



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08445/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 6 April 2018

promulgated

On 11 April 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tufan Senior Home Office Presenting Officer
For the Respondent: Mr Aslam instructed by Sohaib Fatimi Solicitors

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge Hetherington who, in a decision promulgated on 3 October 2017, allowed the appeal on asylum grounds.

Background

2. MAS is a national of Afghanistan, born in Pakistan on 27 June 1995, who arrived in the United Kingdom on 19 May 2016 and claimed asylum shortly thereafter. The application was refused by the Secretary of State on 18 August 2017.

3. The Judge sets out a direction in relation to the issues he was required to decide at [9 – 10] of the decision in the following terms:
 - “9. The appellant claims his uncle was killed by the Taliban.
 10. My task is to identify whether the appellant has a well-founded fear of persecution from the Taliban, on return to Afghanistan, whether there are other reasons for concluding that he faces a real risk of serious harm.”
4. MAS claimed his paternal uncle was shot dead in Pakistan and that he believed the Taliban were responsible. MAS stated his father is a member of the Taliban and that his father wanted MAS to join this group. MAS feels the Taliban will kill him.
5. The Judge sets out the core findings from 11.6 to 11.20 which can be summarised in the following terms (reference to ‘the appellant’ is to MAS as this is the capacity in which he appeared before the Judge):
 - a. The appellant’s statement provides detailed and cogent explanation of the claimed inconsistencies in his asylum interview [11.6].
 - b. The appellant has described growing up in Pakistan where he was educated to year 12. The Judge did not find this statement inconsistent for although the appellant asserted his father was against education his father respected the dominance of his older brother as head of the family who wanted the appellant to be educated [11.7].
 - c. The Judge accepted the evidence of the appellant and witness that photographs provided depicted the appellant’s uncle [11.8] but finds that other photographs depicting a shroud do not and cannot prove the death of the appellant’s uncle, the Hizb-e-Islami commander allegedly killed by the Taliban [11.9].
 - d. When considering credibility, the Judge took into account the fact the appellant’s witness, another uncle based in the UK, was granted asylum by the Home Office in 2001 because he feared he would be killed by the Taliban and accordingly attached weight to his evidence which the Judge found had been given in an honest and straightforward manner and was unshaken in cross examination [11.10].
 - e. The Judge did not accept discrepancies identified by the respondent are either discrepancies at all or discrepancies ‘of such moment as to undermine the appellant’s credibility’ [11.11].
 - f. The appellant was sixteen or seventeen when his uncle was killed. The Judge did not find the appellant had changed his account. The appellant’s uncle in the UK believes his brother was killed by the Taliban which is the basis for the appellant’s belief [11.12].
 - g. The Judge accepted it was plausible no death certificate would have been issued by the authorities in Pakistan as at

the time citizens of Afghanistan were in a camp with no legal status in Pakistan [11.13].

- h. The Judge noted the appellant's parents live in an area controlled by the Taliban and that it was plausible out of fear and motivation to remain safe that the appellants father joined this group. Members of the appellants tribe would know the appellant and will bring pressure on the appellants father to force the appellant to join the Taliban [11.14].
- i. The Judge was satisfied the appellant had given a good reason for not claiming asylum in either Croatia or Germany [11.15].
- j. The Judge found the appellant's uncle in the UK "generally credible" as he is a man who has been granted refugee status by the Home Office based on his fear of the Taliban [11.16].
- k. The Judge finds that the appellant should be regarded as having given a truthful account about what happened in Pakistan and Afghanistan for the reasons set out at [11.17].
- l. The Judge finds documents at pages C1 to C7 in the appellants bundle reliable [11.18].
- m. At [11.19] the Judge finds:

"I accept that the Taliban are a quasi-shadow government who will know who comes into Afghanistan. I find that relocation is not an option for the appellant. The reach of the Taliban is widespread and includes Kabul."
- n. The Judge finds the appellant has a well-founded fear of persecution and is therefore a refugee [11.20].

