



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

Appeal Number: PA/06070/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 2<sup>nd</sup> May 2017**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**S J  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Patel, instructed by Parker Rhodes Hickmotts  
Solicitors

For the Respondent: Mr Diwncyz, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge James made following a hearing at Bradford on 10<sup>th</sup> November 2016.

**Background**

2. The appellant is a citizen of Afghanistan born on [ ] 1975. He applied for asylum in the UK on 7<sup>th</sup> December 2015 having arrived here from Pakistan in 2010, claiming that he could not return to Afghanistan because he feared the Taliban.
3. The judge did not believe him. He said that the evidence lacked credibility and he did not accept that the appellant either had a genuine subjective fear of the Taliban or that they had sought to recruit him in Peshawar which is where he had lived before he came to the UK. He said that there was no significant medical evidence which established that the appellant, who suffers from problems with his mobility, would not be able to access healthcare either in Kabul or in Peshawar.
4. While the appellant may not have lived in Afghanistan since he was a boy he had been living in Pakistan which had a significant Afghan refugee population. He then wrote as follows:

“Finally I have considered whether the appellant is an Afghan national or a Pakistan national. On balance I am satisfied that he is a displaced Afghan national. However for the reasons provided above I would dismiss his appeal in either case.”

### **The Grounds of Application**

5. The appellant sought permission to appeal on a number of grounds challenging the judge’s assessment of credibility in relation to Section 8 of the 2004 Act and arguing that the judge had failed to have regard to relevant evidence when considering whether the appellant could be returned to Kabul.
6. Permission to appeal was granted by Judge Grant on 23<sup>rd</sup> February 2017.
7. On 10<sup>th</sup> March 2017 the Respondent served a reply defending the determination.

### **Consideration of Whether there is an Error of Law**

8. I am satisfied that the judge did not properly engage with the evidence before him in considering whether the appellant could reasonably be returned to Kabul. No findings of fact were made in relation to his claim that he has not lived there since the age of 5 and has no family there. This is particularly important in the appellant’s case since it is clear that he suffers from significant medical issues which limit his ability to find work.
9. There is no merit in the Section 8 challenge. The judge was plainly entitled to take as his starting point the appellant’s failure to claim asylum for five years after his arrival in the UK as damaging his credibility. The judge’s findings in respect of the appellant’s claimed fear of the Taliban will stand.

10. The sole issue at the resumed hearing will be whether the appellant faces conditions in Kabul such as to engage Article 15(c) of the Qualification Directive.
11. The appellant must serve a fresh bundle of all of the evidence upon which he intends to rely, including updated medical evidence, seven days before the hearing which is fixed for 10<sup>th</sup> July 2017. An Afghani Pushtu interpreter is required.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

*Deborah Taylor*

Signed

Date 11 May 2017

Deputy Upper Tribunal Judge Taylor