



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10496/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16 April 2018

**Decision &
Promulgated**

On 11 May 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

HD

(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Bagral, Counsel instructed by Sohaib Fatimi Solicitors

For the Respondent: Ms Isherwood, Home Office Presenting Officer

Anonymity:

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 his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant, a citizen of Afghanistan born on 22 June 1992, is appealing against the decision of First-tier Tribunal Judge Lawrence promulgated on

29 November 2017 whereby the judge dismissed his appeal against the decision of the respondent dated 4 October 2017 to refuse his protection claim.

Background

2. On 20 September 2007 the appellant entered the UK clandestinely. He was apprehended by the police along with several other individuals after being seen climbing out of a lorry. He was interviewed by an immigration officer at a police station. The immigration officer's note of the interview, dated 20 September 2007, (hereafter "the Note") is brief (half a page). The Note mentions that eight males were arrested and in the reception of the police station. The only record in the Note of the appellant's reason for coming to the UK is following paragraph:

"[The appellant] spoke Pushtu and I used interpreter 1234 - he stated that [sic] left Afghanistan six months ago and arrived today in the back of a lorry. He said he was from Jalalabad. Subject stated that he had problems in Afghanistan with the government and his family. He stated that he has a friend in the UK but that someone else in the group had the contact details."

3. Shortly after the above-described interview with an immigration officer the appellant absconded.
4. In November 2010 the appellant established contact with the respondent but absconded again.
5. Further submissions were made on the appellant's behalf in August 2015 and his asylum interview took place on 6 January 2016.
6. The appellant claims, inter alia, that his father was a prominent commander in Hizb-e-Islami (hereafter "HI") and that he is at risk as a consequence of his connection to HI.
7. The appellant made the claim about his father being prominent in HI in his witness statement, oral evidence before the First-tier Tribunal and his asylum interview. However it was not mentioned in the Note (see the section of the Note quoted in paragraph 2 above).

Decision of the First-Tier Tribunal

8. The judge did not find the appellant credible and rejected his account in its entirety. In particular, the judge did not accept the appellant's claim to be the son of a prominent HI commander or that he had himself been a member of HI. The judge gave several reasons for rejecting the appellant's credibility. Prominent amongst these was that there was no mention of HI in the Note (see paragraph 2 above), in respect of which the judge made the following findings:
 - (i) At paragraph 12 the judge stated that the failure to mention HI to the immigration officer who wrote the Note undermined the appellant's credibility.

- (ii) At paragraph 17 the judge stated: "*if his fear was in any way connected with [HI], whether [sic] him being a member through association with his father, some semblance of this connection ought to have featured in his very first account, given on 20 September 2007.*"
- (iii) At paragraph 28 the judge stated that the failure to mention HI to the immigration officer on 20 September 2017 "*fundamentally undermines the core of his claim*"

Grounds of Appeal and Submissions

- 9. Several grounds of appeal were pursued by the appellant. The first, and strongest, ground is that it was irrational for the judge to find that the appellant's credibility was undermined by the absence of a reference to HI in the Note.
- 10. Ms Isherwood's position was that it was a matter for the judge to determine the weight to give to the Note and there was a clear inconsistency between the appellant's account as recorded in the Note, where HI is not mentioned, and the subsequent accounts where HI features significantly.

Analysis

- 11. The appellant arrived UK, aged 15, in the back of a lorry. He was taken to a police station where he was interviewed by an immigration officer. It is apparent from the Note that the appellant was one of eight people in the police station who were interviewed and that the interview was brief. The Note contains only one sentence which relates to the reasons why the appellant left Afghanistan, which is the following: "*Subject stated that he had problems in Afghanistan with the government and his family*".
- 12. The Note does not indicate that the appellant was asked to explain the basis for his asylum claim or that something analogous to a screening interview was conducted. On the contrary, the clear impression formed from reviewing the Note is that the immigration officer briefly interviewed the appellant to determine what steps should be taken and did not engage in any substantive questioning about why he had left Afghanistan or why he had come to the UK.
- 13. Having carefully reviewed the Note, it is my view that it was not open to the judge to find that the absence of a reference in it to HI undermines the appellant's credibility. This is because:
 - (1) The Note is not a record of a screening or substantive interview of the appellant and on its face it appears to be no more than a summary of a short discussion with the appellant the purpose of which was to determine the next steps to take.
 - (2) The note contains no details whatsoever about the reason the appellant left Afghanistan and there is only one sentence addressing

this issue, which is written in broad terms that could cover almost anything.

- (3) There is no indication in the Note that it is a complete record of what was discussed and it cannot be inferred from the absence of a mention of HI in the Note that the appellant did not in fact mention the organisation to the immigration officer.
14. The appellant's claim is set out in his asylum interview and witnesses statements. In all of these documents he had given a consistent account of involvement with, and his father being prominent within, HI.
15. There may well have been reasons to find the appellant not credible (the judge has given several in the decision) but the absence of a reference to HI in the Note was not one of them. Given the significance the judge has given to the Note (describing it at paragraph 28 as fundamentally undermining the core of the appellant's claim) the judge's finding in respect of the Note cannot be separated from the rest of the credibility findings and has materially affected the credibility assessment. The error of law was therefore material.
16. Given the extent of judicial fact finding which is likely to be necessary for the decision to be re-made this case falls within paragraph 7.2(b) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal and should be remitted to the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside in its entirety.
2. The appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated 5 May