



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

Appeal Number: PA/00594/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 January 2020**

**Decision & Reasons Promulgated  
On 15 January 2020**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**ABDULLAH HAZARBUZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Knight, of Duncan Lewis Solicitors

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal J H L Shepherd (the judge) who, in a decision promulgated on 10 September 2019, dismissed the appellant's appeal against the respondent's decision of 15 January 2019 to refuse his protection and human rights claim.

**Background**

2. The appellant is a national of Afghanistan. His date of birth is 15 February 1988. He was born and lived in Rodat District, a district in the centre of Nangarhar Province. He is married with two children. His

immediate family as well as his four sisters and two brothers continue to reside in Afghanistan. He arrived in the UK on 8 September 2017 and claimed asylum on the same date.

3. I summarise the appellant's asylum claim. He feared Daesh (the Arab-language acronym for Islamic State of Iraq and the Levant [ISIL], also known as Islamic State [IS], and, in respect of Afghanistan, Islamic State Khorasan Province [ISKP]) in his home area because he either killed or badly injured his uncle, a commander in Daesh. The uncle's involvement with Daesh only became known to the appellant and the rest of his family some 3 months prior to his departure from the country. The appellant's father was informed by the Afghan authorities of the uncle's involvement with the organisation. At this time the uncle lived with the appellant and his family. The Afghan authorities came looking for the appellant's uncle on several occasions, but he was not at home. Eventually the uncle left the appellant's family home but returned 3 days before the appellant left Afghanistan. The uncle accused the appellant and his father of being infidels and cowards. The appellant became very angry and swore at his uncle. About 15 minutes later the uncle's wife informed the appellant's wife that the uncle had telephoned for his colleagues in Daesh to attend the home in the morning as the appellant was "the cause of the problem." The appellant was angry and went to speak to his uncle who was in his own room. The appellant grabbed a weapon that was leaning against a wall in the uncle's room and shot his uncle. The appellant ran to a road and escaped to Kabul in a taxi. He remained in Kabul for 2 days hiding at a friend's house. The friend helped the appellant find an agent during those 2 days and the appellant left Afghanistan. He travelled to Pakistan by car, then to Italy by plane. After spending 5 days in Italy he went to France where he remained for a few months before entering the UK in a lorry.
4. The respondent was not satisfied the appellant gave a coherent or credible account of events that caused him to leave Afghanistan. In her Reasons for Refusal Letter the respondent relied, *inter alia*, on inconsistencies between the information recorded in the appellant's Screening Interview and his subsequent evidence, including the appellant's knowledge as to whether his uncle died when he was shot, and the appellant's failure to mention in his Screening Interview that he feared the Afghan government, a fear he advanced in his substantive asylum interview. The appellant exercised his right of appeal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

### **The decision of the First-tier Tribunal**

5. The respondent failed to comply with directions to provide a bundle of documents for the First-tier Tribunal hearing. All relevant documents however, other than the Screening Interview, were available to the parties. The appellant was legally represented by Mr Sharma of

Counsel and a bundle of documents running to 171 pages was provided on his behalf, including his initial asylum statement dated 23 July 2018, a copy of his substantive asylum interview dated 12 September 2018 and an appeal statement dated 24 January 2019. The bundle of documents additionally included the Country Policy and Information Notes (CPIN) 'Afghanistan: Security and Humanitarian Situation' of April 2018, and 'Afghanistan: Fear of Anti-Government Elements (AGEs)' of December 2016. The judge heard oral evidence from the appellant.

6. In her decision the judge accurately set out the relevant burden and standard of proof, summarised the basis of the appellant's protection claim and the Reasons for Refusal Letter, and summarised the appellant's oral evidence.
7. The judge's assessment of credibility and findings of fact contained from [37] to [50] of her decision. At [39] the judge stated,

