



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

Appeal Number: PA/01353/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2017**

**Decision and Reasons
Promulgated
On 01 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MA
(ANONYMITY DIRECTION MADE))**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adeel Malik, of Counsel

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Afghanistan, appeals with permission against a determination of Judge of the First-tier Tribunal Housego, who in a determination promulgated on 30 March 2017 dismissed the appellant's appeal against a decision of the Secretary of State made on 25 January 2017 to refuse to grant asylum.
2. The appellant is a citizen of Afghanistan born on 3 March 1985. He left Afghanistan in 1994, moving to Pakistan with his family as refugees from the war in Afghanistan. He received refugee status there and lived there

until 7 October 2004 when he came to Britain as a student. Thereafter he received extensions of stay as a student before making an application for leave to remain as a Tier 1 (Post-Study Work) Migrant in 2008. He was granted leave to remain until 2011. Thereafter he had leave to remain as a Tier 1 (General) Migrant until 2013 when he applied for further leave to remain. That was granted until 26 October 2016.

3. In September 2014 he applied for indefinite leave to remain on the basis of ten years' continuous lawful residence. That application was refused without a right of appeal. He returned to Afghanistan in January 2016 and on 29 July that year he re-entered Britain and claimed asylum.
4. The appellant said that he had gone back in January 2016 to Afghanistan to visit his family. The basis of the appellant's claim to asylum was that in April that year, while at his family home in Nangarhar five or six people came to his house asking his father about his brother. He suspected that these people were either Taliban or ISIS who wanted to recruit young people from the whole village and therefore had come for his brother. His father had said that his brother was not at home. The house was searched but his brother was not found. The men then came to the appellant and asked his father who he was. His father lied to them and said that he was a guest because he had worried that they would take him if they found out that he was another son. The men told his father that they would return and that he should keep his son at home. They said they would find out who he was.
5. That night when his brother returned home his father said it was no longer safe for the two of them to remain in the family home. They therefore moved to Jalalabad where the appellant stayed with a friend for fifteen to twenty days and then moved to Laghman because his father had received a message saying it was not safe for him to live there.
6. At the end of June 2016, while living in Laghman he went to the police to ask them to find out about his parents because he had not heard from them. He told the police what had happened and the police said they would communicate with other police stations to find out if there was any news of his parents. That night the Taliban or ISIS visited his father's friend's house where he had been living, bound him and beat him, telling him that they had found out that he was also the son of his father and he had come from a foreign country. He said his hands were tied, he was blindfolded and placed in a car and driven in the back of the car for 40 minutes after which they stopped, the men left the car, leaving the doors open. The appellant and his brother had used the opportunity to escape and jumped on a lorry which took them to Kabul where the appellant stayed for one month with a friend of his father. He then left Kabul. His brother remained there and he was joined later by his family. He had said at interview that his family was safe in Kabul but were grounded.
7. The Secretary of State considered the appellant's application and in paragraphs 36 onwards of the letter of refusal stated that it was not accepted that the Taliban or ISIS had forced him to flee. The reasons

given were that if the appellant would be in danger his parents would have informed him and he would not have returned. Moreover, it was not credible that if the situation had been that the Taliban recruiting people between the age of 20 and 40 that he would have returned to Afghanistan given his age and placed himself at such risk. These issues undermined the credibility of the appellant's claim. Moreover, it was not accepted that people who had come to his house were the Taliban or ISIS - the appellant had been unclear about his at interview and had only said that these people had been identified as Taliban or ISIS. The reason the appellant had given for stating that these men were Taliban or ISIS was because of "the way they were dressed with their beards and all that so that's the formal dress code" and they had said they were taking people for jihad. It was considered that the appellant was speculating.

8. There was thought to be no reason why the Taliban or ISIS would have a particular interest in the appellant or his brother, particularly if the appellant had not been able to give any answer why there had been a specific interest in recruiting him rather than the many people who had lived in the village. The appellant had then said that was because he was considered to be a foreigner. It was considered that was an embellishment of his claim and he had been asked why he had not mentioned this and he merely said it was because he was between the age of 20 and 40.
9. Moreover, his claim that the Taliban were recruiting people between the ages of 20 and 40 in his whole village was at odds with the fact that he had come face to face with them in the family home and had received no problems other than them saying they would find out who he was.
10. His story of how he had escaped from the car was not thought to be credible and it was pointed out that he had been inconsistent while saying where he had lived in Afghanistan. Moreover, it was noted that his brother remained in Afghanistan and faced no further problems.
11. The judge heard evidence from the appellant, setting out in detail the appellant's claim and the relevant case law. He detailed his conclusions in paragraphs 68 onwards of the determination. He noted the claim that the appellant might face forced recruitment and considered the background documentation thereon as well as setting out details of other background information in the bundle before him. He referred to the fact that the appellant had said that he had suffered beatings, recording this at paragraph 74 of the determination. He made his findings of fact and reasons in paragraphs 91 onwards. He noted that there was no evidence from the wife or father of the appellant or about his brother, all of whom remain in Kabul. He said it was not credible that they would not have remained in touch with him. Moreover, it was not credible that the Taliban would seek to conscript everyone between 20 and 40 in Kabul nor that both the then 15 year old brother of the appellant and the appellant himself would be targeted by the Taliban.

