



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

Appeal Number: AA /07147/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19 January 2015**

**Determination Promulgated
On 13 February 2015**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

AS
(ANONYMITY ORDER CONTINUED)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant:

Ms. E. Darkin, of Counsel, instructed by Duncan Lewis & Co Solicitors.

For the Respondent:

Mr. E. Tufan, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant, a national of Afghanistan, has been granted permission to appeal the determination of Judge of the First-tier Tribunal Pirotta who, following a hearing on 22 October 2014, dismissed his appeal on asylum, human rights and humanitarian protection grounds against a decision of the respondent of 4 September 2014 to remove him from the United Kingdom having refused his asylum claim for reasons given in a letter dated 3 September 2014.
2. At the hearing, Mr. Tufan accepted that the judge had made the following errors of law:
 - i) At [19] of the determination, the judge had erred by ignoring the background material when she said that the appellant's evidence of the delivery of the night letters was not credible.

- ii) In the first sentence of [21], she had erred by misapprehending the appellant's evidence when she said his evidence was inconsistent. She had misapprehended his evidence, in that his evidence was that the attack had taken place on 24 February 2014, the date of the third night letter.
 - iii) At [32], the judge had erred in stating that it was not credible that the Taliban would have sent the applicant night letters. Mr. Tufan accepted that the judge had overlooked the background material in this respect.
3. However, Mr. Tufan did not accept that the judge had erred in her treatment of the intelligence report. The judge dealt with this report at [25] where she referred to it as a police report. She considered it lacking in credibility that the appellant had made a complaint to the police given his evidence that he had not made a complaint because he was afraid that the police were complicit with the Taliban. She did not find it credible that the applicant would have provided his new address to the police if he had believed that they were Taliban members or informants.
4. The English translation of the intelligence report is at A117 and A119. Although A117 is a report compiled by an officer of the "*Intelligent Department of Langhman Province*", A119 (which is also part of the report) is the application made by the appellant. It is addressed: "*To the Honourable Directorate of General Intelligence of the Police*". I therefore agree with Mr. Tufan that the judge did not err in her reasoning at [25].
5. In addition, Mr. Tufan did not accept that the judge erred at [28] in taking into account, against the appellant's credibility, that the Taliban had not shown any interest "*in his brother-in-law, whose details appeared in the documents and whose family, also related to the appellant, lived in Pakistan, though he is British*". The grounds contend that the judge had erred in that she had failed to take into account the fact that the appellant's brother-in-law did not have conduct of the business and did not attend military bases. Mr. Tufan submitted that the Taliban would not differentiate between the appellant and his brother-in-law on this basis. I agree with Mr. Tufan that the judge's reasoning was open to her on the evidence, for the reason given by Mr. Tufan.
6. Mr. Tufan submitted that the errors that I have summarised at my para 2 above are not material. I do not agree. I cannot say that the judge would inevitably have taken an adverse view of the appellant's credibility if she had not made these errors. Furthermore, if she had not made these errors, she might have accepted his evidence that, after he had left his home area and gone to Kabul, he received a telephone call from the Taliban informing him that they knew where he was and that he ought to surrender to them. The credibility of this evidence was relevant to an assessment of the safety of relocation to Kabul.
7. Accordingly, I have concluded that the judge's determination must be set aside and the decision on the appellant's appeal be re-made on the merits by another Judge of the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that it falls to be set aside in its entirety. This case is remitted to the First-tier Tribunal for the decision on the appellant's appeal to be re-made by a Judge of the First-tier Tribunal other than Judge Pirodda.

Signed

Date: 11 February 2015

Upper Tribunal Judge Gill