



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

Appeal Number: PA/04587/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31 October 2018**

**Decision & Reasons Promulgated  
On 28 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**[F H]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Iengar, counsel.

For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 21 March 2018 refusing his application for asylum.

**Background**

2. The appellant is a citizen of Afghanistan born on 27 August 1983. He claimed asylum on 3 November 2015. It was not entirely clear from his

various statements when he first arrived in the UK. He gave contradictory answers to this question in his screening interview and asylum interview but in a letter dated 24 August 2016 his solicitors said that he was satisfied that he came to the UK in 2011 and not 2015 and in further representations made on his behalf dated 14 February 2018, it was asserted that he had entered the UK in 2010.

3. There is evidence that the appellant had been fingerprinted in Hungary on arrival there on 11 December 2009, where he remained for two weeks before travelling to Austria. He was fingerprinted on arrival in Italy on 28 December 2009 and then travelled to Belgium and France before entering the UK concealed in the back of a lorry. This chronology is consistent with the appellant arriving in the UK in 2010.
4. The appellant based his claim on a fear both of the Afghan authorities who suspected him of being a member of the Taliban and for that reason had arrested and detained him in 2006-7 and of the Taliban who suspected him of being a spy for the Afghan government. He claimed that his father had received a letter from the police in 2011 asking about his whereabouts and he also relied on a threat letter from the Taliban. The respondent, whilst accepting that the appellant was a citizen of Afghanistan, did not accept that he had been arrested and detained by the Afghan government or would be of adverse interest of them on return or at any risk from the Taliban.

#### The Hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant not only relied on his own evidence as set out in his witness statement and further representations made on his behalf but also on documentary evidence including the letters he claimed were sent by the police in Afghanistan to his father and the Taliban letter. He produced authentication reports from an expert witness relating to both these documents and other documents, including a health status report from Kabul Medical University and a confirmation letter from the Ulema Council and Elders of Kabul Province, Paghman District that he had been detained by the authorities in 2006 and released after payment of a bribe in 2007. The appellant claimed that after his release, the Taliban started to look for him, accusing him of working for the government and he then fled Afghanistan.
6. In her assessment of the evidence the judge noted that the appellant had made no mention of being in fear of the Taliban in his screening interview and she said that, had this been true, he would have mentioned it at his first opportunity of providing details about his claim. In his witness statement he claimed that the Taliban had delivered a warning letter to his house some five years after he left Afghanistan but then changed his evidence and claimed that the delivery of the letter was some 5 to 6 months after his release from detention, some 11 years ago.

7. The judge found that the appellant had changed his evidence in an attempt to improve the quality of his account, embellishing it in an attempt to bolster his evidence but she accepted that it was likely that he had been detained in 2006 as he claimed and that the authorities had taken interest in him because of his cousins' involvement with the Taliban [19]. She found that the health status report provided support for his claim that he had been detained [27].
8. However, this detention had occurred some 12 years ago and there was evidence that the cousins in question had been imprisoned. She also noted his evidence that he had managed to return to his shop and continued to trade after his release, remaining in Afghanistan without difficulty for some time before he left the country. She found that all these factors suggested that the authorities had no further interest in him and she found that his detention in 2006 would not give rise to a risk on return [20]. She considered the documentary evidence and said at [25]-[27]:
- "25. I consider the documents relied on from Afghanistan with Tanveer Ahmed in mind. I attach no weight to the police letter dated in 2011. I do not accept the authorities had any interest in the appellant after his release in 2007. The appellant does not explain why the police would be writing a letter about him after he had left Afghanistan.
26. I attach no weight to the letter the appellant claims is from the Taliban, given I do not accept the appellant's account regarding the Taliban. Although the document expert finds that the letter bears the hallmarks of a genuine Taliban threat letter, I attach no weight to the document for the reasons given.
27. I attach some weight to the letter from the Ulema Council members as it supports the appellant's claim that he was detained in 2006. I also attach weight to the health status report provided, the date and contents support the appellant's claim that he was arrested in 2006."
9. Accordingly, the judge found the appellant had failed to establish even to the lower standard of proof that he faced a real risk on return from the Taliban or from anyone else and she found that he could return safely to his home area in Kabul [29].

### The Grounds of Appeal

10. It is argued in ground 1 that the judge erred in law in her treatment of the screening interview when assessing the weight to be attached to the answers in that she failed to direct herself properly to the warnings in various cases against placing excessive weight on answers given during a screening interview. She also failed to have regard to the fact that the appellant had been scared at that interview and had said at his asylum interview that he was unhappy with it. Ground 2 argues that the judge erred by failing to give sufficient reasons for rejecting the evidence about the police letter. She had found that the appellant had not explained why the police would be writing a letter about him after he left Afghanistan, but that issue was inadequately reasoned. He had left in Afghanistan arriving

in the UK in 2010 but had gone to great efforts to leave without his departure coming to the attention of the authorities. Ground 3 argues that the judge was wrong to attach no weight to the threat letter from the Taliban despite the expert finding that it bore the hallmarks of being genuine and no sufficient reasons were given for rejecting this opinion.