6. The Secretary State sought permission to appeal on three grounds asserting: (a) that the Presenting Officer identified and submitted several major inconsistencies that go to the core of MAS account, notably the claim his uncle was killed by the Taliban yet that the Taliban want MAS to join them. The grounds assert the Judge has not recorded any of the submissions from either party in the determination. The Grounds refer to two issues recorded in the Presenting Officers post hearing minute being:

"At Q102 AI he says he doesn't know who killed his uncle.

His initial screening interview at Q 4.1 he says it was the Taliban who killed his uncle in Peshwar.

Later in his AI at Q144 he says his Uncle was killed by the government."

"The Appellant maintains his family wanted him to join the Taliban in revenge for the death of his uncle. Yet, if the uncle was killed by the Taliban, which is what the Appellant originally

said, - it isn't clear why the family want him to join the Organisation/terrorist group that were responsible for killing the uncle".

The grounds assert the Judge failed to adequately address the first point and has failed entirely to consider the second submission.

7. (b) that the inconsistencies identified and submitted by the Presenting Officer were not of a minor or peripheral nature. The grounds argue the Judge failed to actually address any of the inconsistencies raised, claiming instead that there were no inconsistencies or if there were they did not undermine the appeal. The grounds assert the question of whether the Taliban killed MAS's uncle was central to the appeal. MAS claimed that he believed his uncle was killed by the Taliban but did not address the issue submitted upon, in other words inconsistencies in MAS's account that he refers to the government, then the Taliban, then he does not know who killed his uncle. The grounds submit that even if MAS believes the Taliban killed the uncle this does not explain why MAS gave three different answers to what should be simple question.
8. (c) the Judge has failed to adequately address the issue of internal relocation at 11.19. The grounds submit the Judge failed to refer to any background evidence to support the view that the Taliban are a "quasi shadow government" and refers to no evidence of any description to demonstrate the Taliban are able to monitor those entering or leaving Afghanistan. The Judge fails to provide adequate reasons for how he was able to reach this conclusion.
9. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis that all grounds are arguable.

Error of law

10. The Tribunal reminds itself that an appellate court or tribunal should not lightly interfere with the findings of a judicial fact-finder, who has had the benefit of hearing and seeing the parties and witnesses give evidence, as the Judge did in this case, without good reason which will ordinarily only arise if the findings are irrational or the Judge had made legal error material to the decision under challenge sufficient to warrant the appellate court having any such involvement.
11. The finding by the Judge at [11.11] is that he did not accept the discrepancies identified by the Presenting Officer are either discrepancies at all or are not discrepancies sufficient to undermine MAS's credibility. The first of these findings is irrational. If one looks at the evidence from all sources available to the Judge it is clear that MAS gave evidence of a contradictory nature as identified in the grounds seeking permission to appeal. In relation to whether those discrepancies undermine the appellant's credibility would depend upon whether there was a satisfactory explanation or that there was other evidence to which the Judge was entitled to give weight which supported the conclusion of the Judge, even though discrepancies may have arisen elsewhere.

