



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

Appeal Number: PA/10178/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 March 2019**

**Decision & Reasons  
Promulgated  
On 15 April 2019**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**R D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Fazli, Counsel instructed by Sohaib Fatimi, Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant seeks international protection. Generally people seeking protection are entitled to privacy and because publicity could create a risk to his safety.
2. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the Secretary of State, refusing him leave to remain as a refugee, humanitarian protection and leave on human rights grounds.
3. The appellant is a citizen of Afghanistan. He was born in May 2003 and so is still only 15 years old. He has a brother who has been recognised as a refugee

and a main part of the criticism of the First-tier Tribunal's decision in this appeal is that it is said to have misdirected itself when considering the evidence relating to the appellant's brother.

4. This is a decision that can only be understood and criticised after a detailed examination of the First-tier Tribunal's decision.
5. The First-tier Tribunal noted that the appellant said that he left Kabul in about 2016 and made his way through Iran and then European countries that he could not name to France and then the United Kingdom. The basis of his claim is "that he is at risk on return from the Taliban because his family owned a butcher's shop and they supply meat to foreign forces including the Americans".
6. The First-tier Tribunal Judge heard evidence from the appellant and his brother who I identify simply as "HD" and his uncle who I identify as NN.
7. The appellant said that he was born and brought up in Kabul where he lived with his mother and father and four brothers and two sisters. His father worked as a manager in a family owned butcher's shop and supplied meat through "Oasis Company" to American, Turkish and French military camps in Afghanistan. The appellant said that his father and two elder brothers, H and N (not N N) worked in the business supplying meat to the Americans but stopped that in 2014 in response to threatening letters sent to the shop where the family worked. The appellant said that his elder brother H left Afghanistan to seek asylum in the United Kingdom. His brother N was abducted by the Taliban. As a consequence of N's abduction the appellant and his younger brother were moved to his uncle's home in a different part of Kabul where they remained for approximately twelve months. He was not aware of any problems with the Taliban during that time but arrangements were made for him to leave when he travelled to the United Kingdom. He said one of the reasons that he did not have any problems in this twelve month period is that he lived discretely remaining indoors for much of the time.
8. The appellant's elder brother H has been recognised as a refugee but he has been recognised as a refugee because he is gay and has made enemies in Afghanistan, not least amongst the relatives of his wife who has been abandoned.
9. The judge noted that the Secretary of State did not believe the appellant but decided that even if there were truth in the story the appellant's father may be of low-level interest to the Taliban and the appellant could be safe by internal relocation possibly within Kabul or possibly to another major city. The judge noted, correctly, that the main issue in the case was the appellant's credibility. The judge noted that the appellant's brother H had claimed asylum because of a fear of the Taliban and because he is gay and because he was escaping from an enforced marriage. The First-tier Tribunal Judge disbelieved the appellant's brother's claim to risk ill treatment by the Taliban because his family supplied meat to the US Forces but accepted that he was gay and would be at risk as a consequence. That is the basis for his brother being recognised as a refugee. The judge said at paragraph 32:

"By virtue of the principles in **Devaseelan**, my starting point is the judgment of FTT Judge Oxlade. The material paragraphs dealing with alleged risk on return

from the Taliban are paragraphs 41 to 46 of his decision dated 19 November 2014, which should be taken as being specifically traversed and incorporated into this decision.”

