



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

Appeal Number: PA/08469/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> December 2018**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**AMZ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr. R Solomon, instructed by Courtney Smith & Co  
For the Respondent: Ms. Vidyadharan, Home Office Presenting Officer

**DECISION AND REASONS**

1. No anonymity direction has previously been made. However, the appeal concerns a claim for asylum and international protection and in my judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. AMZ is granted anonymity throughout these proceedings. No report of these

proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant is a national of Afghanistan. He is said to have arrived in the United Kingdom on 15<sup>th</sup> September 2016, having been granted a visa to enter the United Kingdom on 7<sup>th</sup> September 2016, as a Tier 4 (General) student. He claimed asylum on 3<sup>rd</sup> January 2018. His claim was refused by the respondent on 16<sup>th</sup> June 2018, and his appeal against that decision was dismissed by FtT Judge Chana for the reasons set out in a decision promulgated on 21<sup>st</sup> August 2018. The appellant appeals the decision of the FtT Judge to dismiss his appeal, and the matter comes before me to determine whether the decision of the FtT Judge is tainted by a material error of law.
3. At the conclusion of the hearing before me, I informed the parties that in my judgement, the decision of the FtT Judge does contain a material error of law, and that I would set aside that decision. I said that I would give the reasons for my decision in writing. This I now do.

#### The decision of FtT Judge Chana

4. The account of events that were initially relied upon by the appellant in support of his asylum claim are summarised at paragraphs [14] to [17] of the decision of the FtT Judge. At paragraphs [18] to [20], the FtT Judge refers to an additional factor that the appellant sought to rely upon in support of his claim. It was a matter that had been raised by the appellant just before the hearing commenced, and caused counsel for the appellant to make an application for an adjournment so that the appellant could make another statement addressing this new aspect to his asylum claim. For the reasons set out at paragraphs [20] and [21] of the decision, the FtT Judge refused the application for an adjournment. There is, and can be no criticism of that decision.

5. At paragraphs [22] to [32] of the decision, the Judge records the evidence that was given by the appellant in chief, and when cross-examined. At paragraphs [29] to [32], the Judge notes the questions put by her to the appellant, and his replies. It appears to have been suggested by counsel for the appellant that the Judge was in fact cross-examining the appellant. The Judge records in her decision that counsel “... became obstructive and continued to interrupt my questioning ...”. There is no criticism in the grounds of appeal, as to the conduct of the Judge during the course of the hearing.
6. The Judge’s findings of fact and conclusions are set out at paragraphs [34] to [54] of her decision. Beyond accepting, as the respondent had, that the appellant had worked for the ‘Afghan Institute for Strategic Studies’ (“AISS”), it appears that the Judge rejected the appellant’s account that his work for AISS and the publication of a book of which he was a co-author, put the appellant at risk upon return. The Judge noted that even on the appellant’s account, the appellant had not received any threats from the Taliban whilst he had worked for AISS, or after the publication of the book.
7. The Judge considered the appellant’s claim that the Taliban’s network of intelligence and its informers had not found him during the three years in which he had worked in Afghanistan, but did so after he left the country, to be totally incredible. She did not find it credible that the appellant was not targeted while he lived and worked in Afghanistan, and that it took some time for him to come to the attention of the Taliban. The Judge found aspects of the appellant’s account to be internally inconsistent, and at odds with the background material. She concluded that it was not credible that the Taliban would send the appellant’s father a threatening letter that the appellant should stop working for foreigners, when the appellant had already left his employment, and Afghanistan, some years earlier. The Judge referred to the country guidance set out in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC), noting that a person who is of lower level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul. At paragraph [53], the Judge found that it would be reasonable

and not unduly harsh for the appellant to relocate within Afghanistan. She stated;

“...The appellant is an Afghan National, is educated and in good health. He speaks the local language and has worked in Afghanistan and this will assist him to reintegration into his home country.”

