



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01587/2011

THE IMMIGRATION ACTS

Heard at Field House
On 26 July 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

ZABIT BISMILLAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini, Counsel, instructed by Lawrence Lupin & Co Solicitors
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Afghanistan born on 1 January 1981. He arrived in the UK on 19 March 2009 and claimed asylum. He was intervened in relation to his asylum claim on 27 July 2009. His asylum application was refused by the respondent

on 7 August 2009. The appellant's appeal against the respondent's decision was dismissed in a determination dated 6 October 2009. He made no attempt at this stage to further appeal the determination.

2. On 11 January 2011 the appellant made further submissions in support of his asylum claim. By a letter dated 24 January 2011 the submissions were rejected by the respondent but it was accepted that they amounted to a fresh claim and the appellant was afforded a further right of appeal. In a determination dated 30 March 2011 his appeal was dismissed by the First-tier Tribunal. He lodged an application for permission to appeal which was granted on 2 September 2011.
3. In a determination dated 16 November 2011 the appellant's appeal was dismissed by the Upper Tribunal Judge Perkins. The appellant applied to the Upper Tribunal for permission to appeal to the Court of Appeal and this was refused on 14 January 2013. He then renewed his application directly to the Court of Appeal.
4. On 4 June 2013 Lord Justice Moses ordered that the appellant's appeal be allowed and the decision of Upper Tribunal Judge Perkins dated 16 November 2011 be quashed; that the matter be remitted to a differently constituted Upper Tribunal (Immigration and Asylum Chamber) for a rehearing. The order was on the basis of a Statement of Reasons agreed by the parties that the appeal should be allowed. The agreement was as follows:-

“6. The respondent has carefully considered the findings of Upper Tribunal Judge Perkins, the grounds of appeal and the observations of Stanley Burton LJ. She now accepts that Upper Tribunal Judge Perkins did err in law. The error of law is the failure to fully and properly consider paragraph 12 of Dr Giustozzi's report and the general failure to properly consider the risk to the appellant in his home area. For this reason, the parties agree that the appeal should be allowed and remitted for rehearing.”

5. At the hearing before me Miss Isherwood sought to argue that the order made by Lord Justice Moses meant that the whole of the appellant's appeal needed to be reheard. I disagreed with her. I agreed with Counsel that it is the dismissal of the appellant's appeal that is quashed. The findings of fact made by Upper Tribunal Judge Perkins are to stand. The only issue before me was as set out in paragraph 6 of the Statement of Reasons to which both parties had agreed was the error of law in UTJ Perkins's decision.
6. The facts of the appellant's claim are that he was born and grew up in the Chapliyar District in Nangahar Province of Afghanistan. His mother, wife and two sons currently reside in Pakistan. He did not go to school in Afghanistan so he is illiterate.
7. His father used to be a member of the Hizb-e-Islami and he fought against the Communist regime. When the Taliban came to power in September 1996 his father

joined the Taliban in early 1997. He was a commander and had 70 to 100 men under his command.

8. In November 2001, the Taliban regime collapsed after which the appellant and his family moved from Zgho (in Chapliyar) to Farmaday (in Jalalabad). Farmaday is about one and a half hours away from Zgho. There were a lot of bombardments in the area, which was close to the Tora Bora Mountains, and the coalition forces were searching out the Taliban and harassing their families. The authorities kept coming to their house and asking them about his father's whereabouts. That was when they left Zgho and went to Farmaday. The family returned to Zgho in 2005 after hearing that the situation had improved. They stayed in Zgho for about a month when they returned to Farmaday because it was not safe as the authorities were conducting extensive searches and making arrests in the area. They lived in Farmaday for two and a half to three years. They moved back to Zgho in early February 2009 when the authorities in Farmaday began searching houses and arresting people who had links to the Taliban.
9. In 2009 his father fought with the Taliban, against coalition forces and was killed during the fighting in Kunar.
10. His paternal uncle, Awajan, and cousins Talib and Paynda, are members of the Taliban. About 25 days after they moved back to Zgho, his mother was informed by his parental uncle by telephone that his father had died. His paternal uncle told his mother to send him to fight with the Taliban against the foreign forces. His uncle wanted him to take his late father's place in doing jihad and to avenge his father's death. His mother passed the message on to him but he did not want to join the Taliban and fight as he did not support the Taliban ideology in any way. His mother did not want him to fight either. He was the only son. His father had always asked him to stay at home to look after the land and to take his place as the male protector and head of the family whilst he was away fighting.
11. His maternal uncle, Soorgul, visited them the same day that they received the phone call from his paternal uncle. He was told that his paternal uncle wanted him to go and fight with the Taliban. About two or three days after his father's death, friends of his father's came to their family in Zgho and gave his mother money. They also passed on the message from his paternal uncle to join the Taliban and avenge his father's death. He and his mother told his father's friends that he would be ready to go and fight in a few days to avoid confrontation. His mother asked his maternal uncle to send him somewhere safe. The next day he left the family home with his maternal uncle to a place on the outskirts of Jalalabad. He stayed with his maternal uncle for two to three days before crossing the Afghan Pakistani border into Pakistan. He stayed in Pakistan for about six to seven days. His maternal uncle talked to an agent and he was then taken with the agent to the airport. He used a red passport to travel. They stopped for about two hours in Dubai and he subsequently arrived in the UK on 17 March 2009 and claimed asylum on 18 March 2009.

