



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

Appeal Number: AA/00641/2015

THE IMMIGRATION ACTS

Heard at Field House

On 13th June 2016

Prepared on 16th June 2016

**Decision & Reasons
Promulgated
On 4th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR ABDUL BASIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not attend and was not represented

For the Respondent: Miss Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Afghanistan born on 6th July 1988. He appeals against a decision of Judge of the First-tier Tribunal Rowlands sitting at Harmondsworth on 5th February 2016 who dismissed the Appellant's

appeal against a decision of the Respondent dated 8th January 2015. That decision was to refuse to grant asylum and to remove the Appellant from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999.

2. The Appellant was granted a business visit visa valid until 5th December 2014 in order to attend an international conference. He arrived in the United Kingdom on 29th November 2014. He claimed asylum on 9th December 2014 ten days after his visa had expired. On 17th December the Respondent took the Appellant's case into the Fast Track process and refused the Appellant's application. The Appellant's appeal was dismissed and permission to appeal to the Upper Tribunal was refused. Following the Detention Action litigation in the Court of Appeal the President of the First-tier Tribunal set aside the earlier decision of the First-tier and directed that the appeal be re-determined by a different Judge. In consequence the matter came before Judge Rowlands on 5th February 2016.
3. The Appellant's claim was that he was of adverse interest to both the Taliban and the Afghan authorities because of his work for non-government organisations particularly youth organisations. The Appellant stated that he had set up a shelter for women who had been the victims of domestic violence. He received threats from the Taliban and internally relocated to a town where there was more business activities and better prospects. He was chosen to participate in an international conference to be held in London and flew here to participate. Whilst in the United Kingdom he was told that there had been threats from the Taliban alternatively that a letter had been sent by the Taliban to his home. The Afghan police attended his house to enquire about the Appellant after he had failed to return to Afghanistan from the conference. When the Appellant's brother complained about the threatening letter from the Taliban he was arrested and ill-treated by the authorities. The Appellant argued that the Afghan government did not want civil organisations in Afghanistan making any progress in the country. Indeed the Afghan Upper House of Parliament had issued a statement stating that those belonging to civil rights organisations were people who had no interest in Afghanistan but really wanted to seek asylum in the United Kingdom. He could not relocate to Kabul as he would be a target of the Taliban. The Taliban would not like his attendance at the London conference because that would be to divide their support from anti-government forces. If he had known that his name was going to be published he would not have come in the first place.

The Decision at First Instance

4. The Judge did not accept that the Appellant had established a fear of the Afghan government to the lower standard. He commented at paragraph 20 of his determination:

“The only mention that there has ever been of this claim about the government is from [the Appellant] saying that he heard about it in a

radio or television report. I have had no evidence presented to me to confirm that there has been any kind of statement from the government about those people who attended the conference and remained nor is there any evidence that any of those who returned after the conference have been in any way mistreated or targeted by the government as 'traitors'. There is certainly no evidence of anybody in his position being targeted in any way by the government".

5. Although the Judge acknowledged at paragraph 22 that there would be a risk to the Appellant in his home area the issue was whether the Appellant could safely relocate to Kabul. At paragraph 23 the Judge dealt with the claim to be threatened by the Taliban, stating that he had received some new information which showed that the activities of the Taliban were unfortunately on the increase in Kabul and there was ample evidence to show that certain high profile individuals were increasingly at risk from the Taliban. The Judge continued:

"However, high profile is the appropriate point. On a factual basis I am satisfied that the Appellant has shown that he received threats to cease his human rights work all the way up to the point when he left Afghanistan to come to the London conference and that these were only in his local area which is why I have already stated that returning him to his local area would be unreasonable."

6. The Appellant had family in Kabul and would not be at anymore risk there than anyone else. On the Appellant's own evidence he was going into and working in Kabul on an extremely regular basis up to 2014 and nothing had happened to him there, despite the fact there had been some kind of Taliban presence in the country throughout that time including a presence in Kabul. The Appellant would not be refused assistance by the authorities. The expert evidence did not suggest it would be unreasonable to expect the Appellant to relocate in Kabul. The Judge dismissed the appeal.

The Onward Appeal

7. The grounds of onward appeal argued that the Judge had inadequately reasoned his conclusion that the Appellant was not a high profile target. He had overlooked the Respondent's country information which indicated that the authorities were unlikely to be able to offer effective protection in Kabul. The Judge had wrongly concluded that the Appellant had no intention of continuing with his human rights work, having merely adopted the closing submission of the Presenting Officer, when there was no evidential basis for that submission. Further, the Appellant had no family in Kabul and the Judge had not specified what country guidance decisions that he was referring to. I pause to note here that the grounds of onward appeal drafted by Counsel who had appeared before the Judge at first instance did not cite any country guidance authorities on Afghanistan either.

8. Permission to appeal was refused by First-tier Tribunal Judge Ford as the application was out of time but he otherwise indicated that he would have found an arguable error and would have granted permission had the application been in-time. The reason for the delay in lodging the onward appeal was satisfactorily explained upon renewal and permission to appeal was granted by Upper Tribunal Judge McWilliam on 5th May 2016 (who also extended time to appeal). She wrote:

“There is merit in the application as decided by Judge Ford. The issue is relocation as it was agreed that the Appellant would be at risk on return to his home area”.

