



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

Appeal Number: PA/04774/2016

**THE IMMIGRATION ACTS**

**Heard at Liverpool**

**On 24<sup>th</sup> August 2017**

**Decision & Reasons  
Promulgated**

**On 6<sup>th</sup> September 2017**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**ZUBAIR RHAMAN ALUKOZAI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Mr Mohzam, a solicitor from Birmingham Solicitors*

*For the Respondent: Mr G Harrison, a Home Office Presenting Officer*

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan, who was born on 1<sup>st</sup> January 1988, and who entered the United Kingdom on 29<sup>th</sup> November 2015, concealed in the rear of a lorry. He claimed asylum on the same day claiming a fear of the Taliban and personal enemies of his family.
2. The respondent refused the appellant's claim in an asylum decision letter dated 27<sup>th</sup> April 2016. The respondent concluded that the appellant did not have a well-founded fear of persecution and did not, therefore, qualify

for asylum within the terms of the 1951 Refugee Convention. The respondent was also satisfied that the appellant's return to Afghanistan would not place the United Kingdom in breach of the European Convention for the protection of the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the appellant was not eligible for humanitarian protection.

3. The appellant's appeal was heard by First-tier Tribunal Judge N Sharkett in Manchester on 24<sup>th</sup> October 2016.
4. Before the First-tier Tribunal Judge the appellant was not represented but was assisted by the judge in giving his account.
5. The judge heard oral evidence from the appellant, but did not believe the whole of it. The judge found that the appellant had not given a truthful account of why he had left Afghanistan and he did not believe the appellant to be at risk for the reasons he had given. Having considered the security position in Afghanistan since the promulgation of the country guidance case of *AK (Article 15(c)) Afghanistan CG* [2012] UKUT 00163 (IAC) the judge concluded that even if the appellant did not wish to return to his home area he would be able to return to Kabul. He found that the appellant was a young man who had shown considerable resource in travelling to the United Kingdom and who had told the judge that he had been used to travelling around for months at a time because he belongs to a nomad tribe. He was able to speak Pushtu and Dari and if he wished to would have the support of his family and extended family living in Afghanistan.
6. While the judge noted that there was recently an increase in the level of violence in Kabul, he also noted that the Government was taking steps to limit risk to civilians and found that the overall level of danger did not reach a 15(c) level. The judge concluded that the appellant would be at no greater risk on return to Kabul than any other citizen living there and that there was not sufficient evidence to give reason to depart from *AK*. He concluded that he must also dismiss the appellant's claim for humanitarian protection and his claim for protection under Articles 2 and 3 of the ECHR based, as they were, on the same factual matrix as the asylum claim.
7. The appellant sought permission to appeal and Deputy Upper Tribunal Judge Chapman granted permission on 26<sup>th</sup> April 2017. In doing so she said this:-

*"2. The grounds in support of the application for permission to appeal to the Upper Tribunal, which were made in time, assert that the Judge erred materially in law:*

- (i) in attaching too much emphasis to credibility findings and using these to dismiss the appeal;*

- (ii) *in failing to make a finding as to whether or not the Appellant's father worked with/alongside the Taliban;*
  - (iii) *in failing to take into consideration the security situation and/or Taliban presence in the province or region that the Appellant comes from;*
  - (iv) *in failing at [55] to provide any adequate and/or proper reasoning and failed to reach an ultimate finding on the reliability and authenticity of the documentary evidence;*
  - (v) *erred as a matter of fairness in failing to seek clarification on matters of credibility;*
  - (vi) *in holding it against the appellant that neither he nor his father took any steps to seek revenge, which would have amounted to a serious criminal offence;*
  - (vii) *in making speculative findings at [56]-[67];*
  - (viii) *at [61]-[63] in finding the Appellant's account not credible in relation to an alleged bomb attack due to the absence of a police report;*
  - (ix) *at [69]-[71] in failing to provide the Appellant with the opportunity to deal with the issue of internal relocation and in failing to apply the correct legal principles, in light of the Appellant's circumstances and the fact that he has no ties in Kabul and no support there.*
3. *The Appellant was unrepresented at his asylum appeal before the First tier Tribunal. He did not request an adjournment [9]. The Judge clearly bore the fact that the Appellant was unrepresented in mind: see [51]. It is not arguable that the Judge erred in attaching too much emphasis to credibility findings and using these to dismiss the appeal, given that the Appellant's credibility was in issue in the Respondent's refusal decision and it was incumbent upon the Judge to make findings on his credibility. It is clearly implicit from [57] that the Judge accepted that the Appellant's father worked with or alongside the Taliban.*
4. *However, it is arguable that the Judge erred at [55] in failing to indicate whether or not he accepted the reliability and authenticity of the documents confirming that his father had been shot, albeit the date provided for the Counter Terrorism department was 1383 (2004/05) whereas the Appellant's evidence was that the shooting had taken place 8 years prior to the hearing viz 2008. It is also arguable that, although the Judge bore in mind that the Appellant was unrepresented, he failed to give the Appellant the opportunity to clarify matters pertaining to his credibility and internal relocation and it is arguable that he erred in his assessment of the translated documentary evidence submitted by the Appellant.*
5. *Permission to appeal is granted. All grounds may be argued, but those identified at [4] above appear to have a greater prospect of success than others."*
8. In addressing me, Mr Mohzam submitted that the judge appeared to accept that the appellant's father worked both for the Taliban and for the Government and this was something accepted by Deputy Upper Tribunal Judge Chapman in granting permission. However, the First Tier Tribunal Judge erred in law by failing to make a decision on whether or not the appellant's father did work for the Taliban and for the Government, one

