



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

Appeal Number: PA/03497/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> April 2019**

**Decision & Reasons Promulgated  
On 9<sup>th</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**A Z  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss M Harris of Counsel instructed by Ata & Co Solicitors  
For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Devittie (the judge) of the First-tier Tribunal (the FtT) promulgated on 26<sup>th</sup> November 2018.
2. The Appellant is an Afghan citizen who claimed asylum on 2<sup>nd</sup> October 2015 on the basis that he feared the Taliban if returned to Afghanistan, because he had worked as an interpreter in Afghanistan for a company called CISS.

3. The application was refused on 24<sup>th</sup> February 2018 and the appeal was heard by the FtT on 18<sup>th</sup> October 2018.
4. The judge found the Appellant to be an incredible witness and did not accept that he had worked as an interpreter for CISS as claimed although it was accepted that CISS had operated as a security company in Afghanistan. The judge did not accept that the appellant was the subject of adverse interest by the Taliban and the appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by Upper Tribunal Judge Finch in the following terms;

“It was arguably procedurally unfair to find that the Appellant’s credibility was undermined when he said that he had not been able to obtain any corroborative evidence from CISS but at the same time to accept that the Respondent was not able to establish the veracity of the signature on the documents said to be signed by the CISS and relied upon by the Appellant.

The judge also failed to take into account the fact that the Appellant was able to give oral evidence in very good English when assessing whether he had shown that he was previously employed as an interpreter. He also failed to take into account the fact that the Appellant explained that he did not immediately resign from his post, when threatened, as his family were financially dependent upon him and working as an interpreter was the only way in which he could earn a similar amount of money.

The judge began his assessment of the Appellant’s credibility by considering whether some of his answers were plausible. He did not take into account all of the evidence in a holistic manner before reaching a decision as to the credibility of the Appellant’s account.

As a consequence, it is my judgment that First-tier Tribunal Judge Devittie’s decision and reasons did contain arguable errors of law and, therefore, permission to appeal should be granted.”

6. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

## **My Consideration and Conclusions**

7. At the oral hearing Mr McGirr relied upon a rule 24 response dated 26<sup>th</sup> March 2019 in which it was contended that the judge had directed himself appropriately and made findings which were open to make on the evidence.
8. Miss Harris relied and expanded upon the Grounds of Appeal together with the grant of permission.

9. The judge listed unsatisfactory features of the Appellant's evidence at paragraph 10 (1)- (6) and paragraph 11.
10. At paragraph 10(1) and (2) the judge found that the Appellant had not been able to give a satisfactory explanation as to why he remained at work after receiving the first threat by the Taliban. The judge records the Appellant's explanation as being that he did not take the threat seriously, partly because he was not within reach of the Taliban as he was working in Kandahar. The judge did not accept this explanation as credible.
11. In my view inadequate reasons have been given for rejecting the Appellant's explanation, and the judge has concluded that the Appellant's explanation was not plausible. Caution must be exercised when considering plausibility as was emphasised in HK [2006] EWCA Civ 1037, at paragraphs 28 and 29. In very brief summary the guidance in that case was that in many asylum cases an Appellant's story may seem inherently unlikely but that does not mean it is untrue. Ingredients of the story must be considered against available country evidence and reliable expert evidence, together with factors such as consistency. Inherent probability may be a dangerous, even a wholly inappropriate factor to rely on in some asylum cases.
12. The Appellant's witness statement dated 17<sup>th</sup> October 2018 formed part of the Appellant's evidence before the FtT. At paragraph 18 of that statement the Appellant gave quite a full explanation as to why he had not resigned immediately. He explained that it was not an easy decision to leave a job immediately, hoping that the threat would never be implemented. Working as an interpreter was his livelihood and even if he left CISS he would have worked for a similar organisation to utilise his skills and experience, and the only organisations that paid good wages were international organisations. He also explained that the international forces were still in Afghanistan at that time, and the situation was not as bad as after the departure of those forces in December 2014. He described Kabul as being less insecure.
13. I find that that the judge's decision does not demonstrate that the Appellant's explanation had been taken fully into account, and inadequate reasons were given for making an adverse credibility finding based on plausibility on this point.
14. At paragraph 10(5) and (6) the judge makes a significant adverse credibility finding as to why the Appellant was not able to provide verification of his employment with CISS, and makes reference to the Appellant being asked repeatedly in cross-examination what efforts he had made to contact his former employees. The reference to employees is clearly a typing error and the judge meant to refer to employer. The judge found that the Appellant's responses significantly undermined his evidence and this caused the judge to receive the impression that he was making up his evidence as he went along.

15. I find that it was a material error of law to make such a significant adverse credibility finding on this point. The judge does not mention in his findings, the Respondent's inability to contact CISS and verify the documentation submitted by the Appellant said to confirm his employment with that organisation. At paragraphs 26-27 of the Respondent's refusal decision, the Respondent notes that CISS no longer have an official website because their domain has been taken over and comments that consequently there is no way to confirm that the logo printed on the documents produced by the Appellant is the same as the official company logo. Due to the lack of an official CISS website the Respondent comments that it is virtually impossible to establish what relation the signatory of the documents has to CISS.
16. There is no indication that the judge has taken into account paragraph 2 of the Appellant's witness statement in which he explains that it is difficult for him to submit corroborative evidence of his employment with CISS because the company was dissolved because of corrupt activities and the managers went into hiding. This tends to corroborate what is stated by the Respondent at paragraph 26 of the refusal decision.
17. I find that the judge erred by failing to take into account potentially material evidence, that being the Respondent's inability to contact CISS as outlined in the refusal decision, and the Appellant's explanation in his witness statement, and inadequate reasons were given for making such an adverse credibility finding.
18. At paragraph 11 the judge refers to a report by a country expert, accepting that the Appellant's account is not in itself inconsistent with country background conditions. The judge then considers the documentary evidence submitted by the Appellant, in the form of an identity card and a letter from his former employers. The judge correctly confirms that documentary evidence must be considered in the round in the light of the totality of the evidence. However, in my view the judge does not follow that approach. The judge goes on to record that "The unsatisfactory features I have identified are compelling and they significantly undermine the weight to be accorded to the documentary evidence showing him to have been in the employ of a private security company."
19. The judge therefore has not shown that he has looked at the evidence in the round. The only reason given for not accepting the documentary evidence as reliable, are findings that the judge has made in relation to credibility on other issues. The impression given is that the judge has already found the Appellant incredible, before considering the documentary evidence. I find this to be an error of approach.
20. For the reasons given above I am persuaded that the judge materially erred in law, and made findings which are unsafe. In my view those findings infected other findings.

21. The decision of the FtT is set aside with no findings preserved. It was suggested that it would be appropriate to remit the appeal back to the FtT to be heard afresh. Having considered the Senior President's Practice Statements, in particular paragraph 7.2 I find that it is appropriate to remit the appeal back to the FtT because of the extensive judicial fact-finding required.
22. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Devittie.

### **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

### **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 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.

Signed

Date 4<sup>th</sup> April 2019

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT**

#### **FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the FtT.

Signed

Date 4<sup>th</sup> April 2019

Deputy Upper Tribunal Judge M A Hall