12. The appellant's appeal was dismissed by Immigration Judge Pullen in September 2009. The judge however accepted parts of the appellant's account. He accepted as true the appellant's evidence that his father fought with Hizb-e-Islami and later the Taliban and was killed. The appellant's mother, his wife and two children remained in his home village. He did not doubt the appellant's general account of his journey to the UK, despite the differing accounts he gave of the time he spent with his uncle.
13. The judge doubted the appellant's account of being put at risk after being told by friends of his late father to join the Taliban. The appellant had always said that these men were part of his father's team. The appellant himself had hosted them on previous visits to his home with his father. He did not believe therefore that the appellant would not have known their names as he claims to be the case. There was no objective evidence that the Taliban pursued relatives of dead commanders who declined to join the fight. Without such evidence, he could not find that even the Taliban, known for their brutality, would target the son of one of their commanders who had died a martyr, the son being the only protector for his family, including the martyr's widow.
14. The judge was not satisfied about any risk from the authorities. He considered the appellant's evidence that they left their home because of the authorities and two guns were found in the house. The judge said it could not be at all unusual in Afghanistan for guns to be found in private homes. There was no suggestion that the authorities followed him to Zgho although the farmer occupying his land must have known where he was and no doubt could be forced to disclose it. Farmaday was not far away. The appellant claimed the family left Farmaday when people were being arrested. They did not say there was any specific enquiry about him. The judge doubted the appellant's claim that the authorities were actually interested in him. The fact that the family could return to Zgho without fearing for their safety suggested that they did not perceive any significant risk. If the authorities did not show interest in the appellant then as a Taliban family member, it was not likely that they would now that his father was dead, despite what he said about the culture of revenge in Afghanistan. The judge had no objective evidence that non-combatants sons of dead Taliban were at real risk from the authorities.
15. The judge also rejected the appellant's account that he had no way to contact his family at home. He noted that the appellant spent time in Jalalabad with his uncle, then more days with him in Pakistan and did not find it credible that after what must have been significant expenditure, his uncle would have sent him off without some means of reporting back.
16. In conclusion the judge did not find the appellant credible in relation to his claimed fear of the Taliban or of the Afghan authorities. He did not find that the appellant has a well-founded fear of Hizb-e-Islami either, as no credible reason or objective evidence had been given as to why he should. In the alternative, if the appellant's credibility were established, the judge added that taking the appellant's case at its highest, his account would still leave him with the internal flight alternative to

Kabul. The judge relied on the country guidance cases of **PM and Others** heard in April 2007 and **RQ** heard in June 2008 which showed at the time that the situation allowed for relocation to Kabul.

17. Mr Bazini submitted that Judge Pullen made findings of fact which were not challenged. In light of fresh objective evidence, Judge Pullen's findings needed to be reviewed and that was why the appellant made fresh representations which were considered by the respondent as the fresh claim. The new evidence that came to light was in respect of the situation in Kabul for someone like the appellant whose father, it had been accepted, had fought with Hizb-e-Islami and with the Taliban against the coalition forces as a result of which he had been killed. He would be at risk of persecution if returned to Kabul. As a result of that fresh evidence Upper Tribunal Judge Perkins came to a different view from Judge Pullen in respect of the risk to the appellant in Kabul.
18. It is appropriate to record here UTJ Perkins findings at paragraphs 122 in respect of risk to the appellant in Kabul.

“122. I do not consider this to be a case where internal relocation is an option. I find Dr Guistozzi’s explanation of the inquisitive nature of Afghani society to be persuasive in all the circumstances of the case and I accept that there is a real risk of the appellant being identified if he tried to establish himself in Kabul. It is important to emphasise that the appellant would not necessarily be identified quickly. However, it is accepted that his father was a Taliban commander and I think it is likely that sooner or later those links would become apparent. I think it may be right that he would risk persecution if he came to the attention of the authorities as the son of a Taliban commander from a Taliban supporting area trying to establish himself in Kabul. Of course the appellant would have an innocent and compelling explanation for being in Kabul but I find that there is a real risk of his being persecuted before his explanation was tested. However this finding is speculative, albeit based on Dr Guistozzi’s report and represents the extent of the risk from the authorities that the appellant has been able to establish. It would only arise if the appellant tried to establish himself in Kabul. There is no real risk of it arising as he made his way through Kabul to his home area. He would not be in Kabul long enough for there to be a real risk of his being suspected of being a Taliban terrorist.

