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Heard at Field House

AS (Sufficiency of Protection
- Kabul) Afghanistan [2003]
UKIAT 00088

On 3 September 2003

IMMIGRATION APPEAL TRIBUNAL

notified: Date Determination
30/09/2003

Before
:

Mr J R A Fox (Chairman)
Mr R Baines, JP

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a citizen of Afghanistan, has been given leave to appeal against the determination of an Adjudicator, Mr C J Hanson, dismissing his appeal against the refusal of the respondent to grant him asylum and his claim under the Human Rights Act.
2. At the hearing the appellant was represented by Mr G Knight of Counsel and the respondent by Mr L Parker of the Home Office.
3. The history of the matter is that the appellant was born in Afghanistan on 14 October 1974. He claims to have entered the United Kingdom concealed in the back of a lorry on 28 October 2002 and claimed asylum on that day. He was interviewed on 9 November 2002. He completed an SEF form on 8 November 2002 and he was interviewed on 16 November

2002 and made a statement which was recorded. The respondent then considered his claim and refused the same and the reasons for refusal are set out in a letter dated 17 December 2002. The appellant appealed and his appeal was heard by an Adjudicator who, in a determination promulgated on 3 April 2003, dismissed his asylum and human rights claims. The appellant appealed. Leave was only given in relation to one ground of appeal which was as follows:

“The Adjudicator has erred in upholding the decision of the Secretary of State refusing the appellant’s application for asylum. The Adjudicator, in paragraph 50(f) stated that the CIPU report corroborates that fact that many ex-Taliban members were detained by the Northern Alliance and that some still remain in captivity, especially Pashtuns. They have been subjected to ill-treatment in questioning and kept in unpleasant conditions. It is therefore acknowledged that despite the CIPU report outlined by him, he upheld the Home Office refusal and illustrated that within his determination he was not being impartial.”

4. The basis of his claim was that he feared to return to Afghanistan because he feared the current government and the Northern Alliance because of his political opinions. He claimed that he would be arrested, detained, ill-treated or killed by the current government as he was suspected of involvement with the Taliban. He also claimed that he was a member of Hizb-i-Islami Hikmatyar Party and that his father was a commander in that party and fought for the party. He also claimed that his father was forced to join the Taliban and made a commander and fought for five years in Tora Bora. He also claimed that he had been arrested, detained and ill-treated by the current government in Afghanistan for three months and 10 days in 2002 as he was the son of a commander in the Taliban. He also claimed that the current government came to arrest his father but he escaped and that he would be arrested, detained and ill-treated or killed by the current government because he was a member of Hizb-i-Islami.
5. The Adjudicator found that the appellant was of no interest to the authorities and that he could be returned to Afghanistan and that there will be no breach of his human rights if he was so returned. He also found that there was a sufficiency of state protection in Kabul that he would be able to live in the city free from the instability that exists in the other parts of the country.

6. At the hearing the Tribunal heard submissions from Mr Knight who produced an Amnesty International report entitled "Afghanistan Out of Sight Out of Mind the Fate of the Afghan Returnees". He directed our attention to the relevant parts of that report which challenged the Adjudicator's findings and the findings made in the CIPU. He also directed our attention to the UNHCR report which does not promote forced returns. He submitted that it was unsafe to return a former member of the Taliban to Kabul, that the remaining areas of the country were unsafe.
7. Mr Parker submitted to us that the Adjudicator had doubted the level of importance of the appellant in the Taliban. He had no one under his command.
8. He also directed our attention to the relevant parts of the CIPU report which deal with the submissions that had been made on behalf of the appellant.
9. He requested that we dismiss the appeal.
10. We heard a further submission from Mr Knight in relation to the Adjudicator's finding relating to the status of the appellant's father as a commander. He submitted that the Adjudicator's approach had been flawed. We heard a brief submission from Mr Parker by way of reply.
11. In this appeal the issue before us is whether it is safe to return this particular appellant, whether he can internally relocate in Kabul. The test is whether it is unduly harsh. The burden of proof whether it is reasonably likely, namely that the test as set out in Sivakumaran and the majority decision in Kajac.
12. The Amnesty International report was prepared in April 2003. It states that urban areas, including Kabul, cannot be considered sufficiently secure or stable to satisfy requirements of return in safety and dignity. It goes on to record that in recent months the capital city has been witness to armed attacks on the International Security Assistance Force (ISAF) soldiers and compounds, bomb attacks, rocket attacks and attacks against international non-governmental organisations, and NGO personnel. On 7 June 2003 four German ISAF soldiers and one Afghan civilian were killed and a large number of people were injured when a car bomb exploded near a bus transporting ISAF soldiers to Kabul airport. It also states that the criminal justice system remains extremely weak and unable to effectively protect basic human rights, particularly in areas outside Kabul. The police lack professional skills and are often unable to work effectively due