12. The appellant claimed that all his family were in hiding in Kabul and in paragraph 96 the judge stated that: "His witness said that the whereabouts of the wife and children of the appellant were unknown but probably in Kabul. The appellant has not been candid even with his friend, the witness."
13. It was not accepted that when taking the appellant his hands would have been tied by something like a handkerchief nor that if they had wanted to abduct him they would have left the car doors open so that he and his brother could get away.
14. In paragraph 98 he stated:-

"98. There is the photograph of several wheels on the back of someone said to be the appellant. The appellant did, as he said, say that he had marks on his back in the screening interview. There is no proof that it is his back, but many Afghans are so keen to stay in the UK (and the appellant had been here a long time) that if it is his back self-infliction by proxy is a possibility. There is no objective evidence about these marks. I make no finding of fact that this is or is not the back of the appellant, or that if it is there is any particular causation or as to who inflicted the injuries if they were inflicted deliberately, but the burden of proof is on the appellant and there is nothing other than the one photograph and the oral evidence of the appellant advanced by him. I have not found him a credible witness and so, holistically, do not accept his account about the photograph A1:A1.

99. Put another way, look at in the round, I do not find the presence of these scars on the back of the appellant (assuming it is his back) to be sufficient (with the oral evidence of the appellant) to find his account proved (all the while bearing in mind the lower standard of proof and the need for anxious scrutiny, and the fact that unlikely things do happen). The appellant portrayed this to me as very distressing (it was the point at which he appeared upset). Were this so large in his recollection it is difficult to accept that he would not have told the immigration interviewers about it in the substantive interview, and the explanation that he did not know the word 'whipping' in English is not a valid explanation. There are a myriad of ways he could have communicated that he had scars on his back and how they had been caused - even a simple 'look at my back!' would have done the job. It was the one tangible thing he could have shown the interviewers and he did not do so, at either interview. Taken with everything else, I conclude that his account of injuries to his back is not true."

15. The judge also stated in the following paragraphs that the appellant's visa was running out and he had used deception in a previous application and that therefore his chances of getting a new grant were very small. He went on to say:-

“101. I do not accept that the appellant was an innocent in the false documentation, and that he blindly trusted the firm he retained for his visa, and did not think to check the form he signed. This was an important form for him, for he had run out of student leave and wanted to stay as an entrepreneur. The whole basis on which he did so was fraudulent.”

16. He went on to say that there was a further consideration as to his credibility in that the appellant had previously used deception to stay in Britain and he considered that this application and appeal was a further example of deception – there was no basis for the appellant applying for the First-tier visa and he had used fraud to obtain it: by the time of the second such visa application he had a business and so used that business to make a second Tier 1 application. His previous deception was relevant to the estimation of his credibility “on this occasion”.
17. The judge was stated that there was a pretence at being upset on one occasion during the hearing and he considered that that was not genuine.
18. In effect the decision of the judge was that the appellant had totally fabricated his claim for asylum.
19. There were detailed grounds of appeal which were considered and refused in the First-tier, thereafter they were amplified and then were considered again by Upper Tribunal Judge Pitt, who granted permission. She refused permission on all grounds apart from those which she had assessed in paragraphs 8 and 9 of her decision where she wrote:-
 - “8. The FtTJ assessed the appellant’s evidence on scarring at [98] and [99]. The appellant did refer to these scars and to being beaten in his various accounts and invited inspection of his scars at question 146 of his interview, contrary to what the FtTJ appears to be suggesting at [99]. It is difficult to marry up the indication at [98] that no finding was made on whether the person with scars in the photos provided was the appellant with the earlier comment on there being ‘no proof’ of this and comment that ‘so many Afghans are so keen to stay in the UK’ that ‘self-infliction by proxy is a possibility’. The potential difficulties with the assessment in those paragraphs also have to be read with the comment at [103] on the appellant’s use of ‘pretence’ when giving evidence on how his scars were incurred. The grounds at paragraphs 14, 15 and 20 are arguable.
 9. It is also arguable that the FtTJ did not address the appellant’s claim to be at risk on return because of his ‘westernised’ profile. The grounds set out in paragraphs 8 to 12 are arguable.”
20. At the hearing of the appeal before me Mr Malik argued firstly that the judge had improperly considered the issue of scarring and in particular the fact that the appellant had invited the interviewing officer to look at his

back. He confirmed, however, that there was no medical evidence regarding the scarring. He stated, however, that there was a picture of the scarring in the bundle.

