



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

Appeal Number: PA/12272/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice Centre  
On 14<sup>th</sup> January 2019**

**Decision & Reasons  
Promulgated  
On 30<sup>th</sup> January 2019**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**[H S]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Ms E Ms E A Mottershaw of Counsel instructed by Paragon Law*

*For the Respondent: Mr D Mills, Home Office Presenting Officer*

**REASONS FOR FINDING AN ERROR OF LAW**

1. The appellant was born on [~] 2000 and is a citizen of Afghanistan. He claims asylum on the basis of his imputed opinion, in that he claims to fear mistreatment from the Taliban because he failed to attend Taliban training camp to where he had been taken after his father's death and fears mistreatment from the government because of his affiliation to the Taliban.

2. The appellant arrived in the United Kingdom in April 2014 and claimed asylum. His claim was refused in December that year but he was granted leave to remain as an unaccompanied child until June, 2017. He appealed that refusal and the appeal was dismissed in July, 2015. He made application for further leave to remain in June, 2017 which was refused on 8<sup>th</sup> November, 2017. He lodged Notice of Appeal against the decision on 23<sup>rd</sup> November, 2017.
3. The determination of First-tier Tribunal Judge Devlin in dismissing the appellant's appeal in July 2015 is at pages 46 to 76 of the appellant's bundle. That contains a number of findings of fact to which the stated determination of *Secretary of State for the Home Department (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* UKIAT 00702* applies.
4. The appellant's appeal against the decision of 8<sup>th</sup> November 2017 was heard by First-tier Tribunal Judge Hawden-Beal in Birmingham on 19<sup>th</sup> December 2018. There was effectively only one challenge to the determination, which related to the judge's finding that the appellant could safely return to Afghanistan and live in Kabul.
5. The determination is rather confused, because instead of setting out the clear findings made by Judge Devlin and then applying *Secretary of State for the Home Department (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* UKIAT 00702*, the judge simply quotes odd paragraphs of Judge Devlin's determination, so that the reader of the determination is left in complete dark as to the findings made by the First-tier Tribunal Judge.
6. Judge Devlin, however, found that the appellant did not face any risk because of his Taliban links, which were not accepted and was not at any specific risk from the Taliban were he to relocate to Kabul. First-tier Tribunal Judge Hawden-Beal found that it was not unduly harsh to expect a healthy young adult male to relocate there. The difficulty in this appeal is that the judge was not dealing with an adult male. The judge was dealing with a minor. At paragraph 17 she said this

"In those circumstances, although I acknowledge the evidence of the foster carer that the appellant is a young man of 17 years or age, who has a significant lack of confidence such that unusually, his stay with the foster carer has been extended until he finishes college as opposed to being moved to semi-independent living at the age of 18, the fact remains that I cannot be satisfied that he has done all he can to contact his family and that I cannot be satisfied that they have moved from Kapsia Province, given that they made no mention of leaving before he left them. I find that it is not unduly harsh to expect him to relocate to Kabul, where I am satisfied that his family will be able to join him, given that Kapsia Province is the neighbouring province to Kabul and the family as a whole has had the wherewithal to be able to pay for his journey to the UK and I find that the fact that his family will be able to join him in Kabul and support him there counts as any vulnerabilities which the appellant may have."

7. First-tier Tribunal Judge Hawden-Beal earlier referred to a finding made by Judge Devlin, who found it was implausible that the appellant and his family members had not put in place a mechanism for the appellant to be able to notify his family of his safe arrival when he reached a safe third country he was intending to go to. The judge did not find it credible that the appellant would have no means of telling his family where he was, even if he lost contact with them at a later date. The judge refers to the fact that the appellant attempted to make contact with the Red Cross in 2015 with a view to presumably tracing his family, but produced no documentary evidence of those efforts, however, he did produce a letter from the Red Cross in April 2018, which the judge regarded as being a “knee jerk reaction” to the realisation that the hearing date was drawing near.
8. It was entirely speculative on the part of the judge to assume that the appellant still has family now, let alone that they are still living in Kapsia. They may well have died, they may well have moved. It is fortunate now perhaps that the Red Cross have been contacted and no doubt before any further hearing Counsel will ensure that there is an updated report from the Red Cross. I have concluded that the determination of Judge Hawden-Beal does contain material errors of law such that the determination cannot stand. I set it aside in its entirety, the appeal will be heard afresh by a judge other than First-tier Tribunal Judges Hawden-Beal or Devlin.
9. No anonymity direction is made.

*Richard Chalkley*  
*25 January 2019*  
**Upper Tribunal Judge Chalkley**

*Date:*