



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

Appeal Number: PA/12372/2017

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 28 February 2019**

**Decision & Reasons Promulgated
On 02 April 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**HA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Lewis instructed by Migrant Legal Project (Cardiff)

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

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure of the publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Afghanistan who was born on 3 January 1989. He arrived in the United Kingdom on 17 September 2015 and claimed asylum. The basis of that claim was that he had been targeted by the Taliban because of his employment by a number of companies concerned with construction and infrastructure in Afghanistan. On 10 November 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds. The Secretary of State did not accept that the appellant had worked for foreign companies, as he claimed, in Afghanistan and so would be at risk on return.

The Appeal to the First-tier Tribunal

3. In a determination dated 17 January 2018, Judge Lever dismissed the appellant's appeal on all grounds. Judge Lever, whilst not accepting in its entirety the appellant's evidence of his employment, accepted that it was possible that the appellant had some or most of the employment for foreign construction companies that he claimed (see paras 19 and 22). However, the judge rejected the appellant's account that he had been targeted by the Taliban on three occasions. The first, which the appellant claimed occurred in late 2014, was a threatening letter delivered to the appellant's home. The second, which the appellant claimed occurred in January 2015, involved a raid by the Taliban at a funeral which the appellant claimed he was attending in a village close to his own and, when warned of the Taliban's approach, from which the appellant managed to escape. The third incidence, which the appellant claimed occurred in February 2015, involved a car in which he and others were being driven being fired upon from a Taliban roadblock.

The Appeal to the Upper Tribunal

4. The appellant sought permission to appeal to the Upper Tribunal on four grounds. Permission was initially refused by the First-tier Tribunal but on 14 June 2018 the Upper Tribunal (UTJ Plimmer) granted the appellant permission. UTJ Plimmer singled out ground 1 but granted permission on the remaining three grounds even though, in her view, they were "less strong".

Discussion

5. Relying upon grounds 1, 3 and 4 Ms Lewis submitted that the judge had erred in law in reaching his adverse findings, in particular that the appellant had not been targeted by the Taliban because of his employment by foreign companies involving construction or infrastructure sites in Afghanistan.
6. First, she submitted that the judge had wrongly taken into account, in reaching that finding, that the appellant had not held "any particular senior position or role within any employment that he may have had".

That, Ms Lewis submitted, was not consistent with the background evidence. Secondly, she submitted that the judge had reached his adverse finding by making inferences that were either not substantiated by the background evidence or which were not properly open to the judge.

7. I accept the substance Ms Lewis' submissions.
8. It is clear that the judge accepted that the appellant may have been employed in the way that he claimed. The judge expressly made that finding at para 22. He reached that conclusion in the light of the background evidence where, at para 22 he said this:

"I accept the prospect that the Taliban have targeted construction and infrastructure sites in their own country and I further accept that one of the characteristics for a terrorist group like the Taliban is the setting up of illegal and temporary roadblocks. I do not find any of those features therefore described by the Appellant as being inconsistent with the situation in the country and I accept that there may well be many people who have directly been affected by or can relate stories that deal with such incidents."

9. The judge then went on to conclude at para 22:

"However I do not find that the Appellant has at any stage been specifically targeted nor do I find that he has adversely come to the attention of the Taliban nor that he has held any particular senior position or role within any employment that he may have had. The Appellant is merely providing evidence of the type of activity and destruction that has and no doubt continues to occur in Afghanistan at the hands of the Taliban."

