



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

Appeal Number: AA/09835/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12 May 2016**

**Decision &
Promulgated
On 19 May 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**L D
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. R. Head, Counsel.

For the Respondent: Mr N. Bramble, Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan, born on [] 1998. He made an application to the respondent for asylum on the ground that if he were to be returned to Afghanistan he would face mistreatment due to the fact that his father was a member of the Taliban. He claimed that he too is

being sought as a consequence of his father's membership. He also relied on Articles 2 and 3 of the European Convention on Human Rights (ECHR).

2. The respondent refused the appellant's application for international protection and he appealed.
3. That appeal was heard by Judge of the First-tier Tribunal Dean Kershaw who in a decision promulgated on 22 February 2016 dismissed it.
4. The appellant sought permission to appeal and on 30 March 2016 Judge Simpson gave her reasons for granting such permission.
5. Those reasons state:-

"1. The appellant ("A") seeks permission to appeal against a decision of the First-tier Tribunal (Judge Kershaw) who, in a decision promulgated on 22 February 2016, dismissed his appeal against the Secretary of State's decision to refuse asylum or humanitarian protection and to remove him from the United Kingdom. Although this appeal was not submitted until 16 March 2016 in view of its merit I have decided to extend time.

2. The grounds are as follows:

- (a) the Judge erred by failing to consider the personal risk to A given that it is accepted that his father was a Taliban commander in Afghanistan;
- (b) the Judge failed to give cogent, sustainable and sufficient reasons for rejecting the evidence of the witnesses;
- (c) the Judge failed to have regard to Country Guidance cases;
- (d) the Judge failed to have regard to the expert report.

3. It is arguable that the Judge's findings in [73]-[76] are unsustainable given that the Taleban are not in authority nor are they in control throughout the entirety of Afghanistan. Moreover, the Judge has failed to consider the case of RO (Afghan National Army) - Hizb-e Islami - risk) Afghanistan CG [2008], which is still a binding authority, or indeed any other relevant cases. As to risk from the Afghan authorities it is arguable that this aspect of the claim has not been given adequate consideration, particularly given that his father was a Taleban commander. As to the credibility findings, the Judge has arguably overlooked the fact that A mentioned recruitment by the Taleban in his initial SEF form and has also arguably failed to assess A's evidence in the context of the background information and relevant case law. Finally, the Judge's comments in [84] appear to indicate some confusion as to the meaning of 'sufficiency of protection', which is not generally considered to be a human rights issue.

4. The grounds identify an arguable material error of law.”
6. Thus the appeal came before me today.
7. On the Tribunal’s file was a letter from the respondent dated 14 April 2016 wherein it confirmed amongst other things:-
 - “2. It appears from the grounds of appeal that a country expert report was before the Judge however there does not appear to be any finding in respect of the report.
 3. The respondent does not oppose the appellant’s application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing.”
8. Today Ms Head relied on all the grounds seeking permission to appeal. Mr Bramble accepted that they disclosed within the decision of the judge an arguable error of law. On my own analysis that is the position.
9. Both parties asked, and I agree, that the appropriate way forward is for this appeal to be determined afresh by the First-tier Tribunal.

Notice of Decision

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Dean Kershaw.

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.

Signed

Date 13 May 2016.

Deputy Upper Tribunal Judge Appleyard