10. The First-tier Tribunal Judge then set out in full paragraphs 42 to 46 of Judge Oxlade’s decision. The paragraphs explain in some care Judge Oxlade’s reasons for disbelieving brother H’s claim about the risk from the Taliban.
11. The judge then made findings from paragraph 34 in his decision in which he said that the appellant, his uncle and his brother H gave evidence that was “conflicting and inconsistent in relation to material particulars” so that it undermined the credibility of the appellant’s claim.
12. By way of illustration the judge noted that the appellant had said in his oral evidence that his father was still supplying meat to the American Forces in 2015/2016 whereas his brother H had said in the hearing before Judge Oxlade that they had stopped supplying meat to the American Forces in April 2012 after receiving the first threatening letter from the Taliban. This finding is referenced at paragraph 42 of Judge Oxlade’s decision where that is recorded. The judge noted that before him H said in his oral evidence that his father had continued to supply meat to the Americans and that his father had not stopped supplying meat to the Americans in April 2012. However, this point was not made in the witness statement supporting the evidence and the judge found that the explanation was false. The judge noted that it was the appellant’s evidence that his father continue to supply meat to the Americans “in secret” and this continued to be the situation after H had left but he did not explain how meat could be supplied in secret or how H would have known what was happening as he had left. The judge did not believe that the appellant’s family continued to supply meat to the American Forces.
13. The judge also considered carefully the evidence of the appellant’s uncle, N. He is a British citizen having lived in the United Kingdom since 1991. He said that he went to Kabul almost every year, most recently in 2016. He said when he was last in Kabul (2016) he was told by a number of friends that the family moved “two years ago” which he explained was four years before the occasion he gave evidence. The judge noted that oral evidence was the appellant’s family left their home in 2014 but the appellant said that he was still living in the family home in Kabul in 2015 when he was required to remove to a maternal uncle’s home. The judge found this was an inconsistency that undermined the credibility of the account.
14. Additionally, N had said in oral evidence that he was told by friends that the appellant’s family had moved to Pakistan. However, although he claimed to speak to the appellant’s elder brother H every week, when H gave evidence he said that he was unaware of any suggestion the family had moved to Pakistan. It seems that this point was investigated in cross-examination because N said that he had paraphrased his evidence and said that he had assumed that the family had gone to Pakistan. The judge regarded this as a contradiction. An assumption is not the same as being told by mutual friends. He found the inconsistency undermined the credibility of the account.
15. The judge also found it unsatisfactory that N claimed in his evidence that he had not made efforts to trace the appellant’s father using links in the Afghani

community in the United Kingdom or in Afghanistan contenting himself to say that he “lost touch with them four years ago” but had also described the appellant’s father as his dearest friend. The judge felt that these did not sit well together.

16. The judge noticed that the witness H had said, in direct contradiction to the evidence of Mr N, that they were trying to trace their family through the Afghan community. The judge expressed the view that if the family were genuinely “lost” then:

“there is no rhyme or reason as to why N would not have sought to discover their whereabouts, especially because he returns to Kabul almost every day. I conclude from N’s inaction that in reality the appellant and H have not lost contact with his family. Indeed, if this was the case and the appellant and H no longer had a telephone number for uncle S, (see below), they would have asked Mr N to attend at the home of uncle S, during one of his yearly return trips to Kabul; on the appellant’s account uncle S lives merely an hour away from their home in Khushal Khan. There is no doubt in evidence they have asked Mr N to undertake this journey to see uncle S who runs an estate agency business with his sons and thus should not be difficult to locate. Thus, I am not satisfied even to the low standard of proof required, that the appellant has lost contact with his family. I conclude such testimony has been fabricated in support of a false asylum claim.”

17. The judge also found it significant that N said that he knew that H had a wife but he did not attend the wedding. He was asked about whether he was invited and he said he was in the United Kingdom implying that he could not attend the wedding. The judge found this “plainly false” because it was H’s case that he never married but was only engaged and refused to enter into the marriage because he is gay.
18. Mr N did state though that even though there was no marriage calling off the wedding, it would be shameful for the “girl’s family”.
19. The judge did not accept there was a family feud.
20. The judge found it revealing that contrary to the appellant’s claim that his father had reported the kidnapping to the police H claimed not to be aware of such a report. The judge found that H should have known if his father had made a report. Credibility was damaged.
21. The judge also found it impossible to reconcile the appellant’s claim that he had no contact with his parents during the twelve months that he lived with his paternal uncle S when it was his account that the family home and his home with uncle S were about an hour’s travel away and that “everyone” in uncle S’s home and mobile phones including the six sons. The judge could not accept that there was no working mobile phone to make contact during that time. The judge also found the appellant’s claim to be unable to contact his uncle S after he was taken into the care of an agent with the fact that the agent had a phone number to use to contact the uncle. The judge could not see why the appellant would not have his uncle’s phone number if the agent had it and he found that he had been told lies.

22. The judge then directed himself that, cumulatively, the effect of the difficulties in the evidence was to make the claim unbelievable and he dismissed the claim.

