



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05587/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 29th October 2018

Decision & Reasons Promulgated
On 19th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[A N]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes (Counsel)

For the Respondent: Mr D. Mills (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Perry, promulgated on 29th December 2017, following a hearing at Birmingham Sheldon Court on 13th December 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and was born on [~] 1997. He appealed against the decision of the Respondent dated 1st June 2017, refusing his claim to asylum and humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The basis of the Appellant's claim is that his family supplied parts to foreign armies such that he is now targeted for his refusal to volunteer for a suicide attack on behalf of the Appellant. He had supported western occupation and is at risk on return. He is also at risk from Massod's uncle, who works for the Government and is influential; Massod was one of the persons that he was travelling with in a car who was killed following an incident when he was targeted.

The Judge's Findings

4. The judge accepted that the Appellant was traumatised when he came to the UK and that this had continued for some time until after a suicide attack in 2016. However, he had then converted to Christianity attending the Oasis Church, which had stabilised his condition. The judge had evidence from Pastor [H] confirming that the Appellant started attending the Oasis Church on 5th March 2017, and there was also evidence from [BJ], who was a regular attender at the church (paragraph 13). The judge, however, did not proceed to explain what view he took of these two church witnesses who had provided evidence on behalf of the Appellant.
5. The Appellant's appeal was dismissed for reasons given by the judge, particularly, the Appellant's failure to provide a chronological account of the events that led him to leave Afghanistan (paragraph 26).

Grounds of Application

6. The grounds of application state that the judge has simply not referred to the evidence that the Appellant was a genuine Christian from the church witnesses. Further, he had made unsafe credibility findings with regard to the historic account given by the Appellant. It was also suggested that the judge had failed to properly assess the risk to the Appellant based upon his sur place activities in the UK.
7. On 22nd January 2018, permission to appeal was granted by the Tribunal on the basis that the judge had failed to give reasons for disregarding the evidence from two witnesses (at paragraph 13) from the church who had attended to give evidence on the Appellant's behalf. Also there was evidence of the Appellant's conversion, in terms of the posts on Facebook, which had not been properly evaluated.

Submissions

8. In the hearing before me on 29th October 2018, Mr Mills, appearing on behalf of the Respondent Secretary of State, took the opportunity to speak first, and stated that he would have to concede that there was an error of law in the judge's determination, notwithstanding the Rule 24 response that had been furnished by the Respondent because of the failure by the judge to explain how he viewed the evidence from the church witnesses, who vouched for the Appellant's conversion to Christianity. The judge did not explain what weight he gave to the evidence of these witnesses. This was the centre plank in the Appellant's claim and the failure to address the issue raised in this regard was an error.

Error of Law

9. I am satisfied, given the concession made by Mr Mills, which is unopposed by Mr Holmes on behalf of the Appellant, that the decision of the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision.
10. My reasons are those given by Mr Mills, namely, that the judge, in a decision that is otherwise careful and meticulous in its detail, fails to address what weight is given to the evidence of [RH], the pastor of the church, that the Appellant attends, and [BJ], who is a regular attender of that church. I come to this conclusion reluctantly given the otherwise comprehensive reasons given by the judge for rejecting the appeal. The judge in fact, even gives credit to the Appellant where this is due, making no adverse credibility findings against him (see paragraph 29). He does expressly refer to the letter from Pastor [H], highlighting the precise nature of the evidence, namely, that the Appellant was baptised on 14th May 2017, and that the Appellant had attended the Oasis Church prior to that once a day (see paragraph 32).
11. However, what the judge did not do, was to explain what weight would be attached to this evidence. This is notwithstanding the criticism that the judge has to make himself of the Appellant, namely, that it was significant that the Appellant gave no day-to-day detail of how his life had been changed by a conversion other than to say that it had helped his mental wellbeing (paragraph 32). Also the judge was right to have pointed out that the Appellant only had a limited number of followers on Facebook, such that it was incumbent upon him to explain why in those circumstances, having Facebook posts, would place him at risk in Afghanistan by bringing him to the notice of people there (paragraph 34). All of this, careful as it is in its analysis of the evidence before the Tribunal, does not compensate for the absence of a decision on how the judge had treated the evidence given by Pastor [H] and by [BJ].

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the

First-tier Tribunal, to be determined by a judge other than Judge Perry, pursuant to practice statement 7.2A because the nature of any fact-finding that has been undertaken is such as to not comply with the requirements of procedural fairness and the overriding principle.

13. An anonymity direction is made.
14. This appeal is allowed.

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

Dated

Deputy Upper Tribunal Judge Juss

17th December 2018