way or the other. He submitted also that the judge should have considered whether it would be safe for the appellant to return to Afghanistan, or whether he would be at risk of Article 15(c) harm there. The judge further erred in failing to give the appellant any opportunity to explain why he was not able to travel to Kabul and would not be safe there.

9. Mr Harrison relied on the Rule 24 response submitted on behalf of the Secretary of State. In relation to paragraph 55 of the determination, it is clear that some form of documentary evidence was submitted to the judge by the appellant relating to the attack. In granting permission, Deputy Upper Tribunal Judge Chapman refers to this document as having been provided by the Counter Terrorism department. However, submitted Mr Harrison, at paragraph 55 the judge merely points out an inconsistency between the date recorded in the document and the oral evidence of the appellant. The judge did not believe the appellant's account as to the authenticity of the document, but this was irrelevant because the issue was that the appellant's own evidence was contrary to it. The appellant claimed that he would be at risk on return, but the judge quite clearly indicates at paragraphs 69 to 71 that there was no reason at all why, if he did not wish to return to his home area, he would not be able to live in Kabul. As a matter of fact, Mr Harrison told me, he would be returned by the Secretary of State to Kabul.
10. Mr Harrison indicated that there was no error of law identified by the grounds which amounted to nothing more than a series of disagreements with the judge's decision.
11. Mr Mohzam had nothing further to add. I reserved my decision.
12. At paragraph 51 of his determination, the Tribunal Judge indicates that in reaching his decision he has had regard to the country guidance case of *AK (Afghanistan v SSHD [2007] EWCA Civ. 535)*. He said:-

"Although the Appellant has not raised it, as the Appellant is not legally represented I have also considered any changes that have occurred since **AK** was decided and whether there is any cogent evidence before me that would require me to consider departing from the findings in **AK**."

That was the proper approach to take in the circumstances.

13. Then, at paragraph 55 of the determination, the judge merely points out an inconsistency between the document relied upon by the appellant and his oral evidence. The judge noted that the appellant was adamant that the shooting attack on the appellant's father had taken place eight years before the hearing at the time when his father was 50 and he was now aged 58 or 59. However, the document relied on by the appellant indicated that the shooting took place in 2004 or 2005, when his father would have been 46 or 47.

14. At paragraph 58 of his determination, the judge rejected the appellant's claim that the Taliban had been threatening the appellant's father since 2001, because he did not believe it credible that in that fifteen year period they would not have taken any steps to attack either the appellant's father, or other members of the family. The judge records at paragraph 57 of the determination that the appellant claimed that the Taliban had told the appellant's father that either he had to go back and join them himself or that he had to send one of his sons. The judge did not find that to be credible, because if it were, then the Taliban would have taken action against the appellant and/or his brother, especially since the appellant was some 27 years of age when he left Afghanistan.
15. The judge gives further reasons for finding the appellant not credible. In paragraph 58 of his determination he noted that the appellant claimed that he was angry when his father was shot and that he wanted to revenge the shooting. At the time, the appellant was 20 years of age, but had taken no steps in the intervening years to attempt to kill his father's assailant and it was some six years later when he claimed there was a bomb placed in his car that was intended to kill him.
16. At paragraph 59, the judge noted that the appellant's uncle was killed some eight years previously and, if as claimed by the appellant, revenge is the culture in the area in which the appellant lives, and because of this the appellant will never be safe because the assailant is anticipating an attack on his life, then it is simply not credible that the appellant's father, in the knowledge of what was to come, would not have taken steps to make sure that his sons were safe and avenged his brother's killer. Alternatively, given that the appellant's father is said to have significant influence within his tribe, if he was not strong enough to carry out the killing himself, he could have arranged for somebody else to do it on his behalf.
17. The judge concluded that it was simply not credible that if the appellant's father's assailant had always known that a revenge attack was likely that he would not have made a pre-emptive attack on the appellant and/or his family, but had not done so. The appellant claimed that there was a bomb planted in his car, but because of a warning, the police were able to defuse the bomb and no-one was injured.
18. The judge noted that no evidence was provided of any report made to the police to indicate that the appellant knew the identity of the person or persons responsible for planting the bomb.
19. The judge concluded that the appellant had not given a truthful account of his reasons for having left Afghanistan and, were there any truth in his account that the Taliban were threatening to kill the appellant, his father and brother, they would have done so by now. It was simply not credible they would have allowed fifteen years to pass if that had been their true intention. The judge accepted that the appellant was only 13 years of age when his father was said to have left the Taliban, but had the Taliban

