



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01882/2013

THE IMMIGRATION ACTS

Heard at Nottingham Magistrates' Court
On 17th November 2015

Decision & Reasons Promulgated
On 4th February 2016

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SAJJAD AHMEDZAI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hussain, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr Diwncyz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Sajjad Ahmedzai, was born on 1 May 1973 and is a male citizen of Afghanistan. The appellant appealed against a decision of the respondent to make an automatic deportation order in respect of him as a result of convictions in 2012 for a number of sexual offences relating to minors for which he received (following an appeal) five years' imprisonment. The deportation order was signed as long ago as 6 September 2013; there have been a number of adjournments in these proceedings to allow the appellant time to submit further evidence. His appeal was dismissed by

the First-tier Tribunal (Judge Shanahan / Mrs Bray JP) in a decision promulgated on 8 April 2015. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds may be summarised by reference to the grant of permission (Upper Tribunal Judge Lindsley) at [3]:

The grounds contend that the First-tier Tribunal erred in law in their failure to treat the expert evidence of Dr Fatah appropriately, given he is accepted as an appropriate expert witness and provides an opinion that the arrest warrant for the appellant on terrorist charges is genuine. It is argued that there is a failure to apply the correct lower standard of proof applicable in asylum claims in finding in this context that the warrant did not show the appellant was at risk of treatment contrary to Article 3 ECHR if returned to Afghanistan, see paragraphs 40 – 48 of the decision.

3. The Tribunal indicated [40] that they would start their consideration of the evidence by looking at Dr Fatah's report. The Tribunal acknowledged that he was "an expert in his field." The Tribunal noted that Dr Fatah's first report indicated that he had seen only a copy rather than an original arrest warrant document that he had subsequently amended his report having examined the original. The Tribunal quoted Dr Fatah's comment that, "no one can confirm the authenticity of documents issued by an insurgent group or other bodies in Afghanistan beyond doubt. It should be clear that as an expert I do not pass judgments only give opinions." Dr Fatah had noted "no discrepancies" which would lead him to conclude that the document was other than genuine. The Tribunal noted [42] that in his report Dr Fatah had been unable to explain "why on the back of the document there is an English/European script visible in indentation." The Tribunal then proceeded at [43 – 48] to give detailed reasons for rejecting the authenticity of the arrest warrant. The Tribunal noted that the appellant's friend, J, who had obtained the arrest warrant document had failed to attend the hearing despite being resident in the United Kingdom. His evidence had not been tested by cross-examination. The Tribunal then set out in some detail J's account of having obtained the document through contacts in the Afghani authorities and with the assistance of J's wife who had reportedly visited Islamabad for a tuberculosis test at the time of which he had handed the document to the appellant's friend. The document had been obtained through the agency of a relative of J. The Tribunal noted [44] that there was very little specific evidence as regards dates and there was no "rational explanation" for the fact that the appellant had left Afghanistan in 2007 and yet the document had been dated September 2013; it made no sense that the appellant would have been the subject of such a warrant so many years after he had left Afghanistan. Although the document refers to the appellant being a member of the Taliban it made no reference to the appellant's claim that he had assisted the Taliban in driving a suicide bomber. The Tribunal recorded that the appellant was unable to "provide explanations for these concerns."
4. It is clear that the Tribunal took pains to consider in detail the appellant's account of how the document had come into the appellant's possession. The Tribunal properly considered that account in the context of all the evidence (*Tanveer Ahmed (2002) UKIAT 00439**) The Tribunal also applied the principles of *Devaseelan* [2002] UKIAT 00702, having given their own anxious scrutiny to the appellant's account, and

decided that the findings of the judge who dismissed the appellant's appeal in 2011 remained valid. The Tribunal found "no basis upon which to depart from them." [51]

5. I find that the grounds of appeal have no merit. As I have explained above, the Tribunal reached an outcome which was plainly available to it on the evidence and it did so by rejecting the appellant's account of having obtained the document purporting to be an arrest warrant. The simple fact that the Tribunal acknowledged the expertise of Dr Fatah did not mean that it had to accept each of his observations without further scrutiny. As Dr Fatah himself acknowledged, he was only able to offer an opinion and not provide facts. There was no suggestion in this case that the Tribunal has found the appellant's account to be incredible and only then turned to consider the expert report. On the contrary, they considered the expert report at the outset of and as an integral part of its analysis (*Mibanga (2005) EWCA Civ 367*) and not as some afterthought. I can identify no errors of law in the Tribunal's thorough analysis either for the reasons asserted in the grounds of appeal or at all. The appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 20 December 2015

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 December 2015

Upper Tribunal Judge Clive Lane