



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08290/2017

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 23<sup>rd</sup> July 2018

Decision & Reasons Promulgated  
On 21<sup>st</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR NOOR KHAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Holt, Counsel

For the Respondent: Mr Tan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Afghanistan born on 1<sup>st</sup> January 1988. The Appellant claims to have left Afghanistan in about 2007 and to have arrived in the UK April 2009. The Appellant was encountered at a bus stop by police on 27<sup>th</sup> February 2016 and arrested for entering the UK illegally when he made his asylum claim. The Appellant's claim for asylum is based on having a well-founded fear of persecution on the basis of his imputed political opinion. That application was refused by the Secretary of State on 11<sup>th</sup> January 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Williams sitting in Manchester on 16<sup>th</sup> February 2018. In a decision and reasons promulgated on 16<sup>th</sup> March 2018 the Appellant's appeal was dismissed on all grounds.
3. On 28<sup>th</sup> March 2018 Grounds of Appeal were lodged to the Upper Tribunal. In particular the grounds contended that the First-tier Tribunal Judge, finding against the Appellant's claim that his father had been abducted and that he had come to the adverse attention of the Taliban, had failed to properly consider the expert evidence of Dr Guistozzi and had not properly considered/given insufficient weight to the Appellant's Kuchi lifestyle.
4. On 12<sup>th</sup> April 2018 First-tier Tribunal Judge Andrew granted permission to appeal finding that the judge did not appear to have analysed the expert evidence of Dr Guistozzi in relation to the Appellant's Kuchi ethnicity when coming to his conclusions as to the Appellant's credibility.
5. There does not appear to be any Rule 24 response. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Holt. Mr Holt is very familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by his Home Office Presenting Officer, Mr Tan.

### **Submissions/Discussions**

6. Mr Holt submits that cases involving the Kuchi are extremely rare and that he has only been able to find two decided decisions since 2004. He points out that the Kuchi are a nomadic group of Afghan farmers/travellers and that they are politically unrepresented. They have difficulties with regard to education and literacy and objective evidence shows that only 6% of Kuchi who are aged over 15 could read and write and that they have the worst literary levels in the world. He submits that the judge has failed to give due and full weight to this factor and to consider the Appellant's Kuchi ethnicity and that there are only three paragraphs where the judge has given due consideration to this fact, that is in acknowledging the position of the Kuchi with regard to the Appellant's nationality.
7. Further he submits that in assessing the influence of the Taliban and their killing of the Appellant's father the judge has made no further reference to the Kuchi save for paragraph 22 and has made findings at paragraphs 24 to 30 of discrete credibility assessments all of which are negative. He takes me to the Appellant's witness statement before the First-tier Tribunal Judge and thereafter to the findings of the judge that Appellant could reside in Kabul where he thinks the Appellant has family. He submits that this is not a reasonable conclusion to have reached bearing in mind that the Kuchi are nomads and it is hard to see how he could return to members of his family. He submits that there has been a lack of consideration overall of the Appellant's ethnicity and nomadic lifestyle.

8. In response, Mr Tan takes me to Dr Guistozzi's summary of the Kuchi and points out that this fails to explain the credibility points made by the judge. He reminds me that the Appellant claimed that his father had been abducted during the era of the Karzai government and this hardly reflects on the contention that the Appellant would, due to his education, have no knowledge of government. He submits that the judge has accepted the Appellant's age, nationality and ethnicity and that he does not have to go on to set out everything in the Appellant's favour. He submits the judge is entitled to make the conclusion that the Appellant can, at paragraph 36, return to Kabul and that he can relocate and that it is important to read that paragraph in context bearing in mind the rest of the sentences set out therein. He submits that returning to the Appellant's family is immaterial and that at paragraph 36 at the end of the first sentence the judge has explained his position taking matters at the lowest level and referring to his life in Afghanistan. He submits there are no material errors of law and asked me to dismiss the appeal.

### **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

11. The submissions made by Mr Holt contend that the judge has made an overt decision to attach little weight to the expert's remarks on Kuchi membership and has failed to consider the Appellant's Kuchi status as relevant to his knowledge or reasoning and by failing to make such a consideration has materially erred. He has acknowledged that the First-tier Tribunal Judge has rightly pointed out that Dr Guistozzi gave evidence that there are gaps in the Appellant's knowledge and reasoning that are likely

to be explained by his Kuchi lifestyle. However he contends that when examining the Appellant's credibility the Appellant's status as a Kuchi is never reconsidered. I am not satisfied that that is a fair analysis of the approach adopted by the judge.

12. The judge has given full knowledge and understanding to what being a Kuchi is and has noted the account of his living a nomadic lifestyle, that his livelihood is through farming sheep, and he has noted that the Appellant is able to name a number of towns, cities and provinces in Afghanistan. Further he has accepted that any gaps in the Appellant's knowledge and reasoning are likely to be explained due to the lifestyle of the Kuchi. It is not consequently because the Appellant is a Kuchi that the judge has dismissed this appeal. He has done so because of factors which do not support the credibility of the Appellant claims and some of these factors are sufficiently damning for the judge to make findings that the Appellant was not a reliable witness. These are set out in detail from paragraphs 22 to 30 onwards. These are findings based on the Appellant's evidence which the judge was entitled to make.
13. I acknowledge that a proper approach to credibility will require an assessment of the evidence and of the general claim and that in an asylum claim relevant factors will be the internal consistency of the claim, the inherent plausibility of the claim, and thirdly external factors of the sort typically found in country guidance. These are all factors which in this instant case the judge has considered. He has made findings of fact he was entitled to. In such circumstances I am satisfied that this is a judge who has considered the evidence sufficiently and made findings on credibility and fully explained and given his reasons. In such circumstances overall this is a decision that discloses no material error of law and the appeal of the Appellant is dismissed and the decision of the Secretary of State is maintained.

## **Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law. The Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date:13 August 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date:13 August 2018

Deputy Upper Tribunal Judge D N Harris