



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

Appeal Number: AA/06845/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham Centre City  
Tower  
On 15 June 2015**

**Decision and Reasons  
Promulgated  
On 3 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE PITT  
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**AZ**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Masih, instructed by Braitch Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Afghanistan and was born in 1995.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify

the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

3. This appeal is against the decision promulgated on 23 October 2014 of First-tier Tribunal Judge Parkes which refused the appellant's asylum and human rights appeal.
4. The background to this matter is that the appellant came to the UK in November 2009 as a minor and claimed asylum. His claim was that he was from an area near Kabul and that his father had become of adverse interest to the Taliban. The appellant did not know whether this was because his father was in the Taliban, something he heard people say, or because he worked for the government. The Taliban had come to the family home and beaten his father, on the first occasion taking him away overnight. When they came on other occasions his father was not there.
5. In approximately 2008 the appellant's father was seriously hurt in a bomb explosion and taken to hospital where he remained for an extended period, the appellant visiting him there. After his father had been injured the Taliban came again to the family home and this time beat and threatened the appellant's mother. They warned her not to send the appellant away as they wanted to recruit him. The appellant's mother immediately sent the appellant out of Afghanistan with the assistance of one of her brothers.
6. The appellant then came to the UK where he claimed asylum and was assisted by Social Services and a foster family. He also made contact with his paternal uncle who, after coming to the UK, had become a British citizen. The appellant eventually went to live with his paternal uncle.
7. The appellant's initial asylum claim was refused on 13 April 2010. He did not appeal the refusal. At the same time he was granted discretionary leave as an unaccompanied minor until 20 September 2012.
8. The appellant applied in time to extend that leave on asylum and human rights grounds. In his witness statement dated 28 August 2012 in support of that application he stated that he had not had contact with his family, did not know where they were and still feared the Taliban. He had asked his social worker to assist him to contact the Red Cross but heard nothing further. Commenting on the earlier refusal of his claim, he indicated did not know exactly what his father did or why the Taliban released his father after taking him over night as they were not close.

9. The application was refused on 26 August 2014 and it is that decision that has led to these proceedings.
10. By the time that the appeal came before Judge Parkes, the evidence had moved on and there were new events that had not been put to the respondent so were not covered in the refusal letter.
11. The appellant submitted a witness statement dated 2 October 2014. In that statement he explained that since the refusal of 26 August 2014 his paternal uncle had told him about significant events in Afghanistan that had previously been kept from him. His uncle told him that in approximately October 2012 family in Afghanistan had informed the uncle that the appellant's father and brother had been killed by the Taliban. The uncle had also informed the appellant that on receiving this news he had travelled to Afghanistan. He met the appellant's mother and sister who told him that after the appellant left the family had moved to Loghar. It was after that move that the appellant's father and brother had been killed by the Taliban. Whilst the uncle was in Afghanistan, the appellant's mother and sister moved to Budkhak in Kabul. The uncle returned to the UK in March 2013 but did not tell the appellant anything of who he had met or of the death of his father and brother.
12. The appellant's witness statement of 2 October 2014 also indicated that he only learned after the refusal of August 2014 that his paternal uncle had travelled again to Afghanistan in December 2013, returning in April 2014. His uncle had told him that during the second visit the appellant's mother had refused to see him as the paternal family had not tried to avenge the death of the appellant's father and his brother.
13. The appellant also indicated in his witness statement dated 2 October 2014 that he had spoken to his mother on one occasion and she talked to him about the death of his father and brother. She was distraught and warned him not to return. She told him that his father was a spy for the government, reporting on Taliban activities and that was why he had been killed. His mother told him that his younger brother had been killed trying to protect his father.
14. The appellant's paternal uncle set out the same information in his own witness statement dated 2 October 2014. He confirmed that he had learned in 2012 what had happened to the appellant's family, specifically the deaths of his father and brother. He confirmed that he visited the appellant's mother and sister in 2012, had tried to visit them in 2014 but had not told the appellant anything of these matters until after the refusal of 26 August 2014.
15. As Judge Parkes records at [7], the appellant and his uncle gave evidence at the First-tier Tribunal hearing.

