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Heard at Field House

HS (Assessment of risk –
Standard of proof) Afghanistan
[2003] UKIAT 00122

On 12 September 2003
Prepared 12 September 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.30 October 2003

Before:

Mr H J E Latter (Chairman)
Mr P Rogers, JP
Mr N Kumar, JP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

RESPONDENT

Representation

For the appellant: Ms R Dumbavin, Home Office Presenting Officer
For the respondent: Miss Bayati of Counsel, instructed by Salmons,
Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals against the determination of an Adjudicator (Monica J Pirotta) who allowed the respondent's appeal against the decision made on 7 January 2003 giving directions for his removal as an illegal entrant. In this determination the Tribunal will refer to the respondent to this appeal as the applicant.
2. The applicant arrived in the United Kingdom on 23 October 2002 claiming asylum on 8 November 2002. He claimed that he left Afghanistan via Pakistan spending some time in Pakistan, Khazakstan, Dubai and a number of other unknown countries. He made a clandestine entry to the United Kingdom by boat.

3. The appellant was born in 1962 in Pasheet, Kunar Province. He worked as a doctor during the Communist regime but moved to Nangarhar when the Mujahidin took power. His problems began in March 2002 when his father and four others were killed, so the applicant says, by the authorities led by the Governor of Kunar Province. His father was a village leader and had participated in the selection process for the Loya Jirga but found himself in opposition to the governor.
4. When the applicant's father was killed he suspected that this was the responsibility of the Governor of Kunar. He went to make a complaint to the authorities in Kabul at the offices of the central Government. He was the victim of an attack in Kabul when he was shot at by men in a car. After he returned home he was woken up by the noise of a car stopping outside. He saw a Datsun pickup truck and decided to leave by climbing over into a neighbour's property. Armed men searched his house, assaulting his wife and making threats that they would find and kill the applicant. He then took his family to Kama for safety. Arrangements were made for the applicant to leave via Pakistan where he spent three weeks.
5. The Secretary of State refused the claim for the reasons set out in his decision letter dated 6 January 2003. The Adjudicator heard the appeal against this decision on 15 April 2003. The Adjudicator has set out her findings of credibility and fact in paragraphs 23-26 of her determination. She accepted that his account demonstrated that the applicant was at risk of persecution. Local warlords and governors superficially complied with the interim administration but had vendettas and power struggles of their own and used violence against opponents. The applicant had been targeted but only because of his connection with his late father. She was satisfied that he would be perceived to be opposed to the Kabul administration because reporting to the authorities the murder of his father by one of their own members. The incidents described by the appellant were not referable to any other vendetta and only arose after he reported the murder. In these circumstances he had demonstrated his case to the lower standard of proof. The Adjudicator found his evidence to be credible and consistent with the objective evidence. She was satisfied that he was liable to be persecuted because of his perceived or actual political opinion. Although the security situation had improved in Kabul since April 2002, in the regions there was still danger for certain individuals and significant danger for the applicant. The appeal was allowed on both asylum and human rights grounds.
6. The Secretary of State appeals on the ground that the Adjudicator's assessment of the risk on return is based on speculation. She had accepted that there were two attacks, one in Kabul and the second in Kunar. The assailants were unknown. The applicant's fears were based on suspicions. The Adjudicator had not applied the correct

standard of proof and had erred in law. It is also argued that the Adjudicator was wrong to draw an inference that these events were attributable to a fear of persecution for a Convention reason. She failed to consider that he may have been a victim of random attacks or a victim of criminal attacks. The Adjudicator was also wrong to state in paragraph 14 that the applicant had reported his father's death 40 days after the murder, whereas his uncontested evidence was that the report was some three months after the murder.

7. Ms Dunbavin adopted these grounds in her submissions. She submitted that the Adjudicator had not explained why the applicant would be at real risk on return. The fact that two attacks had taken place did not necessarily indicate a well-founded fear of persecution. She had failed to consider whether these were random attacks. In any event the Adjudicator's conclusions were based upon a misapprehension as to the facts. In paragraph 12 of her determination she referred to Nangarhar as a district of Kabul whereas in fact it was a separate Province. There was a major error as to the time of reporting his father's death. It was reported some two to three months after the murder, not after 40 days which was the initial period of mourning.
8. Miss Bayati accepted that there were these errors of fact but argued that they did not affect the Adjudicator's conclusions. There was a proper evidential basis for the Adjudicator's findings. It was for her to assess what the likely cause of the subsequent attacks on the applicant were. He had not only been attacked in Kabul but also on return his home area. The Adjudicator was entitled to rely on the applicant's evidence that Datsun pickup trucks were vehicles used by the governor. He had also said that he knew the men who attacked his home were associated with the governor because of their regional accents.
9. The Tribunal are not satisfied that the factual errors in the Adjudicator's determination undermine her findings or conclusions. In paragraph 12 she described Nangarhar as a district of Kabul. In all likelihood this was a simple error or misunderstanding. The fact remained that the Adjudicator accepted that there were two incidents: one in Kabul and one at the applicant's home. The Tribunal attach little weight to the Adjudicator's finding that the incident only arose after he made the report to the government 40 days after the murder. This was the period of mourning as the Adjudicator appreciated: see paragraph 22 of her determination. The precise timing of the report has no material bearing on the inferences to be drawn from subsequent events. Discrepancies of this nature may be relevant to the assessment of credibility but in this case there is no dispute between the parties that the applicant's evidence was that he reported the death of his father some two to three months later rather than 40 days later.
10. The Secretary of State argues that the Adjudicator's findings are based upon speculation or were not properly open to her on the evidence.

She accepted that following the report of his father's murder the applicant had been the victim of an attack in Kabul and subsequently an attack after he returned home. In evaluating the reasons for these attacks, the Adjudicator was entitled to take into account the applicant's evidence that he had no quarrel with any other group or individual and his evidence that Datsun trucks were the type of vehicle used by the governor or those acting on his behalf. It is of course possible that the applicant was the victim of random or criminal attacks, but it was the applicant's belief that the attacks were related to his father's death. This was an issue of fact for the Adjudicator to resolve on the evidence, bearing in mind the low standard of proof. The Tribunal are satisfied that the Adjudicator's findings were properly open to her on the evidence. It cannot be said, in the light of the objective evidence and the applicant's own oral evidence, that her findings were based on speculation or were otherwise not properly sustainable.

11. It follows from the Adjudicator's findings that she was entitled to conclude that the applicant would be at risk of persecution on return or a breach of his protected rights under Article 3. The Tribunal are not satisfied that there is any basis which would entitle us to interfere with the Adjudicator's findings and conclusions.
12. The appeal by the Secretary of State is dismissed.

H J E Latter
Vice President