10. So, as can be seen, the judge considered that the appellant's case was, in general, consistent with the background material. In para 22, however, he doubted that the appellant had actually been targeted, inter alia, because he had not held "any particular senior position or role within any employment that he may have had".
11. Ms Lewis relied upon two background documents which were before the judge. The first is the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers* (19 April 2016) at E1-99 of the appellant's bundle. There, under the general heading of "potential risk profiles" at internal pages 38-39 (E40-E41) the following is set out:

"g) *Other Civilians Perceived as Supporting the Government or the International Community*

AGEs are reported to kill civilians deliberately to punish them or supporting the government, with the killings intended to serve as a warning to others. AGEs are also reported to use different mechanisms to warn civilians against supporting the Government, including text messages, local radio broadcasts, social media and "night letters" (shab nameha). In locations where AGEs have been unable to win public support, they are reported to harass and intimidate local communities, and to mete out punishments against the local population for supporting the Government. Civilians accused of "spying for" for Government are reportedly subjected to summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged "crimes" is usually execution."

12. As, Mr Lewis submitted, the risk category of those civilians “perceived as supporting the government or the international community” does not limit the category to those with any “particular senior position or role”.
13. Further, Ms Lewis relied upon the report by EASO, *Country of Origin Information Report: Afghanistan Individuals Targeted By Armed Actors in the Conflict* (December 2017) at pages CC1-CC128 of the appellant’s bundle at paras 1.2, 1.2.2 and 1.2.2.2 as follows:

“1.2 Targeted individuals

Targets of deliberate killings or abduction by insurgents in 2016 include, according to UNAMA, tribal elders, judicial staff, civilian government administration staff and civilians alleged to be government spies, but also civilians who refused to comply with insurgent instructions in 2017, UNAMA added to this list ‘civilians perceived to oppose Anti-Government Element values’

Dr. Antonia Giustozzi summarised the targets of the Taliban as individuals the Taliban considers to be ‘misbehaving’. These include many of the individuals listed by UNAMA above and in addition, Giustozzi adds ‘individuals of any category selected by the Taliban as useful or necessary to their war effort, and who have refused to collaborate’.

1.2.2 Government officials or the accusation of being a government spy

In 2016, UNAMA recorded 481 incidents targeting government officials, including judges, prosecutors and judicial staff but not including ANSF, resulting in 521 casualties. For example, in 2016 in Kandahar City, there was a continued spree of execution style killings of civilians working for or perceived as having connections with the local authorities.

1.2.2.2 Accusation of supporting the government or spying

Targeting by the Taliban is not limited to those who are government employees, but also to those who are accused of being a supporter of the government. In 2013, UNAMA documented 246 attacks against civilians who had no official affiliation to government, NGOs or recognised civilian institutions (i.e. medical, education, elections, development programming). These attacks against civilians resulted in 532 civilian casualties. These incidents involved insurgents deliberately targeting civilians, including farmers, shopkeepers and students, whom they perceived as supportive of the government or national or international security forces. Sources report on the following examples:

- In August 2017, the Taliban allegedly kidnapped over 30 people from a village in Kandahar, killing several of them, on the accusation of supporting the government.
- In Herat’s Gozara district, the Taliban stopped the car of three employees of road construction company and shot them on the spot.”

14. In my judgment, the qualification put upon the risk category by the judge in para 22 of his determination was not supported by the background evidence.

15. Mr Mills, who represented the Secretary of State submitted that the judge's conclusion was not *inconsistent* with the background evidence and, in such a case, his conclusion would only be flawed if it was irrational in the sense of beyond the realms of common sense. Whilst I do not disagree with Mr Mills' submission in principle which, indeed, probably lies at the root of the well-known cases of HK (Sierra Leone) v SSHD [2006] EWCA Civ 1037 and Y v SSHD [2006] EWCA Civ 1223 on the limits of "plausibility" as a tool for assessing the truth of a claim, here there is no basis in the background evidence or the limitation of the risk category to those who hold a "particular senior position or role" and it is not self-evident, in the absence of expert evidence or objective background evidence, why the risk category should be so limited. The background evidence is, in reality, more wide ranging in the scope of the targeted group. To that extent, the limitation is inconsistent with the background evidence and the judge offers no rational reasoning as to why, despite the background evidence, the risk category is more limited. That was, in my judgment, an error in his reasoning which undermines his adverse finding.
16. The judge's reasons for concluding that the appellant was not specifically targeted are not limited to para 22. Indeed, in para 21 he deals with the three incidents relied upon by the appellant to give rise to his claim. There, the judge said this:

