



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

Appeal Number: PA/04869/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 3<sup>rd</sup> October 2018**

**Decision & Reasons**

**Promulgated**

**On 30th October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**WALI [U]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Smith (Counsel)

For the Respondent: Mrs H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Young-Harry, promulgated on 24<sup>th</sup> August 2017, following a hearing at Birmingham on 21<sup>st</sup> June 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Afghanistan, a male, and was born on 1<sup>st</sup> November 1997. He appealed against the decision of the Respondent Secretary of State dated 3<sup>rd</sup> May 2017, refusing his claim for asylum and humanitarian protection pursuant to paragraph 339F of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that the Taliban in Afghanistan had instructed him to become a suicide bomber and his refusal to do so would result in his death at their hands. He fears return to Afghanistan on that basis. He claimed that shortly after his father was kidnapped and killed by the Taliban for refusing to heed their warnings and to stop working for a mine-clearing company, he himself had come under their scrutiny. The Taliban had initially threatened his father and then they had kidnapped him. His father was then killed. The Appellant himself was required to become a suicide bomber. Members of the Madrasah had come to his home to look for him. They did not find him. The Appellant has subsequently learned that his younger brother was also kidnapped and has been killed.

## **The Judge's Findings**

4. At the hearing before Judge Young-Harry, on 21<sup>st</sup> June 2017 in Birmingham, there was copious evidence from a variety of sources, much of which was treated with considerable care and attention by the judge in the determination. The expert report by Dr Giustozzi was particularly scrutinised. Attention was drawn by the judge to the medical evidence and the psychiatric report of Dr Kumar (paragraph 31). There was a social worker's report, and this was referred to by the judge (paragraph 34). The judge then ended with a recital of the country guidance case and its application to the facts here. The decision was then made to refuse the claim.

## **Grounds of Application**

5. The grounds of application state that the decision was flawed for a number of reasons, principally because Dr Kumar's extra psychiatric report was not taken into account as part and parcel of the other evidence, to be considered as a whole, but only analysed after a conclusion had been reached on the Appellant's claim prior to that, with the result that this offended the principle in **Mibanga [2005] INLR 377**. It was also said that this was a case where, not only was there a social worker's report, but the social worker himself, in the name of Roisin Tear, from the Leicestershire County Council, had actually been called as a witness, and had given evidence-in-chief, and had then been subject to cross-examination, where he had spoken about the Appellant's level of vulnerability, and yet none of this was referred to.
6. Finally, it was said that the Appellant was a "vulnerable witness" and the vulnerable witnesses guidelines were not applied to his case, where it was

assessed that his credibility, in terms of how he was giving his evidence, was damaged.

7. On 11<sup>th</sup> January 2018, permission to appeal was granted by the Upper Tribunal, specifically on the basis that the judge's failure to properly deal with the psychiatric evidence, or at all deal with the social worker's oral evidence who had been called, meant that there was an error of law.
8. A Rule 24 response dated 1<sup>st</sup> February 2018 was then put forward on the basis that the judge had considered the evidence of the social worker at paragraph 34, and had proceeded to give clear reasons for why the evidence was not persuasive. There was no error of law.

### **Submissions**

9. At the hearing before me on 3<sup>rd</sup> October 2018, however, Mrs Aboni, appearing on behalf of the Respondent Secretary of State, conceded that there was indeed an error of law in this appeal, because the judge had failed to treat the Appellant as a vulnerable witness, in accordance with the guidelines given in this jurisdiction, and had also not drawn attention to the oral evidence of the social worker, which specifically went to the question of the Appellant's vulnerability. Moreover, the expert report had been factored into the conclusions of the judge after those conclusions had been reached, rather than been taken into account as a whole. With that, Ms Smith agreed. She pointed out, however, that this matter should be remitted back to the First-tier Tribunal, to be reheard again, but with the assistance of a Pushto interpreter.

### **Error of Law**

10. I am satisfied, for the reasons given by Mrs Aboni, and the Upper Tribunal, that the decision of the First-tier Tribunal involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Young-Harry, pursuant to practice statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade, is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

A Pushto interpreter should be provided.

The appeal is allowed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

22<sup>nd</sup> October 2018