



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

Appeal Number: PA/09496/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9 May 2019**

**Decision & Reasons Promulgated
On 30 May 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MHS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, Counsel, instructed by Ata & Co Solicitor

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 20 March 2019 Judge Hanbury of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Afghanistan, against a decision made by the respondent on 26 July 2018 to refuse his protection claim. The basis of his asylum claim was that he was at risk of persecutory harm from the Taliban who had targeted him due to his employment with UNICEF. The respondent was prepared to accept, on the basis of supporting documentation, that the appellant had

worked for UNICEF, but otherwise found his claim not credible. The judge in his conclusions stated:

“24. Given my findings on the lack of credible threats made to the appellant by the Taliban, the case appears to turn on risk on return. The appellant’s family remain in Afghanistan and appear safe, which would itself be surprising, if the threats the appellant alleges were made by the Taliban. If the appellant’s claim were true, it would have given rise to a claim under the Refugee Convention, I have found that although the appellant may have a subjective fear of the Taliban, as they are a notoriously brutal and backward-looking organisation, he has not been able to substantiate his claim that he received threats relied upon. I do not consider he has demonstrated he would be reasonably likely to be killed so as to fall within article 2 of ECHR, nor has he established that he would be subjected to inhuman and degrading treatment or punishment such as would fall within article 3. As far as the Qualification Directive is concerned, the appellant would need to establish that there are substantial grounds for believing that the appellant returned to Afghanistan face a real risk of suffering serious harm and is unable or owing to such risk unwilling to avail himself protection of that country within the terms of paragraph 339CH rules. The appellant has failed to establish this claim to the required standard of proof.”

2. The grounds raised seven challenges, it being argued that the judge (1) reached contradictory findings regarding the credibility of the appellant’s claim that he was threatened by the Taliban; (2) attached too much weight to his finding that the appellant had failed to provide verification that the threatening text from the Taliban and UNICEF e-mails were genuine; (3) failed to identify the evidential basis for a number of findings which were materially relevant to his assessment of the appellant’s claim to have been threatened by the Taliban/failed to resolve apparent conflict in the evidence before him; (4) relied upon a perverse reason for concluding that the appellant’s credibility had been damaged on account of his failure to verify the text from the Taliban; (5) failed to consider the UNICEF e-mails “holistically”/adopted a contradictory approach to the assessment of the reliability of the UNICEF e-mails; (6) failed to address the appellant’s renewed application for an adjournment at the start of the hearing, which related to a matter about which the FTTJ went on to make a negative credibility finding against the appellant; and (7) failed to take any account or consider the fact that the report from Dr Giustozzi verified the police report submitted by the appellant in support of his claim.
3. I am grateful to the brief submission I received from Mr Fripp and Ms Everett. Both agreed (Ms Everett after discussion) that the judge’s decision could not stand.
4. I shall not rehearse my reasons in full for concluding that the judge materially erred in law but in brief I see no arguable merit in grounds (5) and (6) – and one aspect of ground 2. As regards (5), the documentary basis in which the appellant was accepted by the respondent to have

worked for UNICEF was quite separate from the UNICEF e-mail adduced by the appellant; the respondent's acceptance of the appellant's UNICEF employment in light of those documents did not oblige the judge to accept the reliability of the UNICEF e-mails. As regards (6), the judge was entitled to conclude that the appellant had had ample time to produce evidence corroborating the authenticity of the UNICEF e-mails.