"In terms of the Appellant's personal problems his interview discloses in reality very little personal difficulty. The first matter related by the Appellant is as late as December 2014. That means the Appellant had been working for such companies without incident for a period of five years. In reality the threat in December 2014 appears to have been a general threat against a particular site where the Appellant was working demanding the closure of the site for a specified period. Curiously the threat was not for the permanent closure of the site and possibly related to a bracket of time when the Taliban sought to operate without being observed. The threat appears to be against those in the site generally and may well as the Appellant infers be a not unusual type of threat or demand. I do not accept as credible that there was any personal threat or letter sent to the Appellant at his home as he suggests. The reality of course is that if the Taliban did know where he lived then subject to the Appellant swiftly doing what they demanded they would have been able to kill or capture him with ease. The Appellant certainly makes no reference to any other threat being received at his home or any attempt or movement by the Taliban or individuals to kill him directly. Further it cannot be said that in any of the jobs the Appellant has described he was in charge or in any real senior position. Insofar as the second incident in January 2015 is concerned that did not relate to work but rather the fact the Appellant removed himself swiftly from a village where he had gone for a funeral when news was received the Taliban were coming to that village. Again I do not accept as credible any direct or inferential evidence that Taliban would come to the village specifically to target the Appellant. As I have indicated above there would have been no difficulty in them targeting the Appellant at his home or place or work if they so desired. It is also unclear how they would necessarily have known in advance the Appellant was intending to attend a funeral. The final incident is the Appellant simply travelling as a passenger in a taxi or private vehicle where the driver with some skill avoided a Taliban roadblock which he had spotted."

17. Ms Lewis mounted a sustained attack upon the judge's approach in para 21 to the appellant's evidence. In my judgment, she identified a number of features in the judge's approach which further undermined his adverse finding.
18. In relation to the threats which the appellant claimed to have received, he identified two specific threats: there was the letter left at his home in December 2014; and there was the raid by the Taliban at a funeral he was attending in January 2015. The judge characterised the appellant's claim, as set out in his interview, as disclosing "in reality very little personal difficulty". There is the obvious problem with that characterisation as the appellant identified two incidents of personal targeting. In my judgment, the reason why the judge adopted this characterisation is perhaps because he did not fully reflect the appellant's account in interview of the incidents in December 2014 and January 2015.
19. As regards the letter, the judge described that threat as in reality being a "general threat against a particular site where the appellant was working demanding the closure of the site for a specified purpose." What the appellant actually said in his interview at questions 48 – 57, in summary, was that he had received a warning letter in which he was told that he must come and cooperate with the Taliban and that they knew that he worked with "the foreigners and infidels". He was warned that if he did not do that they would kill him. That, on its face, was not a "general threat against a particular site" but rather a specific threat against the appellant himself.
20. As regards the incident at the funeral in January 2015, the judge stated that this "did not relate to work" and then noted that the appellant swiftly removed himself from the village when news was received that the Taliban were coming. The judge concluded that he did not accept that there was "any direct or inferential evidence that the Taliban would come to the village specifically to target the appellant".
21. There are two difficulties with that. First, as Ms Lewis pointed out, there was support in the background evidence to which she referred me, and which I have set out above, in the EASO Report at para 1.2.2.2 of the Taliban kidnapping over 30 people from a village in Kandahar, killing several of them because they were accused of supporting the government. Secondly, the appellant's evidence, again given in his interview, was not that he left the funeral simply because he heard the Taliban were coming but rather because he was specifically warned of that by the brother of the person who had organised the funeral (see question 60 of the asylum interview). In his witness statement the appellant says at para 5: "I found out later, from the person who had organised the funeral, that the Taliban had been asking for me by name when they arrived at the funeral." Again, the appellant's evidence was that he was being specifically targeted.