9. The Respondent replied to the grant of permission by letter dated 23rd May 2016. The letter stated that it may be that the Judge had miss-recorded where the Appellant’s family were and whether they would be able to provide some support on return to Kabul. However, there was no materiality to this error. The Appellant was an educated and competent 27 year old male and there did not appear to be any evidence he would be unable to manage his life if returned to Kabul. The Respondent was unable to comment on the Judge’s conclusion that the Appellant would not carry on his civil rights activities upon return. It was open to the Judge to conclude that the Appellant would not be identified or targeted in Kabul since his risk was limited to his home area and there was no adequate evidence as to how or why he would be identified in Kabul. The Judge noted that the Appellant was working frequently in Kabul up until 2014 without adverse interest. There was no material error in the determination.

The Error of Law Hearing

10. Notification of the hearing to decide whether there was an error of law was sent by first-class post to the Appellant at his address in 10 Muirkirk Road, Catford, London SE6 and to his solicitors Messrs Duncan Lewis & Co. That correspondence was evidently received because Duncan Lewis wrote a letter to the Tribunal on 10th June 2016 stating that they no longer represented the Appellant in this matter. No alternative address for the Appellant was provided.
11. When the matter was called on before me shortly before 12 noon there was no attendance by the Appellant and no explanation for the non-attendance. I was satisfied that the notice of the hearing on form IA113 dated 18th May 2016 had been properly served both on the Appellant and his then solicitors. I considered whether I should proceed with the appeal in the Appellant’s absence. The Appellant was under an obligation to prosecute his own appeal. There was no application for an adjournment. As he had failed to attend without reasonable explanation I determined to deal with the appeal in any event.
12. The Presenting Officer submitted that the Appellant had told the Judge at first instance that he would be unable to continue with the work he had

been doing back in his home area. He did not think he could do it in Kabul either because of the death threats. That claim had been rejected by the Judge. The Appellant's problems were said to be with the Taliban. The Appellant had spoken about more practical based problems. The Judge had rejected the claim of threats from the state. The Appellant had been at the conference in the United Kingdom liaising with other likeminded people where the Taliban would not have influence. Whether or not the Appellant had family in Kabul did not take the case any further. The Appellant was an adult and had been frequently visiting Kabul.

Findings

13. The issue in this onward appeal as identified by the Upper Tribunal Judge who granted permission, was whether the Appellant could be expected to internally relocate to Kabul given that he could not return to his home area. In order to assess that possibility the Judge had to make findings on the Appellant's personal profile which he did. The Judge accepted that the Appellant had received threats to cease his human rights work but there was no danger to the Appellant from the authorities. The issue was whether there was an adequate level of protection for the Appellant. The Appellant had been a frequent visitor to Kabul in the past without any harm having been done to him and the Judge's view was that the Appellant could safely relocate to a city the Appellant knew well.
14. There is no country guidance authority which indicates that conditions in Kabul are such that they would breach Article 15(c) of the Qualification Directive. The Appellant's argument appears to be a disagreement with the Judge's conclusions as to the level of the Appellant's involvement with non-government organisations and takes issue with the Judge's conclusion that the Appellant had no intention of resuming such activities upon return.
15. Having perused the file in this matter, I cannot see where the implication that the Appellant did not wish to resume NGO activities upon return has come from. The Respondent made the point in closing submissions and that point was adopted by the Judge in his determination. Given that there appears to be no evidential basis for it, the issue is whether that error is material such that the determination at first instance should be set aside and the matter re-heard.
16. The Appellant's evidence indicated that he did wish to resume his NGO activities upon return and in the absence of a general adverse credibility finding, I proceed on the basis that that was indeed the Appellant's intention. The issue is whether in the light of the Judge's other findings, even if the Appellant did intend to resume his NGO activities would he thereby be at risk.
17. The Judge specifically rejected the argument that the Appellant would be at risk upon return as a failed asylum seeker. At paragraph 22 the Judge dealt with the issue of whether the Appellant's activities would put him at

risk from the government and he rejected that argument. Thus there could be no material error of law in the Judge proceeding on the assumption that the Appellant might not want to continue his activities upon return since whether he continued them or not there would be no risk from the government.

18. That left the issue of whether the Appellant nevertheless was at risk from the Taliban if and when the Appellant resumed his NGO activities in the capital. Here the Judge's conclusion at paragraph 25, that the Appellant was not of such a high profile as to be one who would be a high target for the Taliban, is relevant. The Judge found that the Appellant would be of no more risk than anyone else in Kabul. The Appellant up to 2014 had been going into and working in Kabul for NGOs on what the Judge described as "an extremely regular basis". Nothing had happened to the Appellant then and there was no reason to believe that anything would happen to the Appellant in the future. Thus, while the Judge expressed doubts that the Appellant would in fact continue with his NGO work upon return, it is plain from reading the determination as a whole, that the Judge's view was that even if the Appellant were to resume his NGO activities in Kabul there would be no risk sufficient to engage the Refugee Convention from either the authorities or the Taliban. Although there was an error in the determination in the Judge's understanding of part of the Appellant's evidence (his intention to resume work upon return) it was not material to the determination as a whole.
19. Accordingly I do not find that there was any error of law in the Judge's determination and I dismiss the onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I dismiss the Appellant's appeal against it.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 1st day of July 2016

.....
Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As no fee was payable and the appeal was dismissed there could be no fee award.

Signed this 1st day of July 2016

.....
Deputy Upper Tribunal Judge Woodcraft