intended that the appellant be forced to join, then they would have taken steps long before he reached his mid 20s. The judge concluded that the appellant was not at risk from a man who shot the appellant's uncle and father. The appellant was 20 years of age when that attack was said to have happened, and if the culture of revenge such as that explained by the appellant was to result in the death of the appellant, then it would have done so before he reached the age of 26. The fact that there were no attacks on him led the judge to conclude that if he were in dispute with someone in Afghanistan it was for reasons other than a fall-out because of the shooting of his uncle and father.

20. It is clear therefore that the judge did not believe any part of the appellant's claim. I believe that the judge's decision is clear, cogently reasoned and thorough. The judge went on to consider the security position in Afghanistan and concluded that the appellant would not be at any risk of return to Kabul. The judge was satisfied that the risk to civilians and the overall level of danger did not reach 15(c) level.
21. It was suggested on behalf of the appellant that he was denied the opportunity of explaining why he is not able to go to Kabul but, with respect, there is simply no evidence to suggest that he was denied the opportunity of giving full details of his claim to the judge and explaining why he could not return to Afghanistan. It is clear from the determination that the judge assisted the appellant in giving his account.
22. The grounds suggested that the judge attached too much emphasis to credibility findings and used these to dismiss the appeal. With very great respect there was no error on the part of the judge. The appellant's credibility was in issue and the respondent's reasons for decision letter make this abundantly clear. It was incumbent upon the judge to make clear findings on credibility and this he did.
23. The second challenge suggests that the judge should have made a finding whether or not the appellant's father worked with or alongside the Taliban. With very great respect, given the judge's findings the judge did not err. It is quite clear that the judge did not believe the appellant's account.
24. The third challenge suggests that the judge erred in failing to take into account the security situation and/or Taliban presence in the province or even where the appellant comes from, but the judge was quite satisfied that if the appellant did not wish to return to his home area he could be safely relocated to Kabul where he would not face an Article 15(c) risk.
25. There was no error in failing to reach findings on the reliability and authenticity of documentary evidence submitted by the appellant. It is not clear entirely what that evidence was, but nonetheless it contradicted the appellant's own evidence and that contradiction was never explained. It is said that by failing to seek clarification on matters of credibility, the judge erred, but with respect the issues taken by the judge are clear and obvious

ones. The judge did not hold it against the appellant that neither he nor his father had taken any steps to seek revenge, merely that despite claiming that he wanted revenge he had done nothing about seeking revenge and, given the culture prevailing as indicated by the appellant, the appellant's father's assailant had not taken any steps to prevent the appellant seeking revenge. The findings at paragraph 57 to 67 were not speculative; they were the judge's reasons for finding the appellant's claim simply not credible. As I have indicated, they are cogent, they are clear and they are logical. The Secretary of State's decision letter makes it clear that the appellant would be returned to the international airport in Kabul. It was for the appellant to explain why he could not relocate to Kabul if he thought that he would be at risk there. He chose not to do so.

26. I have concluded that in making the decision Judge Sharkett has not materially erred in law for all the reasons I have set out and I uphold the judge's determination.

**Notice of Decision**

22. The appellant's asylum appeal is dismissed; the appellant's humanitarian protection appeal is dismissed; and the appellant's human rights claim is dismissed.

***Richard Chalkley***  
**Upper Tribunal Judge Chalkley**  
**2017**

**Date: 6<sup>th</sup> September**