



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04856/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3<sup>rd</sup> November 2017

Decision & Reasons Promulgated  
On 13<sup>th</sup> November 2017

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**I S  
(ANONYMITY DIRECTION MADE)**

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

Appellant

**and**

Respondent

**Representation:**

For the Appellant: Mr E Wilford (instructed by Duncan Lewis & Co, Solicitors)

For the Respondent: Mr P Nath (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, in relation to a Decision and Reasons of the First-tier Tribunal (Judge Raymond) promulgated on 3<sup>rd</sup> May 2017 by which he dismissed the Appellant's appeal against the refusal of his protection claim.

2. The Appellant, born on [ ] 1989 is a citizen of Afghanistan.
3. He grew up in Laghman province with his parents, three brothers and two sisters. The family were deeply religious and his grandfather was a preacher. The Appellant attended school and also a Madrassa. At age 12 the Appellant was sent to stay with an uncle in Pakistan who was a religious scholar. The Appellant flourished in his religious studies such that by the time he finished high school and college at age 21 he had memorised the whole Koran and was issued with a certificate. He was then employed in a religious school as a teacher of 9 to 15-year-olds between July 2010 and November 2011. He would also lead the prayers at the village mosque.
4. The Appellant then said he wished for a change and applied to study in the UK. He made a student visa application in Abu Dhabi which was granted on 22nd January 2012. At that time he was living in Pakistan.
5. The Appellant studied Business Management at Queensbury College in the UK.
6. In the UK he adopted a western style of dress. He shaved his beard and ceased wearing a religious hat. He came to realise the sort of Islam he had followed in Afghanistan, very orthodox and strict as required by the Taliban was not the only way to follow Islam.
7. In 2014 he returned to his family in Afghanistan for a holiday. At that time there was increasing violence and a lack of safety associated with the Taliban. Whilst there he undertook a two-hour drive from his village to Jalalabad to have dinner with a friend and stayed overnight.
8. His claim was that when he returned home he was told by his mother that in his absence four members of the Taliban had come to the house to interrogate him. They had asked his father why the Appellant left Afghanistan when he was a religious teacher who should have been helping the Taliban with Jihad. They beat up his father with the end of a Kalashnikov and said they would come back for the Appellant. The Appellant's father was injured and hospitalised with a broken bone in his back. Three days later the family moved to Jalalabad.
9. The Appellant returned to the UK on 26th April 2014. On 18th August 2014 Queensbury College's sponsorship licence was revoked and the Appellant's visa curtailed. On 30th January 2015 the Appellant made a family life/Article 8 application which was refused on 1st May 2015.
10. The Appellant says that he did not claim asylum immediately on his return to the UK because he had a visa. Believing that he could only claim asylum if he was in the UK illegally, he arranged to be trafficked out of the UK so that he could return the same way and make an asylum claim. However, he was apprehended trying to leave the UK and claimed asylum then.

11. His claim for asylum is based on the fact that as a previous religious scholar who has been a religious teacher and who had the approval of the Taliban, he would be at risk on return for having left to study in a western country, ceasing to be a religious teacher and having become westernised. He relied on the attack on his the family home and his father as evidence of the Taliban's displeasure with him.
12. In his appeal before the First-tier Tribunal the Appellant relied upon various statements and his oral evidence. There were documents from Afghanistan which the Appellant relied upon to confirm his father's injuries and that the family had moved to Jalalabad. Those documents, the Appellant claimed, were brought to him by a friend in the UK who travelled to Afghanistan. That friend did not give evidence before the First-tier Tribunal.
13. The Judge found the Appellant's claim to be incredible and dismissed the appeal in a lengthy judgment running to 18 pages.
14. The Appellant sought and was granted permission to appeal by First-tier Tribunal who found it arguable that the Judge may have misunderstood the medical evidence relating to the Appellant's father and the background evidence regarding freedom of movement which may render questionable some of the findings of fact.
15. There are seven grounds of appeal.
16. The first refers to the Judge's findings that it was not credible that the Appellant would have undertaken a two-hour journey to Jalalabad from Laghman when it was his case that his demeanour and westernised appearance put him at risk. It is asserted that conclusion is based on a misinterpretation of the background evidence and country guidance as well as being *Wednesbury* unreasonable in the absence of alternative methods of travel.
17. I find that ground is not made out. The Judge noted that the Appellant had chosen to return to Afghanistan for a holiday at a time of increasing violence and lack of safety. His evidence was that there were Taliban soldiers everywhere. They were at checkpoints and often interrogated individuals as to why they did not have a beard. If they found a person to be in possession of any documents which showed they worked with the government they would capture and torture that person. He said there was no peace in Afghanistan; "everywhere you go is Taliban". Against that background, which was the Appellant's own evidence, the Judge found it not credible that he would choose to travel for two hours to Jalalabad for a purely social visit. Furthermore, I note he did so without difficulty in both directions. The Judge was entitled to make that finding on the evidence before him.
18. The second ground asserts that the Judge erred in referring to the Appellant's father having serious injuries to the spine as a result of the assault on 19th April 2014 and his adverse credibility findings that in light of his father having been severely injured he would have been unable to move his family three days later.

