



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

Appeal Number: AA/10085/2014

**THE IMMIGRATION ACTS**

**Heard at IAC Manchester  
On 31 March 2016**

**Decision and Reasons Promulgated  
On 13 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**Appellant**

**[A F]**

**Respondent**

**Representation:**

For the Appellant: Ms C Johnstone, Senior Home Office Presenting Officer  
For the Respondent: Mr M Schwenk, instructed by UK Immigration Solutions Limited

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department ("SSHD") against a decision of First-tier Tribunal Judge J S Law allowing [AF]'s appeal against the respondent's decision to refuse to vary his leave to remain and to remove him from the UK following the refusal of his asylum claim.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and [AF] as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a national of Afghanistan, whose date of birth is regarded by the respondent as [ ] 1993, although claimed by the appellant to be [ ] 1995. He arrived in the UK in June 2009 and claimed asylum. His claim was refused on 14 October 2009 but he was granted discretionary leave until 3 March 2011 as an unaccompanied minor. He did not appeal against the decision. On 1 March 2011 he submitted an application for further leave to remain (HPDL). That application was refused on 11 March 2011. The appellant appealed against that decision but later withdrew the appeal when the respondent agreed to reconsider the decision. The appellant's HPDL application was refused again on 2 December 2011 and he appealed against that decision. His appeal was allowed by the First-tier Tribunal on 23 February 2012, but to the extent only that the case was remitted to the Home Office to reconsider the decision in the light of DS (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 305. The application was then refused again on 7 November 2014.

4. The basis of the appellant's claim was that he feared persecution at the hands of his step-uncle, a former mujahedin commander during the Taliban rule and subsequently a police commander. He was born in Kabul but lived in [ ] province and his uncle was a police commander in that area. The appellant claimed that when his grandfather died his land was divided between his father and his step-uncle (his father's step-brother). His step-uncle lost his portion of the land through gambling and demanded that his father divide his share of the land. When his father refused, his step-uncle had him arrested and taken to prison. His father was in prison for four months and, following his release, died from injuries received in prison. The land then passed to the appellant. His step-uncle started harassing his mother for the land and she moved the family to Kabul. She complained to the police but they would not help her due to his step-uncle's position. Once his step-uncle discovered that they were in Kabul he sent people to demand that the land ownership pass to him and he also visited his mother personally and warned her to comply with his demands. His mother was worried about him and so sold a small portion of the land to pay for an agent to take him out of Afghanistan.

5. The respondent, in refusing the appellant's claim, noted that the appellant had given inconsistent evidence about his step-uncle's position and did not accept that he held the influence claimed. The respondent noted further that there had been no attempt by the appellant's step-uncle to harm him and again concluded that that demonstrated his lack of influence. The respondent considered that the appellant could in any event seek protection from the police in Kabul or could resolve the matter by selling or giving the land to his step-uncle. It was not accepted that the appellant would be at risk on return to Afghanistan and it was not accepted that his removal would breach his human rights.

6. The appellant's appeal was heard in the First-tier Tribunal on 25 February 2015, by which time the appellant's evidence was that he had been beaten and tortured by his step-uncle to the extent that he had developed a shoulder injury which required surgery. It was

also claimed by the appellant that his brother had been kidnapped in Afghanistan and that he had paid a ransom of £15,000 for his release. Evidence was also produced to the Tribunal of the appellant's successful boxing career. The appellant was supported, at the hearing, by a number of witnesses, including the owner of the boxing gym which he had attended and who had in effect adopted him as his own son when his foster family threw him out, as well as his boxing manager and his girlfriend of five years. First-tier Tribunal Judge Law accepted the appellant's claim and found that he would be at risk on return to Afghanistan. He allowed the appeal on asylum, humanitarian protection and human rights grounds.

7. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had failed to provide adequate reasons for his findings and had erred by finding that the appellant could qualify as a refugee when it had not been shown that persecution was for a refugee convention reason.

8. Permission to appeal was granted on 23 March 2015.

9. At the hearing Ms Johnstone submitted that the judge had failed to address the inconsistencies identified by the respondent in the appellant's evidence and had failed to explain why the appellant would be at risk on return. The judge had failed to identify a convention reason. He had also erred in his assessment of Article 8.

10. Mr Schwenk submitted that the appellant was a member of a social group and had been persecuted because of his father. Accordingly there was a convention reason. He submitted further that the judge had summarised the refusal letters in detail and had noted all the adverse credibility points but had found the appellant credible. The respondent's challenge was no more than a disagreement. The judge was entitled to allow the appeal on Article 8 grounds in light of the extensive evidence relating to his private life.

### **Consideration and findings**

11. I find merit in the respondent's grounds of challenge and would agree that the judge's findings have not been properly reasoned.

12. The respondent, in refusing the appellant's original claim and his subsequent application for further leave, noted his inconsistent evidence about his step-uncle's position and did not accept that he held the influential position claimed. In the second decision the respondent also noted that there was no evidence of the appellant's step-uncle having shown any continuing interest in him in the five years since he had left Afghanistan. Further credibility issues were raised by the respondent at the hearing, in that the appellant's account included details of torture and the kidnapping of his brother which had not been mentioned previously.

13. Although Judge Laws referred to the credibility concerns, his findings were limited to what he said at [28], which was simply that the appellant was a minor when he gave the

statements and that he would not make an adverse finding against him, other than to accept that there may have been a small attempt to embellish his claim with regard to the account of the kidnapping. Whilst I am loathe to interfere with the credibility findings of a judge who has had the benefit of hearing from the appellant and his witnesses, I cannot ignore the fact that such a finding, if indeed it is a finding at all, is devoid of any reasoning and goes nowhere towards engaging with any of the issues raised by the respondent. It appears that the judge accepted the appellant's credibility on all matters, other than, perhaps, the kidnapping claim, but that is certainly not clear, as all the judge did was to state that he would not make an adverse finding. Neither is it clear how the judge reached the conclusion that the appellant was at risk on return to Kabul since, again, no proper reasoning has been given in his decision.

14. Furthermore, whilst the judge, at [29], addressed the respondent's submission as to the qualification under the refugee convention, he did not in fact make any finding as to what the convention reason was. Whether or not the appellant's step-uncle was using the power of the state against an individual, it was still incumbent upon the judge to address the question of how the actions of the appellant's step-uncle amounted to persecution for a convention reason. Mr Schwenk sought to argue that the appellant was a member of a social group, but I do not agree with his submission and, in any event, note that the judge did not make any such findings.

15. Accordingly the judge's decision simply cannot stand. I do not accept Mr Schwenk's submission that the findings on Article 8 were independently made on the basis of the appellant's private life. It is clear that his findings on Article 8 were inextricably linked to his findings on risk on return and are therefore infected by the errors of law made in that regard.

16. For all of these reasons I find that the judge's decision contains material errors of law and simply cannot stand. None of the findings can be preserved and the appeal clearly needs to be determined afresh on all grounds. Accordingly the appeal will be remitted to the First-tier Tribunal to be heard de novo.

## **DECISION**

17. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed. 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 Law.

Signed

Date

Upper Tribunal Judge Kebede