21. He questioned the finding of the judge that the appellant had previously used deception to stay in Britain and stated that the appellant had accepted that false documentation had been used but stated that had been the fault of his advisers.
22. Moreover, there was a lack of findings regarding private life or whether or not the appellant would qualify under the provisions of paragraph 276ADE. Also, the judge had not dealt with the fact that the appellant was now westernised and looked more like a westerner than an Afghan. With regard to forced recruitment he referred to the UNHCR report.
23. Mr Tufan accepted that the judge had been in error to discount the fact that the interviewing officer had been invited to look at the appellant's scars but he stated that was not material. What was relevant was that the appellant's claim was itself not credible. He stated that there was clear evidence that the appellant had used deception to obtain leave to remain. What had happened, however, was that his leave to remain had not been curtailed and therefore there was no right of appeal although of course the decision could have been subject to an application for judicial review. There was no suggestion that the appellant would have been able to qualify under the provisions of paragraph 276ADE of the Rules and nothing to indicate that the fact that he had been westernised would lead to his being persecuted.
24. He referred to the UNHCR report about the possible recruitment of young people but stated that little weight could be put on that, given that UNHCR documents were produced for a rather different purpose. In this regard he referred to the decision in **NM and Others (Lone women - Ashraf) Somalia CG [2005] UKIAT 00076**. He argued that in any event internal relocation to Kabul was open to the appellant, given the fact particularly that his brother and family were there - he referred to the decision in **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**.
25. In reply Mr Malik stated that the issue was whether there had been a material error with regards to the issue of scarring. Moreover, the judge should have relied on the report from UNHCR regarding the recruitment of young men and indeed he stated that the judge's credibility assessment was flawed - he had failed to give regard to an innocent explanation of the way in which the appellant had obtained his leave to remain as a Tier 4 Migrant. He argued that it was correct that the judge had erred in his consideration of internal relocation although he did not argue that that was not open to the appellant.
26. I have considered in detail the basis of the appellant's claim. I consider that the judge was correct to place weight on the fact that the appellant would not have returned to Afghanistan if there was a danger to his being there - he would surely have heard from his family that he should not

return if he was likely to suffer harm. Having returned to his home area I consider that the judge was correct to consider that his claim that he would be subject to recruitment by the Taliban was not credible. I note the appellant's age - he is now 28. The UNHCR report regarding forced recruitment is somewhat unclear as it repeatedly refers to the recruitment of children to carry out attacks or act as human shields while participating in acts of combat and smuggling weapons, acting as spies or scouts. The reference to which I was referred is headed "Forced and Underage Recruitment by Pro-Government Forces" and refers to attempts to criminalise underage recruitment. The paragraph refers only to the recruitment of children with a very brief reference to "young men" being forcibly recruited. I consider it is most unlikely that the Taliban would want to recruit an independently minded adult who had not been immersed in their culture for some time. I consider that the judge was entitled to find that that was not credible. In any event although the appellant said that he and his brother were captured by the Taliban at no time was the appellant certain who actually had detained him. The reality is, however, he said that he was able to escape without difficulty from his captors' car. That, again, does not seem credible: given that he said that his hands were tied, it is not credible that he would be able to get out of a car when the door was left open and the Taliban or his captors had walked away.

27. Clearly the appellant's claim that he had lost touch with his family in Kabul is also lacking in credibility as he at one stage said that he was there with his brother and that his family had joined him. I note that there is a reference in the determination to the appellant's wife and family and in answer to a question in the questionnaire he said that he had been married in 2014. He also says that he had been able to go to Peshawar to meet his family. In paragraph 10 of his statement he refers to his having a wife and daughter in Kabul but says that he does not know where they are hiding. However, he nowhere states in terms when and where he was married or when his child was born. There is a clear lacuna in his evidence on the issue of his wife and child.
28. With regards to the appellant's scarring on his back, a picture of which is at page A1 of the bundle, while the judge erred in stating that the scarring had not been mentioned to the interviewing officer the judge was entitled to be sceptical about the issue of scarring. It is not mentioned in the body of the interview despite the appellant stating that he and his brother had been taken by the Taliban. It is only mentioned at question 146, which gives the appearance it was mentioned as an afterthought. Moreover, the reality is that in his statement the appellant only briefly mentioned the scarring at paragraph 16 and gives no detail of exactly what happened when he received a "whipping". I consider that, given the brevity of the assertion by the appellant that he was whipped, the judge was entitled to consider that he was not credible in that regard. He was also entitled to conclude that marks on the appellant's body would not necessarily have been inflicted in the way he claimed. There was no medical report that indicated that the marks shown in the photograph could have been inflicted by whipping.

29. In all I can only come to the conclusion that the judge did reach conclusions which were fully open to him on the evidence and that his decision was reached after proper consideration of all the evidence before him. As he said, the reality is that he considered all the evidence before him holistically and I consider that he gave clear and sustainable reasons for finding that the appellant was not credible. His conclusion that the appellant did not have a well-founded fear of persecution on return to Afghanistan was fully open to him and I therefore find that the judge was fully entitled to dismiss the appeal on asylum grounds. I would add that there was nothing to indicate that the removal of the appellant would be a disproportionate interference with his rights under Article 8 of the ECHR.

30. I therefore find that the decision of the judge shall stand.

Notice of Decision

The appeal is dismissed on all grounds.



Signed

Date 31 October 2017

Deputy Upper Tribunal Judge McGeachy