



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11761/2016

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 11 January 2019

Decision & Reasons Promulgated  
On 31 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

S M A N  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Diwnycz, Home Office Presenting Officer.

For the Respondent: Mr E Nicholson, Counsel.

**DECISION AND REASONS**

1. The Appellant is a citizen of Afghanistan who sought international protection. His application was refused and he subsequently appealed. Following a hearing, and in a decision promulgated on 23 April 2018, Judge of the First-tier Tribunal Row, dismissed the Appellant's appeal. In so doing he found the Appellant had given inconsistent evidence and made adverse credibility findings.

2. The Appellant sought permission to appeal which was initially refused. However, a renewed application was granted by Upper Tribunal Judge Finch on 3 September 2018. Her reasons for so granting were: -

“The Appellant is appealing against the decision by First-tier Tribunal Judge Row to dismiss his appeal against the decision by the Respondent to refuse to grant him asylum.

The First-tier Tribunal Judge was required to consider the evidence in *the round in accordance with Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11. However, in his decision, the First-tier Tribunal Judge does not give any weight to a substantial number of certificates, letters, references, commendations and an extract from a biography. Instead, he required the Appellant to provide further evidence to corroborate the evidence he had submitted.

It is also arguable that, when reviewing the evidence, the First-tier Tribunal Judge failed to apply the requisite low standard of proof and failed to give sufficient reasons for disputing the validity of his documentary evidence.

As a consequence, the grounds of appeal identify arguable errors of law and it is appropriate to grant permission to appeal.”

3. Thus, the appeal came before me today.
4. At the outset Mr Nicholson referred me to an additional Appellant bundle provided for today’s hearing along with further materials provided by his instructing Solicitors. He acknowledged though that they amounted to fresh evidence that did not go to the heart of the issue for me to decide which is whether or not, within Judge Row’s decision, there is a material error of law.
5. Mr Nicholson asserted firstly that the Judge had erred by failing to attach weight to substantial numbers of certificates, letters, references, commendations and an extract from a biography and in so doing effectively required the Appellant to provide further evidence in relation to such matters to corroborate the evidence that he had submitted. In particular, he referred me to paragraph 23 of the Judge’s decision where, in relation to whether or not the Appellant worked for a non-government organisation called ACTED, the Judge had materially erred in finding that it “would have been for the Appellant’s representatives to contact the organisation to ask them to confirm the Appellant’s account. ACTED would presumably either have confirmed it or said that they had never heard of him...”. In any event, this error was compounded by the failure of the Judge to recognise that this, like others, was not challenged by the Respondent. He referred me to paragraph 27 of the Respondent’s refusal letter. It states: -

*“27. It is accepted that you are an Afghan national and it is accepted that you have undertaken employment as you have stated, however it is not accepted that you are at risk from the Taliban or anyone else because of this employment. In addition, it is not accepted that you have written a biography for which you are at risk in Afghanistan.”*

6. Mr Diwnycz responded by arguing that this was no more than a “TK (Burundi) v SSHD [2009] EWCA Civ 40 point” and that as such, it was evidence that the Appellant ought to have produced.
7. I considered this first challenge. It was incumbent upon the Judge to consider the totality of the evidence in the round. That, he has failed to do. He does not give any weight to a substantial number of documents as referred to in the grant of permission to appeal and has failed to appreciate the concession that was made by the Respondent in relation to the Appellant’s claim to work for ACTED.
8. I find that not only is such an error a material one, but that it infects the totality of the adverse credibility findings made by the Judge. In light of that, his decision cannot stand. There is no need for me to consider further grounds.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

The decision is set aside.

The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Row.

### **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

Deputy Upper Tribunal Judge Appleyard

15 January 2019