22. Ms Lewis also attacked the judge's reasoning that it was not credible that the Taliban would target the appellant in a nearby village in the way he claimed when they knew where he lived and therefore if they wished could without "difficulty" target him at his home or his place of work. Ms Lewis relied on the well-known passage in the judgment of Keene LJ in Y at [25] that a judge:

"should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events...in the context of conditions in the country from which the appellant comes."

23. At [27] Keene LJ also said:

"A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not be reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question."

24. Taken as a point alone, I would not accept Ms Lewis' submission that the judge was not entitled to reach the finding that he did on this issue even though, as she submitted, the judge failed to take into account that the appellant had gone into hiding in February 2015 - two months after the threatening letter) until he left Afghanistan in April 2015.
25. That said, however, the cumulative effect of the problems in the judge's approach and reasoning which I have identified above, particularly in relation to the claimed incidents in December 2014 and January 2015 fatally, in my judgment, undermine his adverse finding in relation to whether the appellant was specifically targeted by the Taliban. I take that view despite also seeing no difficulty in the judge's assessment of the third incident - at the roadblock - which on the appellant's own account does not appear to be an incident at which he was targeted specifically.
26. In addition, the judge also took into account, as relevant to the general credibility of the appellant, a number of other matters in particular relating to his previous immigration history. Ms Lewis relied upon grounds 3 and 4 in this regard. She relied upon the fact that at para 24 the judge appeared to cast doubt upon the appellant's credibility based upon his having previously made an application for entry clearance as a spouse but, inter alia, noting that there was an "abrupt and wholly unexplained ending to this relationship." The judge commented at para 24:

"accordingly to some extent what the appellant appears to be describing is consistent and familiar but the abrupt and unexplained ending to that relationship is very unusual and without explanation from the Appellant cannot be taken any further."

27. Ms Lewis submitted that the appellant had not been cross-examined on how his relationship ended and it was unfair to make an adverse credibility finding based upon it.
28. Further, at para 25, commenting on the appellant's earlier visa application, the judge appeared to cast doubt on the truthfulness of the appellant based upon his claim at the time of that visa application that he was unemployed and that it was inconsistent with his account of what had occurred to him in Afghanistan that, when making that application, he had given as his permanent address an address in Pakistan where he had only claimed to be living for about one month. As regards the latter, the judge rejected the appellant's explanation that he had given the address in Pakistan because there was no FedEx delivery in Afghanistan for the return of documents with his application on the basis that: "the application was made by website on the internet".
29. Ms Lewis submitted that as regards the indication that the appellant had inconsistently said that he was "unemployed" at the time of his visa application, that was simply not the case. Mr Mills acknowledged that point. As regards the judge's reason for rejecting the appellant's explanation for giving an address in Pakistan, Ms Lewis submitted that the fact that his application had been made on the website was not inconsistent with his explanation for having to give an address to which a FedEx delivery could be made in Pakistan for the return of documents. I accept Ms Lewis' submission in regard to both these matters. Also, the judge placed weight upon the "abrupt and wholly unexplained ending" of the appellant's marriage and that does not appear to have been a matter upon which he was given an opportunity to give an explanation in the absence of cross-examination on that point.
30. Although these matters might not individually be sufficient to unpick the judge's adverse credibility finding, when taken cumulatively with the matters I have already identified in relation to the judge's assessment of the appellant's account of being specifically targeted, they add weight to the view that I take that, read overall, the judge's adverse credibility finding was materially flawed in law.
31. Consequently, for these reasons I am satisfied that the judge materially erred in law in reaching his adverse credibility finding. His decision must, accordingly, be set aside.
32. In the light of that, the appellant's claim to humanitarian protection should also be remade in the light of any factual findings made in respect of his asylum claim.

Decision

33. Accordingly, the decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside.

34. Given the nature and extent of the fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing.
35. The appeal is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Lever.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath.

A Grubb
Judge of the Upper Tribunal

Dated 28 March 2019