12. The Reasons for Refusal letter noted the core of MAS's claim, which was that MAS's uncle was shot dead in Pakistan, but then refers at [31] to the discrepancies in the evidence which are in the Secretary of States view such significant inconsistencies that the MAS failed to establish the perpetrators of his uncle's passing after providing three different responses. MAS was therefore fully aware that this was an issue since receipt of the refusal letter in August 2017. The decision-maker also noted MAS has not provided any documentary evidence to support his claim or to confirm his uncle's death. The decision-maker also noted MAS claimed that he was from a family who are members of the Taliban, although MAS himself is not a member and has no active role in this organisation, and that he claimed his deceased maternal uncle is a commander of the Taliban in his reply to the asylum interview question 14 or, alternatively, that his uncle was a member of Hezb-i-Islami, asylum interview question 100-101. It was also noted at [39] of the refusal letter that MAS claimed asylum because family and relatives are Taliban members or alternatively that his uncle was killed by the Taliban and his father lost a leg because of the Taliban, although it was noted MAS failed to mention such family ties to the Taliban in his screening interview.
13. It is also noted at [44] of the Reasons for Refusal letter that MAS claimed in his asylum interview that his father left Pakistan in fear after his uncle's death and after returning to Afghanistan from Pakistan experienced no problems from the Afghan government. It was also recorded at this stage that MAS provided two different accounts regarding his uncle's killer, as noted above. It was found however that given the family had experienced no problems from the Afghan government since returning and since MAS had failed to establish the perpetrators of his uncle's death it is considered significantly inconsistent that the family would want to take revenge against the Afghan government which was said to undermine the appellants account.
14. The removal direction in this matter is set to Afghanistan not Pakistan.
15. At its highest, considering MAS's evidence on its own, the Judge may have been able to make a finding that MAS subjectively believed that his uncle had been killed as alleged which then led to the necessity to consider whether such a subjective assessment had been objectively made out.
16. The Judge accepted MAS's account because he accepted the account of the uncle based in the United Kingdom. It appears to have been a major element in assessing the credibility of the witness that the uncle was granted asylum by the Home Office in 2001 because he feared that he would be killed by the Taliban [11.10 and 11.16].
17. The information referred to by the Judge in MAS's bundle, Section B - B12 - B 32, relates to the uncle's earlier claim. These include a letter of the 17 August 2001, a copy of the uncle's statement of evidence form, SEF (self completion) in which the applicant provides details of family composition and in which there is reference to a statement in which the core of the claim giving rise to a real risk on return is allegedly set out. Two issues arise in relation to this documentation. The first is that the statement referred to in that form was not

provided to the Judge and does not appear in the section of MAS's bundle relied on by the Judge. The second issue is that the Judge in the determination under challenge refers to the fact the uncle has been granted asylum yet the Judge did not have before him the letter from the Home Office setting out the basis on which asylum had been granted. The letter dated 17 August 2001 at page B12 of MAS's appeal bundle is a letter from the Home Office, Immigration and Nationality Directorate National, Asylum Support Service, informing the uncle that following confirmation that his application for asylum had been determined and confirmation he has been granted leave to remain in the United Kingdom, he was being advised that he no longer qualified for support under section 95 of the Immigration and Asylum Act 1999. There was therefore no evidence before the Judge setting out the full extent of the claim made in 2001, the basis on which the uncle was recognised as a refugee (if this was the case), or how those facts related to the current situation. It appears the best the Judge had was a witness statement dated 22 September 2017 in which the uncle claimed he arrived in the United Kingdom on 22 January 2001 as a result of fleeing the Taliban as he faced a real risk as a member of the Hizb-i-Islami party from the Taliban once they took over control in Afghanistan.

18. The Judge fails to factor into the assessment of this evidence, particularly in light of the absence of adequate reasoning, relevant authorities applicable to assessing the weight to be given to a grant of refugee status to a person in the position of the appellant's uncle. In *AB (Witness corroboration in asylum appeals) Somalia [2004] UKIAT 00125* the Tribunal said "We would add a comment on the growing practice of appellants and/or their representatives adducing letters granting refugee status to someone who is (or is said to be) a relative or colleague. All too often it is assumed such letters magically prove that the person concerned was granted refugee status on the basis he says he was. All too rarely are such letters accompanied by documents confirming on what basis the person concerned actually claimed asylum or, if an appeal was involved, on what basis the Adjudicator allowed that person's appeal. Since such additional documentation should often be still available to the person concerned or to that person's solicitors, Adjudicators should consider what weight they can attach to refugee grant letters when they are not accompanied by confirmatory documents of this kind".
19. In *AC (Somalia) 2005 UKAIT 124* the Tribunal said the fact that a witness has been granted refugee status does not compel an Immigration Judge to believe her evidence about the basis on which she was granted that status. Whereas evidence at a hearing is tested by the adversarial procedure and the Judge must give reasons for his findings, the grant of status by the Home Office is a purely administrative decision, taken on the papers and with no reasons given.
20. The Judge does say this witness gave his evidence in an honest and straightforward manner and was unshaken in cross examination, but it is clear that this was a factor that the Judge considered together with the grant of refugee status and it is not certain that the Judge would

