



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07899/2019

THE IMMIGRATION ACTS

Civil Justice Centre (remote hearing)
Heard on 9th September 2020

Decision & Reasons Promulgated
On 14th September 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AK
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Fazli, Counsel instructed by Sohaib Fatimi Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan born in 1998. He appeals with permission against the decision of the First-tier Tribunal (Judge Buckwell) to dismiss his appeal on protection and human rights grounds.
2. The Appellant arrived in the United Kingdom and claimed asylum in 2014. There were two planks to his claim as advanced before the First-tier Tribunal. The first was that as a young man of fighting age he had a well-founded fear of persecution by the Taliban in his home area of Baghlan, who had tried to recruit

him. He did not want to be a Talib and was afraid that they would persecute him as a result of his refusal to join the group. The second issue concerned the Appellant's fear of persecution at the hands of the Afghan authorities, who perceived him to be a member of the Taliban and therefore wished to arrest him.

3. In respect of the first plank the First-tier Tribunal found there to be material discrepancy between the Appellant's description of his forced recruitment by the Taliban and the objective country background material before the First-tier Tribunal. In particular his claim to have been taken on four occasions in two years for a few hours of training at a time was not consonant with the general practice of the Taliban in recruiting children from the ranks of Madrassa pupils. Those boys are taken directly into full time training. The 'taster sessions' described by the Appellant were not consistent with this evidence and did not "ring true". Having made that finding the Tribunal said this:

"103. On the basis of my view of the main thrust of the account by the Appellant I do not find otherwise that my concerns in that respect are altered by the purported documentation provided. Original documents were not provided...the documents were not independently verified by any expert and I must consider the veracity of such documents in the round. In doing so of course I take into account the views I have expressed as to the recruitment account put forward by the Appellant. On that basis I do not give weight to the documents which the Appellant has produced in copy form".

4. As to the second plank, no findings are made.
5. The grounds of appeal are:
 - i) That a material unfairness has arisen from a mistake of fact. The originals of the documents mentioned by the Tribunal at its §103 were in fact available for inspection at the hearing. The Appellant had them with him and had the Tribunal wanted to see them it could have done so. A witness statement and certified copies of the documents were provided in support of the grounds.
 - ii) The approach taken by the Judge to those documents did not in any event accord with the *Tanveer Ahmed*¹ requirement that the evidence all be considered 'in the round'.
 - iii) That the omission to make findings on the risk from the Afghan authorities was a material error.

Error of Law: Discussion and Findings

6. I am satisfied that grounds (i) and (ii) are made out. Whilst it is true that the Tribunal had other concerns about the documentation, specifically the lack of expert verification, the documents produced were a central element of the

¹ *TA v Secretary of State for the Home Department* [2002] UKIAT 00439

Appellant's case and as such should have been considered in the round. The documents being before the Tribunal in copy form one wonders why the no-one thought to bring to the Judge's attention that the originals were present in court, but that is not important now. What matters is that the Judge, in his concern over the lack of originals, was labouring under a misapprehension. As such the failing was not necessarily his, but it is an unfairness capable of justifying interference with his decision. It is an error of the same species discussed in MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC):

“(2) A successful appeal is not dependent on the demonstration of some failing on the part of the FtT. Thus an error of law may be found to have occurred in circumstances where some material evidence, through no fault of the FtT, was not considered, with resulting unfairness (*E & R v Secretary of State for the Home Department* [2004] EWCA Civ 49).”

7. As for the second limb of the Appellant's case, the claimed fear of the Afghan authorities, this was a factual issue that required discrete findings. The Appellant had produced evidence – in oral and documentary form – that he is wanted by the Afghan authorities who suspect him of membership of the Taliban. That could be true regardless of whether the Appellant was ever given taster sessions by the Taliban in Baghlan. The failure to make those findings was a further material error.
8. In the circumstances the parties agreed that the most appropriate forum for the remaking of this decision would be the First-tier Tribunal where an ‘in person’ hearing can take place with an interpreter, and the original documents produced.

Anonymity Order

9. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decision and Directions

10. The decision of the First-tier Tribunal is flawed for material error of law and it is set aside.

11. The decision in the appeal is to be remade in the First-tier Tribunal following a fresh hearing before a Judge other than Judge Buckwell.
12. There is an order for anonymity.

Upper Tribunal Judge Bruce
9th September 2020