19. As the Judge made clear, the medical evidence was not terribly helpful. There was an undated letter from the elders of the village confirming that the Appellant's father had been beaten during an attack by the Taliban which broke his back and as a result he was admitted to hospital. There was a further undated letter from the administrator at the hospital confirming that the Appellant's father was admitted for treatment of "backbone breakage" and after reasonable treatment was prescribed full rest. Further details were not given.
20. The Judge was entitled to find on the basis of that evidence that it was not credible that the Appellant's father, three days after the injury was incurred would have been in a position to move the entire family to Jalalabad, a distance of two hours. I find that ground is not made out.
21. The third ground asserts unfairness amounting to an error of law in the Judge making findings on matters not relied on by the Secretary of State or put to the Appellant at the hearing. The Judge noted a contradiction in the evidence of the Appellant that he was not known when he moved to Jalalabad with his family in 2014 which seem to be contradicted a certificate issued in October 2002 indicating that he was from Nangahar. It is difficult to follow the Judge's reasoning in that respect. However the point does not help the Appellant. The argument that was made before me was that his family is safe in Jalalabad because the Appellant is not with them. They would be at risk, as would the Appellant, if he was with them. That only can be based on the Appellant being known in Jalalabad. That being the case there is a contradiction between that and the Appellant's claims to not be known in Jalalabad and the Judge was entitled to make such finding.
22. This also reveals another difficulty with the Appellant's evidence. He claims his family are safe because he is not with them. However, he also claimed that his family was attacked when he was not there in April 2014.
23. Another assertion made in that ground relates to the Judge's disbelief of the Appellant's claim that he believed that he could only claim asylum if he was in the UK illegally. The Judge noted he is an educated man. He had had legal advice over student applications and other applications that he made and so it was not credible that he would believe that. That finding was properly open to the Judge on the evidence.
24. The fourth ground challenges the Judge's conclusion that there were two strands to the Appellant's claim. The Judge said that on one hand the Appellant claimed to have had a shifting of his religious beliefs while still in Afghanistan and the other strand was that he became interested in a less restrictive form of Islam and adopted a western way of life once in the UK. It was said before me that the Appellant's argument was that the shift had taken place once he was in the UK when he adopted a westernised approach to dress and Islam generally and it was that which on his return would attract adverse attention. He says he did not attract the adverse attention of the Taliban prior to his leaving in the first place.

25. I do not find that ground made out either. It was the Appellant's evidence that he comes from a deeply religious family. He himself was a religious scholar, teacher and preacher. However, in Afghanistan he made the decision to cease that way of life and come to the UK to study an entirely different subject. Given his claim that in Afghanistan his behaviour and religion was in accordance with what was expected by the Taliban; then he must have known when in Afghanistan that the decision he was taking would bring him potentially into conflict with the Taliban. He must therefore have had a culture shift in his outlook prior to leaving Afghanistan. The Judge was entitled to form that view.
26. It is also true that once in the UK the Appellant's attitudes and behaviour changed further, particularly regarding a less restrictive form of Islam and altering his mode of dress and behaviour.
27. The fifth ground criticises the Judge's conclusions that the Appellant's explanation as to why his family are safe in Jalalabad lacks credibility. For the same reason I found earlier, I find the Judge did not err in this respect either. As I have already indicated his claim is that his family is safe because he is not with them. However, he claims on the one hand also to have been in Jalalabad with his family without problems in 2014 but also that his family were attacked when he was not there in his home area in 2014. It is correct to say therefore that the Appellant's explanation as to why his family is safe is contradictory and conflicting.
28. The sixth ground criticises the Judge's treatment of the documentary evidence arguing that he did not look at it in the round at the same time as the other evidence in accordance with Tanveer Ahmed. That ground is also not made out. The Judge has explained why he attached little weight to the various documents. Letters were undated and gave unclear information. Photographs were blurred and could have been of anybody. Furthermore, the Judge was concerned that the documents were brought the UK by a friend of the Appellants, who did not give evidence, and who had apparently travelled back to Afghanistan voluntarily once he had been granted refugee status on the basis of risk on return.
29. Finally the grounds argue that the Judge erred in finding that with the support of relatives in Kabul the Appellant could relocate safely when it was the Appellant's evidence that his family were also deeply religious and supporters of the Taliban who therefore would not offer him support. However, as the Judge pointed out in various places in the Judgement the Appellant is a highly educated young man. He is 28 years of age and does not need family support in Kabul. In that respect the Judge referred once more to his friend who had travelled in safety to and from Afghanistan.
30. Overall therefore I find that this Judge has carried out a careful, detailed assessment of the Appellant's claims. For sustainable reasons that are properly based on the evidence he found the Appellant's claims to be incredible. Even if at risk of the Taliban in his home area the Appellant could safely relocate to Kabul. In

truth, the grounds are simply a disagreement with the Judge's conclusions and an attempt to re-argue the case.

31. For all of the above reasons I find there to be no error of law material to the outcome in the First-tier Tribunal's reasoning and for that reason the appeal to the Upper Tribunal falls to be dismissed.

### **Decision**

The appeal to the Upper Tribunal is dismissed

The first-tier Tribunal having made an anonymity direction I direct that is continued

### **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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 8<sup>th</sup> November 2017

Upper Tribunal Judge Martin