to the shortage of resources and local control of armed groups.

13. It does record the UNHCR view; it promotes voluntary repatriation when a careful assessment of the situation shows that the conditions of safety and dignity can be met. In other words, when it appears that objectively it is safe for most refugees to return and that such returns have good prospects of being durable.
14. At paragraph 7.21 the report states that it believes that Afghanistan is not a country which has crossed over into a post-conflict situation and therefore is one to which most refugee and IDP returns should be considered unsustainable.
15. The report later records that the security situation in Afghanistan has steadily deteriorated in 2003 and gives examples.
16. It goes on to state that the insecurity is as prevalent in the urban centres of Afghanistan as it is in the countryside as the pace of reconstruction in Afghanistan slows and the living conditions of most ordinary Afghans fail to improve, many returning to extremist forces such a revitalised Taliban now active in the south east and east to express their disappointment in the present administration and its foreign backers.
17. In particular states at paragraph 7.24:

“While Kabul has achieved some measure of security in the last few months relative to the rest of the country, there are still areas of the city such as in western Kabul where security is precarious. ISAF comprising 4,800 soldiers and based exclusively in Kabul is to provide some measure of security to Kabul’s inhabitants, but this is largely the result of the ISAF effect, where the mere presence of international soldiers is sufficient to deter some crime and lawlessness. The ISAF is mandated to intervene on behalf of the government and to help the government ensure law and order in Kabul.”

It points out that ISAF is not a peacekeeping force and has no mandate to intervene in relation to human rights violations without a request from the government. Consequently police harassment and excessive use of force against civilians, violence against unaccompanied and destitute women and petty crimes do not come within the ISAF’s remit.

18. The respondent challenges that view. In the CIPU, at paragraph 5.42, it records that ISAF reported in late April 2002 that the security situation in Kabul had improved significantly since their arrival. According to the ISAF ongoing statistical analysis, crime rates have decreased across the city by as much as 70%. ISAF reported that the general population of Kabul welcomes the security and confidence that ISAF brings, with some 89% of respondents saying that they are happy with the presence of the force. There were a few low level incidents involving ISAF patrols which ISAF associated with increased patrolling activity, especially in the hours of darkness in the more lawless areas of the city. ISAF will continue to improve the security situation in these areas. In late May 2002 further evidence of improvement in the security situation in Kabul was provided, night time curfew hours were reduced so that the curfew only ran from 2300 hours until 0400 in the morning.
19. At paragraph 5.43 the Danish Fact-Finding Mission to Kabul in May 2002 reported that the security situation in Kabul was generally good, although in certain areas (particularly districts 5, 6 and 7) civilian safety was poor. Crime in these areas was mainly directed against the wealthy. Some politically motivated crime was also reported but thought to be in connection with the selection process for the Loya Jirga still under way at the time of the visit. The Director of the Danish Committee for Aid to Refugees (DACCAAR) did not believe there was any ethnically motivated violence in Kabul. The Deputy Chief of Police in Kabul stated there were no security problems in Kabul. He attributed the crime rate to economic problems. In September 2002 during a Danish Fact Finding Mission to Afghanistan most sources stated that the presence of International Peacekeeping Troops in Kabul had the effect of ensuring good security in the capital. UNAMA also finds that the presence of ISAF in Kabul has improved security and limited intimidation. According to the Cooperation Centre of Afghanistan the situation in Kabul is generally good, there is no harassment or political arrests.
20. At paragraph 5.45 the security situation is also covered in the Secretary General to the UN Security Council's report dated 11 July 2002 (covering the period from 18 March 2002). He reported that in Kabul the ISAF has continued to have a very positive impact on security in conjunction with the Afghan police and other domestic security forces. However, security in Afghanistan remains a cause for concern. In addition to actions by ex-Taliban and Al Qa'ida armed factions nominally support the bomb process continue to pose a threat to the consolidation of peace and civil governments in the country.