5. However I see particular force in ground 1. The judge's analysis at paragraph 17 was that:

"17. I found the appellant be an essentially honest witness. He may well have a fear the Taliban. That does not mean that his fear is objectively justified or that he necessarily received the threats he claims to have received. Clearly, working for an international organisation he would have been aware of their brutality and may well have a legitimate desire to seek to move abroad. It is possible for him to be telling the truth over part of this case but to have exaggerated other parts of his evidence. In particular, I have to look critically at documents produced, which have not been verified. In some cases those documents were inconsistent with the behaviour normally expected of the Taliban. In particular, as we pointed out in submissions, the Taliban do not normally make threats by letter. There is also evidence to suggest Taliban do not normally make threats by letter. There is also evidence to suggest Taliban do not normally telephone their victims or intended victims in advance. The reasons for this are obvious; it would make them easier to trace. As I understand it, the appellant's mobile phone was not submitted for verification and the respondent was provided with copy texts. The original texts could not be checked. It is striking that the appellant did not seek confirmation from a member of UNICEF that the emails he says he received from his work colleagues genuinely emanated from that organisation. It would have been relatively straightforward to have sought the original e mail thread instead of merely providing print-outs, which may or may not be genuine. The lack of verified documents is a recurring theme. This is surprising since the appellant had nearly a fortnight between arriving in the UK and advancing this claim. He also has now had well over a year to verify the documentary evidence. Had this verification been provided early on, the documents would have simply been accepted by the respondent. It is particularly difficult, when faced with, for example, text messages, to verify they are genuine. Therefore, even making allowance for the apparently honest account the appellant gave-without any reliable documentary evidence in support his case appears weaker than it would otherwise appear."

6. There is a clear contradiction within this paragraph between the unqualified terms of the first sentence "I find the appellant to be an essentially honest witness" and the highly qualified terms of the final sentence: "the apparently honest account", especially given that in between the judge expressly rejects the appellant's claim to have received texts from the Taliban.

7. I also find force in ground 3 (and the related aspect of ground 2) in relation to the judge's reasons for rejecting the appellant's claim to have received texts from the Taliban. Perhaps by use of the word 'normally' (as in "the Taliban do not normally make threats by letter"/"telephone their victims"), the judge meant to convey it was not impossible, but there was evidence before the judge stating that it was not uncommon (see in particular paragraph 13 of the report from Dr Giustozzi) and it was at least incumbent on the judge to explain why he did not think this evidence applied in the appellant's case. Ground (4) also makes a reasonable point about the judge's treatment of the appellant's failure to verify the texts by way of submitting his phone to the respondent to be checked: the respondent did not ask him to.
8. I consider ground (7) is also made out. Considering how much emphasis the judge placed on the lack of verification of documents it is very odd that he did not address the fact that Dr Giustozzi had verified by way of a short additional report the police reports submitted as part of his claim. It is true that this report was not sent to the FTTJ until four days after the hearing (which took place on 22 February), but the judge did not promulgate his decision until 20 March 2019, nearly a month later and the Tribunal had confirmed to the appellant's solicitors that this document had been passed to the judge. Given that, it must be presumed the judge received this report before promulgating, and as such he should have addressed it or at least explained why he would not take account of it, see **E & R** [2004] EWCA Civ 49 at [92].
9. Mr Fripp also submitted that the judge's approach to credibility failed to apply a structured approach in line with **KB & AH Pakistan** [2017] UKUT 00491 (IAC). That is a valid criticism, but the judge's errors went further than simply a lack of a structured approach.
10. I did pause over the issue of whether the judge's error were material given his alternative finding on internal relocation. However, although the judge at paragraph 23 also stated that the appellant would have "an internal flight alternative", it cannot be said that this survives as a free-standing, finding, not least because the judge himself stated at paragraph 24 that if the appellant's claims were true, "it would have given rise to a claim under the Refugee Convention" (in context that can only mean, the claimant was entitled to succeed in his claim).
11. For the above reasons I conclude that the judge materially erred in law.
12. The case is remitted to the FtT (not before Judge Hanbury). Whilst I make no specific direction to the next judge hearing the case, I would observe that in light of the argument raised at ground (6), it can be expected that the appellant would have taken steps by then to obtain independent corroboration from UNICEF as to the authenticity of the UNICEF e-mails adduced by the appellant. Indeed Mr Fripp said such steps were underway.

13. The next judge will also obviously need to apply Upper Tribunal country guidance such as is current at the date of the hearing.
14. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Hanbury).

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 their 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: 25 May 2019



Dr H H Storey
Judge of the Upper Tribunal