The tribunal, having found that the claimant would be safe from his enemies in Kabul, also found it would not be unduly harsh to expect him to go there. It explained its reasoning as to that, at paragraph 64 of its written reasons. It relied upon a number of factors which, in my judgment, amply justified its overall conclusion. Finally, as to the safety of relocation to Kabul, it applied Country Guidance as it was required to do. It cannot be faulted for that. There was no clear evidential basis to persuade it to do otherwise given the high threshold which must be reached before Country Guidance may be departed from.
10. In light of the above I have concluded that the tribunal's decision does not have shortcomings other than its misleading description of the claimant as being a refugee when in fact and in substance it was not finding that he is not one. So, I have concluded that the tribunal did not err in law. That has the consequence that the claimant's appeal to the Upper Tribunal must be dismissed.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, that decision shall stand and this appeal to the Upper Tribunal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
17 July 2019

Anonymity

The First-tier Tribunal granted the claimant anonymity. I have decided to continue that grant. Accordingly, no report of these proceedings shall name or otherwise identify the claimant or any member of his family. This grant applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

M R Hemingway
Judge of the Upper Tribunal
17 July 2019