Particularly in the north, rivalry between the Jumbesh and Jamiat factions has prevented the establishment of effective security in Masar City. The Secretary General also reported that in the weeks prior to the report a number of armed attacks and robberies took place against international agencies. At the time of his report no credible measures had been taken to address the security problems.

21. At paragraph 6.56 it states that Pashtuns are the largest single ethnic group constituting some 38% of the population. They are Sunni Muslims living mainly in the east and south of the country adjacent to Pakistan.
22. It also records that there is a long tradition of mobility among the Pashtuns who live in the north and west of the province. It goes on to record that others were merchants or businessmen with interests in Kabul, Kandahar and Jelalabad, Afghanistan and Peshawar in Pakistan who move regularly between the two countries.
23. In a carefully prepared determination, the Adjudicator found that the appellant was a farmer in Afghanistan. He last lived in the Province of Nangahar, which is a province in which the city of Jelalabad is to be found.
24. As already stated, he claimed that he and his father were suspected supporters of the Taliban and claimed that they had been made to support them by force. He stated that he had been arrested and detained for three months and 10 days by the Northern Alliance as a result of their suspicions he had assisted the Taliban.
25. He also claimed that after he had been released and he was at his aunt's house when four pick-up trucks full of people came to the house to arrest his father. The appellant claimed that his father escaped and that a neighbour advised the appellant that the people who had come to arrest his father were also asking for the appellant, and he left. He moved to his uncle's house where he remained for 16 days.
26. He also claims to be a member of Hezb-i-Islami Hikmatar in 1990.
27. Other matters that the appellant was that his father was a commander.
28. The appellant gave confusing evidence in relation to his arrest by the Northern Alliance and the claimed arrest of his father. In evidence to the Adjudicator he said his father had never

been arrested by the Northern Alliance. He also claimed that his father was a famous commander. At paragraph 50 of the determination the Adjudicator makes his findings in relation to claims made by the appellant. He did not accept the appellant's contention that his father was a high profile commander.

29. The Adjudicator quite properly found that he would not have been released from detention if he was of interest to the authorities. He made a clear finding that the appellant was of no interest to the authorities. He found that the appellant's claim at its highest point was that he was a former Taliban member who is also a Pashtun.
30. He then set out the evidence in relation to the treatment of former Taliban members, recorded the releases that had occurred in Kabul. He also recorded that Hamid Karzai, leader of the interim administration has stated his intention to free all prisoners who held no senior position and that Taliban rank and file would not be punished. The Adjudicator finds that the claimant held no senior position in the Taliban and was at most a member of the rank and file. He also found that the appellant had not been persecuted because of his ethnicity. He made a clear finding of fact after reviewing all the objective evidence in some detail. The appellant was of no interest to the authorities and that he could be returned to Afghanistan and there would be no breach of his human rights claim.
31. It is clear from the objective evidence set out in the CIPU applying the Horvath test, it would not be unduly harsh to return the appellant to Kabul, that there is a sufficiency of protection and there is no error of law in relation to that finding made by the Adjudicator.
32. Accordingly, applying the guidance given by the Court of Appeal in Oleed, as there is no error of law in the determination and nor can it be said to be perverse, that this appeal must fail.
33. The appeal is therefore dismissed.

J R A Fox
Vice President