16. The appellant's first ground is that the First-tier Tribunal failed to take into account material parts of the appellant's claim, specifically the new evidence concerning the death of his father and brother.
17. We found that this ground had merit. As the permission judge indicated, brevity is a virtue but here the appellant has no indication of what the First-tier Tribunal made of the evidence both he and uncle gave concerning the clearly potentially material matter of death of his father and brother at the hands of the Taliban. Judge Parkes does not refer to this aspect of the claim at all. There is no summary of the appellant's account that might indicate that the judge was aware of the later evidence. At [7] he refers to the appellant's response to refusal of 26 August 2014 being contained the appeal bundle but there is nothing further to suggest that he was astute to the new matters in the 2 October 2014 statements.
18. Indeed, at [13], the First-tier Tribunal judge states, referring to the incident when the Taliban beat the appellant's mother:

"If this attack were true it would have highlighted the interest of the Taliban in the family as it would be clear that not only was his father was (sic) of interest. However, only the Appellant was sent to safety. In the absence of the Appellant it is not clear why the Appellant's brother would not in due course become of interest to the Taliban or why they might be expected to leave the family, including the father, alone."
19. It will be clear that the appellant's new evidence went directly to this point, his case before Judge Parkes being that his father and brother became of fatal interest to the Taliban after he left Afghanistan. The comments at [13] suggested to us that Judge Parkes had not taken account the later evidence.
20. There is also the comment at [16] that when the appellant had spoken to his mother on the telephone "it did not appear that they had much of a conversation". As above, it was the appellant's evidence in his 2 October 2014 witness statement that he and his mother discussed the death of his father and brother and that his mother was very distressed, warning him not to return. We found it difficult to reconcile this with the comment that they did not have "much of a conversation". The adverse view of the limited telephone conversation then feeds in to a finding at [17] that the appellant had not been truthful about the amount of contact he had with his family in Afghanistan. We also noted that the question of the appellant's limited contact with the family in Afghanistan was another point on which his evidence was supported by his uncle but that evidence not addressed at any point by Judge Parkes.
21. It was our conclusion that an error of law arose from the failure to show that material aspects of the appellant's account and his later

witness statement and that of his paternal uncle had been taken into account. It was also our view that it was possible that the conclusions on credibility and risk on return could have been different and the appeal allowed had those parts of the evidence been taken into account and that the decision therefore could not stand and would have to be remade.

22. Where the error goes to the heart of the credibility findings, following paragraph 7.2 (b) of Part 3 of the Senior President's Practice Statement dated 25 September 2012, it was our view that the nature of the fact finding that will have to take place if an error of law is found is such that it is appropriate to remit the appeal to the First-tier Tribunal to be re-made *de novo*.
23. The appellant's second ground concerned the expert report of Dr Giustozzi dated 11 October 2014. We did not find that this had merit where, quite properly, Dr Giustozzi does not comment on credibility. Although it is a little odd that he appears to seek to do so at [19], this is not material where there was nothing for the First-tier Tribunal judge to disagree with or distinguish regarding the credibility of the appellant.
24. Dr Giustozzi does comment at [5] on Taliban retribution against spies and [7] the Taliban being active in Loghar. In so far as they are relevant to the new evidence on the death of the appellant's father and brother, these did fall to be considered by the First-tier Tribunal judge and will have to be so considered as part of the overall credibility assessment that is to be remade.
25. The third ground argues that the First-tier Tribunal was incorrect in placing negative weight on the failure to appeal the 2010 refusal of the appellant's original asylum claim. Judge Parkes states at [8] that "the fact that he [the appellant] was content to leave matters as they stood and to remain in the UK on the more limited basis does not assist his case."
26. We were not entirely sure if that statement showed that a negative inference had been drawn from the failure to appeal the first decision. On balance, we did find that it suggested that the later claim was found to be undermined to some degree by the failure to appeal and that was not a permissible approach, where the appellant was a minor aged 15 at the time of the first refusal, had come relatively recently to the UK and was presumably taking advice from his solicitors and/or others.
27. We should indicate that we were grateful for Ms Masih's indication at the outset of her submission that the allegation of bias in the grounds of appeal was entirely misconceived and not pursued before us.

## Decision

28. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
29. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

Signed   
Upper Tribunal Judge Pitt

Date 23 July 2015