11. In her submissions Ms Lengar relied primarily on ground 3 arguing that there had been a failure to give proper consideration to the expert evidence and that the judge's reasons for rejecting it were insufficient and indicated a failure to have regard to the evidence as a whole. She also submitted that the judge had erred by attaching undue weight to the appellant's failure to mention his fear of the Taliban at the screening interview. As the judge had accepted parts of the evidence, it was unclear why she did not accept that the Taliban would have an adverse interest in him.
12. Mr Kandola submitted that the expert evidence simply showed that the letter from the Taliban had the hallmarks of being genuine but whether it was genuine was an issue of fact for the judge to assess in the light of the evidence as a whole. She had been entitled, so he submitted, to take into account the length of time after the appellant had left Afghanistan that the letters were written. The judge had to consider the issues in the round and he submitted that she had reached a decision properly open to her.

#### The Error of Law

13. I will deal first with grounds 2 and 3 which challenge the judge's finding that both the police letter and the threat letter from the Taliban were documents on which no weight could be placed. The expert evidence relating to the police letter is found in the appellant's bundle (A) at A69-78 and in relation to the Taliban matter at A81-92. The evidence is provided by Mr Jawad Zadeh whose qualifications are set out at A69-72 and he explained his methodology and analysis in A73-74 of his report. He has set out his various tests and observations at A74-76. It is his conclusion that the police arrest letter has the correct hallmarks and characteristics of a genuine Afghan national police arrest letter and it is his view that it is a genuine document.
14. There is a similar report in relation to the threat letter issued by the Taliban and Mr Zadeh's tests and observations are set out at A87-90. His view is that the threat letter displays all the correct hallmarks of a genuine Taliban threat letter and at A77 he comments that he does not just authenticate a document because it looks a good document and that sometimes best quality documents fail the tests of genuineness.
15. It is also worth noting that Mr Zadeh was asked to assess the authenticity of two photocopy documents relied on by the appellant including the photocopy of the confirmation document from the Ulema Council but he declined to do so as there were numerous rubber stamps which required in-depth analysis and he regarded it as unsound to express an opinion

without sight of the originals: A95. He was also asked to assess the health status report from Kabul Medical University relied on by the appellant and at A111 he gave his opinion this was a genuine report issued by the hospital.

16. At [25] the judge said that she attached no weight to the police letter dated 2011. She did not accept that the authorities would have any interest in the appellant after his release in 2007 and he had not explained why the police would be writing a letter about him after he had left Afghanistan. In [26] she said that she attached no weight to the letter from the Taliban "given I do not accept the appellant's account regarding the Taliban". She noted that the expert found that the letter bore the hallmarks of a genuine Taliban threat letter but said, "I attach no weight to the document for the reason given". That reason was her rejection of the appellant's evidence regarding the Taliban.
17. I am satisfied that the judge fell into the error identified by the Court of Appeal in Mibanga v Secretary of State [2005] EWCA Civ 367 of failing to consider all the evidence in the round when assessing credibility. The Court held that a decision-maker would err in law if they approached the evidence in a compartmentalised way and reached a conclusion before considering all the relevant evidence in the round, for example, by making an adverse finding on the credibility of an appellant's account and only then considering whether the findings made in an expert report are to be relied on: per Wilson LJ at para 24.
18. The expert evidence about the police letter and the threat letter from the Taleban are clearly capable of affecting the outcome of the appeal if they are accepted as genuine. For this reason, the judge's assessment of credibility is flawed by an error of law such that the decision should be set aside. I need not deal any further with ground 1 on the weight to be attached to the answers in the screening interview save to comment that had that ground stood alone, I would not have been satisfied that the judge had erred in law.
19. As credibility will have to be reassessed the appropriate course is for the appeal to be reconsidered by the First-tier Tribunal. Ms Iengar sought to preserve the positive finding that the appellant had been detained in 2006. Mr Kandola did not seek to resist this as the respondent had not sought to challenge that finding in this appeal. Preserving findings of fact can cause difficulties when a case is being reconsidered by way of a full re-hearing, but this finding of fact is no longer in issue between the parties and to that extent is preserved.

### Decision

20. I am satisfied that the First-tier Tribunal erred in law such that the decision should be set aside. The appeal is remitted to the First-tier Tribunal for a reconsideration by way of a full rehearing before a different judge.

Signed: H J E Latter  
November 2018  
Deputy Upper Tribunal Judge Latter

Dated: 9