8. Having considered the matters relied upon by the appellant, at paragraph [54] of her decision, the Judge stated:

“The burden of proof lies on the appellant albeit to a low standard. I am not satisfied that the appellant’s evidence is credible or that he is telling the truth. Considering all the evidence as a whole, I am not satisfied that, if returned to Afghanistan, the appellant would face a real risk of persecution, death, or torture or inhuman or degrading treatment or punishment from anyone. I find that the appellant has fabricated his evidence that he is at risk from the Taliban or that he worked secretly for the Indian embassy in his last desperate attempts to stay in this country. I find that the appellant is an economic migrant.”

### The appeal before me

9. The appellant advances five grounds of appeal to the Upper Tribunal. First, the FtT Judge failed to make findings of fact on relevant matters, and failed to have regard to relevant evidence. Second, the FtT Judge made factual findings on credibility that are not reasoned or adequately reasoned. Third, the FtT Judge unfairly mischaracterised some of the evidence. Fourth, the FtT Judge failed to consider the expert evidence in the round before making an assessment of the appellant’s credibility. Fifth, the FtT Judge failed to properly consider the risk upon return in light of the relevant country guidance, and the appellant’s particular profile and characteristics.
10. The appellant was granted permission to appeal to the Upper Tribunal by FtT Judge Landes on 15<sup>th</sup> October 2018. It is fair to say that in granting permission, FtT Judge Landes considered some of the matters relied upon by the appellant in the grounds of appeal, to have more merit than others. Although the five grounds of appeal are set out in 28 paragraphs, Mr Solomon acknowledged that many of the criticisms made of the decision of the FtT Judge, are subsumed within the first ground of appeal. That is, in reaching her decision, the FtT Judge failed

to have regard to the evidence that was before the FtT Judge when considering the core of the appellant's account of events, and the risk upon return. There was evidence that was capable of corroborating the appellant's account, and the Judge's failure to have any or any proper regard to that evidence, has caused the Judge to either misunderstand the claim, or to reach findings without considering the material that was capable of answering the Judge's concerns.

11. On behalf of the appellant, Mr. Solomon relied upon the grounds of appeal and referred me in particular to the evidence that was before the FtT Judge, at pages 19 to 77 of the appellant's bundle of documents. That evidence included in a witness statement of the appellant, but more importantly, included evidence from a number of other individuals that was capable of corroborating the appellant's account of events, and the risk upon return. He referred me to that evidence, and submits that the Judge simply fails to refer to, or engage with that evidence. He submits that if the Judge had considered that evidence, the Judge would not have found the claim to be fabricated, or that the appellant is an economic migrant.

12. On behalf of the respondent, Ms. Vidyadharan refers to paragraph [34] of the Judge's decision in which the Judge stated:

"I have considered all the evidence in this appeal including evidenced to which I have not specifically referred. I have considered the documents provided by the appellant in line with the case of Tanveer Ahmed which states that a document that the appellant relies upon must be capable of being relied upon."

13. Ms. Vidyadharan submits that a careful reading of the decision of the FtT Judge demonstrates that the Judge properly identified the issues in the appeal, and the areas in which the appellant's evidence was internally inconsistent and difficult to reconcile with the background material. She referred to the decision of Mr. Justice Hadon-Cave in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) which confirms that it is generally unnecessary and unhelpful for FtT judgments to rehearse every detail or issue raised in a case. What is necessary is for the Judge to identify and resolve key conflicts in the evidence, and explain in clear and brief terms their reasons, so that the

parties can understand why they have won or lost. She submits that here, that is what the FtT Judge has done. She accepts that the Judge does not make any express findings as to whether the appellant was a co-author of a book or the extent to which that book has been distributed, but the Judge did note that the appellant was of no adverse interest to the Taliban whilst he was in Afghanistan despite any involvement as a co-author of that book. She submits that the Judge carefully considered the appellant's evidence about the attempted assassination of [KP], and the evidence about the 'night letter' received by the appellant's father. She accepts that the Judge does not refer in the decision, to the statement of the appellant's father, neighbor's, or the letters from AISS, but submits that the findings reached by the Judge were properly open to her. Ms. Vidyadharan submits that although lengthy, the matters relied upon by the appellant in the grounds of appeal amount to nothing more than a disagreement with findings that were properly open to the Judge, on the evidence.