"I bear in mind that the record of the screening interview upon which the respondent relies in making two attacks in respect of the appellant's account, on the basis of claimed inconsistencies, was not before the Tribunal nor had been seen by either representative at the hearing. In one sense therefore it is not before me in this appeal. Nevertheless, it is not said by the appellant that the answers recorded at interview by the respondent were not in fact what was said. For example the appellant does not aver that he did mention his fear of the Afghan government in his screening interview, by way of rebuttal of the respondent's identification of its omission from the screening interview (paragraph 34, RFRL). Again in respect of the other significant discrepancy between what is said by the respondent as to the screening interview (paragraph 32, RFRL), that the appellant stated in the screening interview that his uncle had died after he had shot him (SCR.1), the appellant does not claim that that was not the answer given. I may take it therefore that the two answers upon which the respondent relies in the screening interview are taken from a record accurate of what was said at that interview. Furthermore I am not told otherwise than that the appellant and/or his representatives received a copy of the screening interview (as would be standard practice) and that no challenge was made to the contents of it at that point. Finally, Mr Sharma for the appellant at the hearing did not ask me to exclude the respondent's references to the screening interview on the grounds of irrelevance, or inadmissibility, or at all. I take it therefore that the respondent's reliance on these alleged inconsistencies are within my consideration as part of the evidence in the appeal."

8. The judge went on to identify several internal inconsistencies and implausibilities in the appellant's account. At [40] the judge detailed, at some length, the inconsistent evidence given by the appellant in his screening interview, his substantive asylum interview, his appeal statement and his oral evidence with regard to whether his uncle

died, a point acknowledged by Mr Sharma. The judge also noted that the appellant had been able to maintain contact with his family when he was in Belgium in 2010/11 in respect of an earlier asylum claim, and his claim that his parents died after he entered the UK, and found this undermined the appellant's assertion that he had no contact with anyone in Afghanistan. The judge found the appellant's account of the aftermath of the shooting implausible [44] and considered (at [45]) the appellant's immigration history (including the record of a failed attempt by the appellant to obtain entry clearance in 2009 and a failed asylum claim in Belgium and his subsequent return to Afghanistan). At [46] to [48] the judge considered the background evidence upon which the appellant relied including the December 2016 CPIN and the April 2018 CPIN in respect of his fear from Daesh. At [50] the judge stated,

"Taking what I find to be a barely credible account of the appellant to have been specifically targeted by a leading member of Daesh in his local area, together with background evidence which does not place Daesh in his district at the time at which he claims (and I am mindful of the fact that my attention has not been drawn to any of the background material by those arguing the case on the appellant's behalf), I conclude that whilst in his home area in Nangarhar province he may well have been aware that Nangarhar was one of the districts in which Daesh were attempting to infiltrate, that the background evidence does not support his claim to have been in an area where Daesh sway and where his uncle would, for example be able to call upon people to come and kill him with a simple phone call."

9. The judge concluded that the appellant did not face a well-founded fear of persecution in his home area from Daesh. In the alternative, at [52], the judge considered that the appellant could avail himself of the internal relocation alternative as the appellant had previously stayed with a friend in Kabul and that the security situation did not render it unreasonable for him to live there.
10. The judge dismissed the appeal.

### **The challenge to the judge's decision**

11. The challenge can be crystallised into three distinct grounds. The 1<sup>st</sup> ground contends that the judge misdirected herself in law by relying on information said to have been given by the appellant during his Screening Interview in circumstances where the Screening Interview had not been seen by the judge or the legal representatives. It was impermissible for the judge to rely on a document not before the Tribunal and to rely on the respondent's comments in her Refusal Letter as to the accuracy of the Screening Interview. The 2<sup>nd</sup> ground essentially contends that the judge failed to adequately engage with the background evidence relating to Daesh. The judge referred to background evidence at [48] of her decision indicating that ISIL managed to maintain a presence in southern Nangarhar, but

concluded at [50] that the background evidence did not place Daesh in the appellant's district. It was unclear, according to the grounds, how the judge reached this latter conclusion. The 3<sup>rd</sup> ground challenges the judge's assessment of the viability of the internal relocation alternative to Kabul. This ground contends that the judge failed to give adequate reasons for her findings, failed to properly consider the country guidance case of **AS (Safety of Kabul) Afghanistan CG** [2018] UKUT 00118 (IAC), and failed to consider up-to-date evidence such as the UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan issued on 30 August 2018, the EASO Country of Origin Information Report issued in May 2018, and the Human Rights Watch World Report 2019.

12. At the 'error of law' hearing Ms Jones, representing the respondent, provided a copy of the Screening Interview. Mr Knight, representing the appellant, had an opportunity to consider the Screening Interview and maintained that although the Reasons for Refusal Letter accurately recorded the information contained in the Screening Interview the judge was nevertheless not entitled to rely on information contained in a document that was not before her. Mr Knight drew my attention to 5.2 of the December 2016 CPIN which referred to an AESO report published in September 2016 identifying the districts in which Islamic State in Khorasan (ISKP, which, for present purposes, is the same as Daesh) had a firm presence, and to 7.3.5 and 7.3.6 of the April 2018 CPIN which indicated that ISIL maintained a presence in southern Nangarhar Province. Mr Knight submitted that the judge failed to consider that the appellant was a married man when assessing the internal relocation alternative.

