



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/01606/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2021**

**Decision & Reasons
Promulgated
On 24 January 2022**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE SYMES**

Between

**IMAL RAHIM
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Amin
For the Respondent: Mr Whitwell

DECISION AND REASONS

1. The Appellant, Imal Rahim, is a citizen of Afghanistan born 30 December 1992 who appeals against the decision of the First-tier Tribunal of 21 May 2021 dismissing his appeal on asylum grounds.
2. He entered the UK following the issue of a student visa on 18 April 2010 and was subsequently repeatedly granted student leave until

19 October 2015, though he was served notice of being a person thought to have obtained leave by deception on 28 August 2014. He claimed asylum on 14 July 2017, that application being refused on 3 May 2018 and the ensuing appeal dismissed on 29 August 2018. On 25 November 2019 he made further representations which, whilst substantively refused on 4 February 2020, were accepted as constituting a fresh asylum claim warranting a further right of appeal.

3. The Appellant's asylum claim was based on his return to Afghanistan from the United Kingdom in July 2016, occasioned by his mother's serious illness. He said that he had subsequently spoken out against the Taliban, including via a series of speeches he had made at mosques in Nangarhar Province in favour of democracy, human rights and the rule of law. He was abused and beaten, and subjected to a grenade attack in Kabul in which his cousin died. In May 2017 he left Afghanistan and returned to the UK.
4. In his August 2018 decision First-tier Tribunal Judge Raymond rejected the Appellant's account finding it to lack credibility due to inconsistencies, implausibility and an absence of corroboration.
5. The Appellant's case before the First-tier Tribunal (now in the person of Judge Hanbury) was that the further evidence called for the previous appellate findings to be revisited. A report from Afghan lawyer Marwa Fazil, instructed via his Solicitors by an email of 10 May 2019, was based on enquiries made by a colleague of hers. Her colleague confirmed following a visit to Barro Village in the Rodat District of Nangahar that he had ascertained from local people that the Appellant had indeed made speeches against the Taliban which had inflamed the local population; and following enquiries in the Khoshal Khan area of Kabul he had received information that there had been a grenade attack involving the Appellant which had martyred one of their neighbour's sons in Kabul. Enquiries of the local Taliban commander confirmed that a letter sent to the Appellant was a genuine warning and that the attack in Kabul would not represent the last of their interest in him; and the local authorities confirmed that a complaint had been lodged with them albeit that they lacked the resources to offer individualised protection.
6. Submissions below found the Respondent encouraging the First-tier Tribunal to see the essential facts surrounding the Appellant's asylum claim as resolved by Judge Raymond's decision, save only for subsequent developments relating to the country situation in Afghanistan. Whereas the Appellant submitted that the evidence from the Afghan lawyer Ms Fazil, an ostensibly independent and trustworthy source given her occupation, called for the underlying facts of the asylum claim to be re-determined in his favour.

7. The First-tier Tribunal “concluded that the decision of Judge Raymond is in fact conclusive as to the points ... in the current appeal” and that any challenge to his decision needed to have been brought by way of an onwards appeal against Judge Raymond’s decision at the time, rather than by “attempting to relitigate the original appeal with slight tweaks three years later”. The new evidence sought to be relied on “presupposes the truthfulness of the original account”. The Tribunal then proceeded to determine the appeal by reference to Judge Raymond’s negative credibility findings and the prevalent Country Guidelines decision of *AS Afghanistan*; as a healthy male with financial support available from his father he could be presumed to have sufficient support to survive in Kabul.
8. Judge Gumsley granted permission to appeal for the First-tier Tribunal on 28 June 2021 on the basis that arguably there had been a material error of law in rejecting the new evidence on the basis of the findings of Judge Raymond, rather than considering the evidence as a whole.
9. Ms Amin for the Appellant submitted that *Devaseelan v SSHD* [2002] UKIAT 00702 had been applied without regard to the available evidence. For the Secretary of State Mr Whitwell, quite properly, accepted that the decision was flawed. He observed that once the Respondent had accepted that fresh claim test was passed, *Devaseelan* could not be applied without reasoned engagement with the latest evidence. However there was simply no reasoning on credibility issues here.

Findings and reasons

10. Given the stance of the parties our reasoning can be relatively brief.
11. The Appellant had put forward a significant volume of evidence that potentially cast doubt on the earlier findings of Judge Raymond. In particular the report from Marwa Fazil was relevant to the primary facts advanced by the Appellant which had previously been rejected. Her evidence was that a colleague had pursued a series of direct and individual enquiries with various third parties who might reasonably be thought to have direct knowledge of background facts asserted by the Appellant and that those enquiries had corroborated his account. That was both in his home area with the local population, with the local authorities and even with a representative of the Taliban; and in the part of Kabul where he alleged having suffered a grenade attack.
12. *Devaseelan* enjoins judges to take the earlier findings on an asylum claim as the starting point for its subsequent adjudication. However the very fact that the Secretary of State has recognised further

representations as amounting to a fresh claim shows that the material now advanced requires reasoned consideration before the earlier appellate findings are treated as conclusive of the matters in issue. Unfortunately the evidence here received no such consideration. The evidence in question from Ms Fazil is not *dependent* on the truthfulness of the Appellant's account so much as *potentially corroborative* of that very issue. Whether or not it should be accepted is not for us on this appeal. But it requires assessment in the context of the evidence as a whole. The failure to conduct such an enquiry undermines the decision before us.

13. Mr Whitwell helpfully informed us that the Secretary of State is reviewing all extant appeals involving asylum claims from Afghanistan in the light of the Taliban's ascendancy there. We trust any such review will take place in good time.

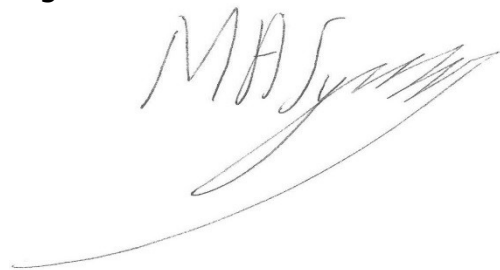
Decision

The appeal is allowed to the extent that it is remitted for full re-hearing in the First-tier Tribunal.

The Judge erred materially for the reasons identified. We set aside the decision with no findings preserved pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter is remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 20 January 2022

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends across the width of the signature.

Deputy Upper Tribunal Judge Symes