#### Discussion

14. The assessment of credibility is always a highly fact sensitive task. The FtT Judge was required to consider the evidence as a whole. In assessing the credibility of the appellant and the claim advanced by him, the Judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. Some of those factors may be more relevant in an individual case than others. If an account is littered with internal inconsistencies that may be enough for a Judge to dismiss the evidence of an appellant as incredible. It does not follow that a Judge is entitled to dismiss an account in the same way simply because the account is implausible.
15. In **HK -v- SSHD [2006] EWCA Civ 1037**, the appellant's account had been rejected at first instance simply because the facts he described were so unusual as to be thought, unbelievable. The Court of Appeal held that that was not a safe basis upon which to reject the existence of

events that were said to have occurred within an environment and culture that were wholly outside the experience of the decision-maker. At paragraph [28] of his judgment, Neuberger LJ stated:

*“Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).”*

16. It is right, as Ms. Vidyadharan submits that here, at paragraph [34], the Judge confirms that she has not made findings without first looking at all the evidence in the round. Having made that clear, I should be cautious to conclude that she did not adopt that approach. What follows at paragraphs [35] to [50] are findings that appear to arise from a combination of inconsistencies in the account, a lack of detail or sufficient explanation, and matters that appeared to the Judge, to be implausible.
17. In considering the grounds of appeal relied upon by the appellant I have considered the evidence that was before the FtT Judge, and to which the Judge makes no reference at all, in her decision. At pages 30 to 32 of the appellant's appeal bundle, there were before the FtT Judge two letters from [KP]. The first is dated 10<sup>th</sup> January 2018 and confirms how he knows the appellant. In that letter, [KP] states:

“... We have received multiple warnings from the relevant security authorities about the possible threats from insurgent groups. Eventually on 23/09/16, I was targeted in a failed assassination organized by insurgent groups. I was then hospitalized in India and then moved to the United States of America for the rest of my medical procedures ...

...

I was informed by AMZ that he has received the same threat letter from the terrorists that I have received before I was targeted ...”

18. The second letter from [KP] dated 7<sup>th</sup> July 2018 clarifies that the Taliban had targeted him in a failed assassination attempt on the evening of 24/09/16, and that he had mistakenly put a wrong date in his earlier

letter. At paragraph 5(h) of the appellant's witness statement dated 24<sup>th</sup> July 2018, the Appellant clarified that in giving his account of that assassination attempt, the appellant had relied upon the date set out in the first letter received from [KP].

19. As to that aspect of the appellant's claim, at paragraph [42] the F&T Judge stated:

"... The appellant claims that the Herat office was closed as one of his colleagues, [KP] was assassinated in Herat on 23 September 2016. However, the appellant changed his evidence and said that [KP] was a victim of a failed assassination attempt. Background evidence states that [KP] was the head of Afghan network of civil societies in Herat and that an unknown gunman opened fire on him in the evening of 24 September 2016 and no group has accepted responsibility for the shooting. The appellant provided a letter from [KP] dated 10 January 2018 in which he stated that he was shot on 23 September 2016. The reports however say that the shooting was on 23 September 2016. This inconsistency in the appellant's evidence goes to the appellant's credibility and to the credibility of his claim."

20. I can only assume that in that paragraph, the F&T Judge considered there to be an inconsistency because the letter from [KP] dated 10<sup>th</sup> January 2018 stated that he was shot on 23<sup>rd</sup> September 2016, whereas the background material states that the shooting occurred on 24<sup>th</sup> September 2016. The Judge considered the inconsistency to impact upon the appellant's credibility and the credibility of his claim. However, in reaching that decision, the Judge fails to engage with the second letter from [KP] dated 7<sup>th</sup> July 2018, and with the explanation given by the appellant in his witness statement. I accept that the weight to be attached to that additional evidence, would be a matter for the Judge, but in the absence of any reference to that evidence in the decision, I cannot be satisfied that the Judge did in fact consider that additional evidence. It was at least capable of explaining the inconsistency in the evidence that the Judge considered to be relevant to the credibility of the overall claim.

