



**Upper Tribunal
(Immigration and Asylum Chamber)** **Appeal Number: UI-2021-000402
(PA/51533/2020); IA/01678/2020**

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre **Decision & Reasons Promulgated**
On the 16 September 2022 **On the 17 October 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**Azizullah Sultan
(No anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, instructed by Legal Justice Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of First-tier Tribunal Judge Chowdhury dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. I would mention at this point that whilst Judge Chowdhury referred, under the appellant's name in the decision heading, to an anonymity direction having been made, she made it clear at [3] that no anonymity order was in fact being made. I have therefore not made an anonymity direction myself.

3. The appellant is a citizen of Afghanistan, born on 25 July 1993. He arrived in the UK on 21 October 2007 and claimed asylum the following day. His claim was refused on 16 April 2008 but he was granted discretionary leave to remain on account of his age, valid until 24 January 2011. He applied for further leave to remain on 21 January 2011 but his application was refused and his appeal against that decision was dismissed on 5 April 2012. He became appeal rights exhausted on 7 August 2012 after being refused permission to appeal to the Upper Tribunal. He then made further submissions on 25 October 2019 which were treated as a fresh asylum and human rights claim. His claim was refused on 10 September 2020 and he appealed against that refusal decision.

4. The appellant's initial claim was made on the basis that he feared the Taliban as his father had been threatened when he did not give him (the appellant) up to fight for them. In dismissing his appeal against the refusal of that claim the First-tier Tribunal did not accept the appellant's account and concluded that he had simply been sent to the UK as a child for a better life. It was considered that he would be at no risk on return to Afghanistan.

5. The appellant's further submissions of 25 October 2019 made the same claim as previously, namely that he was at risk of being targeted by the Taliban, and he relied upon an expert report which was provided in support of his claim. The respondent reached the same conclusion as previously and found that the appellant could return to his home area of Jalalabad or relocate to Kabul where he could receive support from his family.

6. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Chowdhury on 20 May 2021. The appellant claimed before the Tribunal to have lost contact with his family in Afghanistan, but Judge Chowdhury did not accept that and found that he was seeking to embellish his claim in various respects. The judge found that the appellant was not a credible witness and she concluded that he was at no risk on return to Afghanistan for the reasons he had claimed or on the basis of being westernised or perceived as a spy. She concluded that there was no evidence to show that he could not build a support network upon return to Afghanistan and that he was at no risk from Taliban. The judge found there to be no reason to depart from the previous Tribunal's findings nor to depart from the settled country guidance. As for the current situation and the events occurring in Afghanistan following the withdrawal of US and UK military personnel and the resurgence of Taliban power, the judge considered that she could not speculate on the risks to the appellant given the fluidity of the situation and, having assessed the risk on the basis of the current country guidance, she dismissed the appeal.

7. The appellant sought permission to appeal to the Upper Tribunal on grounds challenging the judge credibility findings as well as her findings on risk on return to Afghanistan. Permission was refused in the First-tier Tribunal but was subsequently granted upon a renewed application to the Upper Tribunal on limited grounds only, relating to the question of risk on return in light of the current developments in Afghanistan.

8. The respondent filed a rule 24 response opposing the appeal. However at the hearing before me, Mr McVeety accepted that the judge had erred in her approach to the question of risk on return by failing to make findings in the light of the current developments in Afghanistan.

9. Both parties agreed that Judge Chowdhury's decision had to be set aside and both agreed that the matter should be remitted to the First-tier Tribunal for a fresh hearing, although Mr McVeety confirmed that he would be reviewing the case in the meantime.

10. In light of the concessions made there is no need for me to provide any further details. I set aside the judge's decision and remit the case to the First-tier Tribunal for a fresh hearing.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Chowdhury.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 16 September 2022