23. At paragraph 53 the judge said:

“53. The cumulatively effect of all above serious causes for concern, is such as to cause me to conclude that the Appellant has failed to submit any satisfactory evidence to establish, even to the standard of a reasonable degree of probability, that his factual account is true. In particular I am not satisfied that there is any reliable evidence to suggest that the findings of fact made by Judge Oxlade should not be relied upon. While I accept the Appellant’s, family were involved in the running of a butcher’s shop, the findings of fact made by Judge Oxlade, remain unaltered; H’s case was, as accepted by Judge Oxlade, that they stopped supplying meat in April 2012. Thus, the risk passed. The judge also found, for the reasons set out in detail in his Decision, he did not accept the Appellant’s elder brother H was targeted by the Taliban, by phone or letters. The Appellant before me, seeks to rely on the same alleged targeting by the Taliban.

54. I remind myself of the UT guidance in **Devaseelan**. My starting point is the decision of FT Judge Oxlade. I can only depart from his finding and decision if credible new evidence is provided which casts doubt on his findings. The only “new evidence” relied upon by the appellant amounts to little more than assertions by himself and H to the effect that after H left the family home, the appellant’s father carried on selling meat to the Americans. For the reasons set out above I find such assertions to lack credibility.”

24. The judge then found that he was not satisfied that the appellant’s brother N had been kidnapped or that there was any family feud or that there was for any reason a reasonable likelihood of persecution on return.

25. The grounds supporting the application for permission extend to some twelve paragraphs but I find they are well summarised by Deputy Upper Tribunal Judge Roberts when she gave permission. She said that she gave permission because:

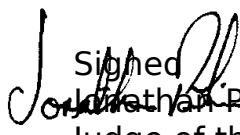
“Ground 2 has merit. It is arguable that the FTTJ has misdirected himself on the **Devaseelan** principle by treating findings made in the appellant’s brother’s appeal as determinative of the appellant’s credibility and it is arguable that the FTTJ has adopted an incorrect approach to the evidence before him by focusing more on the weight of evidence of the appellant’s brother and uncle rather than directing his attention to the evidence of the appellant himself”.

26. I have considered the case of **AS and AA (Effect of previous linked determination) Somalia [2006] UKAIT 00052**. There is a full judicial headnote which I set out below.

“The Rule that his judicial determination stands as the determination of the issue between the parties does not govern later litigation between different parties. Accordingly, when it is said that a previous determination of the claim or appeal of another claimant is of relevance in assessing a later claim by a different person: (1) the previous determination has no evidential value as such, but; (2) its narrative content is to be taken as evidence of what was said and done leading up to that determination; (3) the Tribunal determining the later case is required to make its own decision on the evidence before it; (4) no rule of general law or practice supports the argument that the decision in an earlier claim should bind or be regarded as part of the evidence in an appeal by a different person

and therefore; (5) the later Tribunal should not regard itself as bound to follow a previous decision in respect of another claimant or make a decision consistent with such a previous decision; (6) on the other hand, principles of good administration require the decision should not be needlessly divergent, so; (7) the earlier decision should be treated as a starting point, but; (8) the Tribunal will not hesitate to depart from that starting point in every case where the evidence requires it.”

27. It worried me when I first considered the papers that the First-tier Tribunal may have erred by considering itself bound by a decision not involving the appellant but involving one of the appellant’s witnesses. If that is what the judge had done the judge would almost certainly have erred materially. I am satisfied that that is clearly not what the judge did. What the judge did was consider the evidence before him and tested it against things that had been said earlier in the case of the brother H by that brother. When the judge put everything together he found the evidence entirely unpersuasive. I find the judge has in fact followed the requirement set out in **AS and AA**. They took as a starting point a decision but the judge did not did not make his own decision just because of that decision. Rather he looked at the reasons for that decision and things that were said in it before concluding for himself that the appellant’s evidence was not believable.
28. There is a point that I find needs to be addressed specifically. The appellant said that his brother’s evidence had always been misunderstood by the First-tier Tribunal but there was no avenue for remedying that because the brother had obtained the result that he wanted to obtain and could not appeal or would not wish to appeal the decision that led to his being recognised as a refugee. It is clearly right to assert that successful appellant do not, and probably cannot, appeal favourable decisions. If that is the explanation then it is an explanation that could have been set out clearly in witness statements and placed before the First-tier Tribunal Judge. It is not an error of law by the judge if that was not done.
29. In short although the layout of the determination gave proper reasons for concern when the decision is considered as a whole I find the grounds are without merit.
30. It follows there is no material error of law and I dismiss the appeal against the Secretary of State’s decision.

  
Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 12 April 2019