21. Similarly, at paragraphs [45] and [46] of her decision, the Judge considered the appellant's claim that his father had received a letter from the Taliban in December 2017 stating that his son is working for "foreigners". The Judge considered there to be no credible evidence as



to how the Taliban would have found out about the appellant's activities at the Indian Embassy, and noted that if the Taliban had known the appellant was promoting the Indian government's interests in Afghanistan, they would have sought him out earlier. The Judge did not consider it to be credible that the appellant would have been associated with AISS when he was no longer working for them and was in fact in the UK. The Judge did not find it credible that the Taliban would send the appellant's father a threatening letter threatening that the appellant should stop working for foreigners when the appellant had already left the job and the country, some four years earlier.

22. I have carefully considered the letter that the appellant claims was received by his father, the translation of which is to be found at page 36 of the appellant's bundle. The document states:

*"[The appellant ]... a resident of Herat province, who is an associate of the foreign forces, has been engaged in organizing political and security meetings in Herat. According to the Islamic Emirates' Sharia Law, he has been sentenced to a severe punishment. As far as we are aware his whereabouts remain unknown. In view of his continued absences family members are to be punished."*

23. The content of that document is difficult to reconcile with the description of it set out at paragraphs [45] and [46] of the decision. The Judge did not find *"it is credible that the Taliban would send the appellants father a threatening letter that the appellant should stop working for foreigners when the appellant had already left the job and country some four years earlier."* The letter does not threaten that the appellant should stop working for foreigners, but claims that the appellant *"is an associate of the foreign forces"* and *"has been engaged in organizing political and security meetings in Herat"*. At page 39 of the appellant's bundle that was before the FtT, there is a letter from the appellant's father explaining the circumstances in which the letter had been received by him, and the steps that he took to refer the matter to the Police and National Security Forces. At page 42 of the appellant's bundle, there was a letter from a neighbor that confirms that the appellant's family have left Afghanistan but *"... Unknown groups have been sighted near his home and his house is under surveillance.."* The

FtT Judge fails to make any reference to this evidence in her decision. Again, in the absence of any reference to that evidence in the decision, I cannot be satisfied that the Judge did in fact consider that additional evidence relating to the letter received by the appellant's father.

24. There was a wealth of other evidence that was before the FtT Judge, but which simply does not appear to have been considered by the FtT Judge. Having carefully considered the evidence that was before the FtT Judge, I accept the submission made by Mr Solomon that the Judge's assessment of the credibility of the appellant viewed from different angles is flawed, and when taken together, the findings made by the Judge are unreasonable in the *Wednesbury* sense. I am satisfied that in many places, the Judge appears to have made adverse findings against the appellant without carefully considering all of the evidence that was before her, and which was at least capable of providing some explanation, and answering the concerns of the Judge.
25. I accept the submission made by Mr Solomon that when the decision of the FtT Judge is read as a whole, it is clear that in a number of respects the Judge made findings and reached conclusions upon matters without proper reference to all the evidence before her. That is not to say that if the Judge had considered that evidence, she was bound to reach a different conclusion. She may well have reached the same conclusion, but I simply cannot be satisfied that she would have. The resulting unfairness to the appellant is apparent from the findings made by the Judge and the conclusions reached.
26. I am satisfied that the decision of the First-tier Tribunal involved in the making of an error on a point of law and the decision of the First-tier Tribunal is set aside. I must then consider whether to remit the case to the First-tier Tribunal, or to re-make the decision myself. I consider that where a first instance decision is set aside on the basis of an error of law involving the deprivation of the appellant's right to a fair hearing, the appropriate course will be to remit the matter to a newly constituted First-tier Tribunal for a fresh hearing. In reaching my decision, I have also taken into account paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the

appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**Notice of Decision**

27. The appeal is allowed, and the decision of FtT Judge Chana is set aside.
28. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

Signed  
2018

Date

10<sup>th</sup> December

Deputy Upper Tribunal Judge Mandalia

**FEE AWARD**

No fee is paid or payable, there can be no fee award

Signed  
2018

Date

10<sup>th</sup> December

Deputy Upper Tribunal Judge Mandalia