## Discussion

13. I consider the 1<sup>st</sup> ground. It is clear from [39] of the judge's decision that she was acutely aware that the Screening Interview was not before her and the potential consequences flowing from the absence of the document. She stated that, "in one sense therefore [the Screening Interview] is not before me in this appeal." She properly noted however that the appellant had not taken issue, either in his statements or in his oral evidence, with the accuracy of the references in the Reasons for Refusal Letter to the information recorded in the Screening Interview. The judge additionally noted that the appellant's barrister did not ask her to exclude the references in the Reasons for Refusal Letter to the Screening Interview. In these circumstances, where the accuracy of the references to the Screening Interview contained in the Reasons for Refusal Letter were not disputed, the judge was entitled to rely on those extracts as being accurate. The provision of the Screening Interview at the 'error of law' hearing confirmed that the references in the Reasons for Refusal Letter were indeed accurate, both in respect of the recording that the appellant said his uncle had died and in respect of the omission of any

reference to fearing ill-treatment from the Afghan authorities. As acknowledged by Mr Knight himself, even if the judge was in error in relying on references to a document not before her, this could not have made any material difference to the particular adverse credibility inferences drawn by the judge based on information recorded in the Screening Interview. This ground is not made out.

14. I consider the 2<sup>nd</sup> ground. At [46] the judge made specific reference to the December 2016 CPIN noting, with reference to 7.3.1, that, at the time of publication, Daesh had settled in the southern district of Nangarhar, and that its main base was Achin District. According to government sources ISK (Daesh) was dealt serious blows and was expelled from Achin District. At 6.1.7 the judge referred to a SIGAR report indicating that ISIL's safe haven in Nangarhar had been greatly reduced. At [48] the judge considered the April 2018 CPIN report and made specific reference to 7.3.5 and 7.3.6 noting that ISKP remained in a handful of Nangarhari districts and that ISIL had managed to maintain a presence in southern Nangarhar despite increased military operations carried out by the USA and Afghan defence and security forces. It is apparent that the judge did engage with the background material made available to her relating to Nangarhar Province. Mr Knight relied on an extract from an EASO report published in September 2016 and contained at 5.2 of the December 2016 CPIN report, but this did not identify Rodat District, the district in which the appellant lived and which is located in central Nangarhar, as a district in which Daesh had a firm presence. Mr Knight additionally relied on 7.3.5 and 7.3.6 of the April 2018 CPIN report but these sections indicate that Daesh maintained a presence in southern Nangarhar Province and does not mention the appellant's home district of Rodat. The judge fully engaged with the background evidence made available to her and her conclusion at [50], that the background evidence did not place Daesh in the appellant's home district at the relevant time, was consistent with the information contained in both CPIN documents. This ground is not made out.
15. I now consider the 3<sup>rd</sup> ground. I note first that the bundle of documents provided by the appellant's representative for the First-tier Tribunal hearing did not contain the UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan issued on 30 August 2018, the EASO Country of Origin Information Report issued in May 2018, or the Human Rights Watch World Report 2019. Nor did the skeleton argument prepared by Mr Sharma refer to these documents. Nor is there any reference in the record of proceedings to the judge being invited to consider any of these documents. A judge cannot be expected to consider background evidence that has not been provided to her. The 3<sup>rd</sup> ground is, in any event, premised on the appellant holding a well-founded fear of persecution in his home area. The judge did not however find the appellant to be a credible witness and rejected his account of fearing ill-treatment from Daesh. The judge gave detailed

and cogent reasons for disbelieving the appellant. The issue of internal relocation did not therefore arise. The judge's brief assessment of the viability of internal relocation and the Country Guidance case of **AS** was considered in the alternative (see [52]). Having found that the appellant was not at risk of persecution or Article 3 ill-treatment in his home area, there was no need for the judge to consider internal relocation to Kabul. This ground is not made out.

**Notice of Decision**

**The appeal is dismissed**

**D.Blum**

8 January 2020

Signed  
Upper Tribunal Judge Blum

Date