- have concluded as he did in the absence of the weight given to the grant of refugee status. The respondent makes out arguable legal error material to the decision on this ground.
21. The second ground of challenge, relating to the issue of relocation, is by far the strongest ground. Even if MAS's uncle was killed as he alleged, there is still the fact MAS's father return to Afghanistan where he experienced no difficulties from the government. The Judge makes no findings at all within the determination that either the appellant or family members would face persecution on return at the hands of the Afghan government.
 22. The Judge was required to consider the point to which MAS would be returned in Afghanistan and to ascertain whether he will face a credible real risk of persecution in that area. If such real risk was found, the Judge was required to consider whether there is a sufficiency protection in that area or, if not, whether there is another area of Afghanistan to which it would be reasonable to expect MAS to relocate in which he will face no such real risk of persecution or ill-treatment or, is such a risk may arise, that he has available to him a sufficiency protection.
 23. The finding by the Judge that the Taliban are a 'quasi-shadow' government is arguably irrational. The Judge gives no reasons for such a finding and fails to refer to any country guidance or other relevant authorities or country material to support such a finding. The finding that as a result of this status the Taliban will know who comes into Afghanistan is irrational as, again, there is no reference in the determination to any country material to support such an assertion. It is not made out the Taliban have the resources or desire to sit at the airport and log the details of those flying in and out through the International airport in Kabul, or elsewhere, or have access to immigration documentation created by the Afghan government of manifests to enable them to be aware of who is entering or leaving the country or being returned from the United Kingdom, even assuming the Taliban are aware that MAS has left Pakistan.
 24. The finding by the Judge that the reach of the Taliban is widespread and includes Kabul lacks clarity. If the Judge was saying that the Taliban have a presence in all parts of Afghanistan this is not arguably disputed although their presence in some parts, including Kabul, does not appear to be in a position of power of authority and is only reflected by terrorists acts such as assassinations, shootings, and bombings. If the Judge was inferring that such a presence was in the quasi-governmental capacity, such as indicating control of institutions and individuals, such claim is not made out.
 25. The Judge has not properly considered the issue of internal relocation. Although not yet reported by the Upper Tribunal, Mr Tufan did have in his possession a copy of the determination relating to return to Afghanistan which is before the Reporting Committee with a view to its publication as a country guidance case which confirms the position as was clearly understood from existing case law that a person who is of low-level interest to the Taliban, i.e. not a senior government or security service official, or a spy, is not at real risk of persecution from the Taliban in Kabul, and that it will not in general be unreasonable or

unduly harsh for a single adult male in good health to relocate to Kabul, even if he does not have specific connections or a support network in that city. Whilst fact specific issues must be taken into account it was not found the current security situation renders internal relocation unreasonable or unduly harsh. The Judge fails to analyse any of the existing case law relating to returns and, as a result, his approach to the issue is flawed.

26. In light of the nature of the errors identified, and the determination considered as a whole, I find it is not possible for there to be any preserved findings. I set the determination of the First-tier Tribunal Judge aside. As extensive fact-finding is required in relation to every aspect of this claim, and in accordance with the practice direction relating to remittal of appeals, I consider the only just and fair option is for the appeal to be remitted to the First-tier Tribunal sitting at North Shields to be heard by another judge of that Tribunal nominated by the Assistant Resident Judge, or another on his behalf, according to the operational requirements of that hearing Centre.

Decision

27. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remit the appeal to the First-tier Tribunal sitting at North Shields to be heard by another judge of that centre nominated by the Assistant Resident Judge, other than Judge Hetherington.**

Anonymity.

28. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 9 April 2018