19. I also record UTJ Perkins’ findings which led to the Court of Appeal’s decision to remit the case back to the Upper Tribunal for a rehearing.

123. I appreciate that the appellant says that he is at risk both from the Taliban because he is not prepared to support them and from the government because they think that he is.

124. I do not accept that the appellant has shown that there is a real risk of his being persecuted by the Taliban for failing to join their cause. I accept as a matter of law that pressure from members of the Taliban, whether or not they happen to be members of the appellant's family too, *could* amount to persecution if, for example, it was accompanied by credible threats of serious adverse consequences if the appellant did not comply but whether or not it did would depend on particular findings of fact.
125. I found it very significant that Dr Giustozzi does not support the claim the appellant would be persecuted because of his failure to join the Taliban. Certainly Dr Giustozzi recognises that the Taliban would put pressure on a person in the appellant's position. He also recognises that a father might beat his son for failing to tow the family line on matters of politics. He does not support the contention that the appellant, a man now aged 30 would be risk serious ill-treatment by family members. Taunting by paternal relatives would not amount to persecution."
20. Before UTJ Perkins were two reports from Dr Giustozzi dated 13 December 2012 and 1 March 2011. For this hearing Dr Giustozzi had prepared a further report dated 24 July 2013.
21. In the light of Dr Giustozzi's latest report, Mr. Bazini submitted that the appellant's case is now based on a risk in his own area from insurgents and members of his own family who are members of the Taliban in Hizb-e-Islami. The gist of Dr Giustozzi's recent report is that whereas in the past the risk to the appellant in his own area was from the authorities, this was no longer the case because of the withdrawal by the authorities in recent months from the appellant's home area. Consequently this means that the appellant is no longer at risk from the authorities in those areas. Those areas are now occupied by the insurgents.
22. The appellant who was present in court was not called to give evidence. The appeal was dealt with way of submissions only.
23. Miss Isherwood was concerned about the lack of evidence as to what family contact the appellant has in Afghanistan. She said there was no evidence about the appellant's uncle and cousins who were in Afghanistan at the time of his departure. We cannot assume that they are still there.
24. She was concerned that there was still a credibility issue as to the appellant's evidence about not wanting to join the insurgents. At question 15 of the interview, the appellant said that when he was very young he did fight with the Taliban. However, he has changed his evidence in that respect by saying that he did not want to join the insurgents. She relied on paragraph 3.10.19 of the OGN Afghanistan issued in June 2013 which said that forced recruitment by Taliban military commanders, leaders or fighters (that is situations were individuals or their families are directly approached and forced to join up under threat of retaliation or violence if they refused) has to be considered as exceptional. The risk will be highest in areas

where armed anti-government groups are operating or have control and in refugee camps but the evidence is of recruitment driven more by broader coercive strategies, such as economics, fear, intimidation, pride and honour, religious persuasion and the use of tribal mechanisms to pressurised individuals into joining the Taliban rather than by force.

25. Relying on this objective evidence Miss Isherwood said that at no stage was the appellant threatened with violence or retaliation for not joining the insurgents. There is no evidence that after he left Afghanistan and his family remained in the home area that the family continued to have problems because of this situation. In Dr Giustozzi's report of 2010, he said at paragraph 6 that the Taliban rarely practised forced recruitment. At paragraph 7 he said it was highly unusual for a son to refuse the path that his father has chosen for him. Miss Isherwood submitted that it was the appellant's evidence that his father wanted him to remain at home and be the head of the household. His father did not pressurise him into joining the Taliban. The appellant was in his late twenties when his father died.
26. With regard to the current report by Dr Giustozzi, Miss Isherwood relied on **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)** which reiterated that there are packages available to a failed asylum seeker returning to Afghanistan from the UK. At paragraph 86 the Upper Tribunal referred to UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, 17 December 2010. Miss Isherwood submitted that although this is not an Article 15(c) case, the UNHCR gives a list of possible people we need to consider and those at risk from insurgents. At paragraph 212 the Upper Tribunal said there is also a very significant level of support provided to the Afghan population by myriad paid and humanitarian agencies, domestic and international.
27. Miss Isherwood asked me to treat with caution Dr Giustozzi's changed position in respect of the appellant's claim. She said that despite finding that the appellant's father was a member of the Taliban, Dr Giustozzi accepted the appellant's evidence that his father was a commander who had 72 to 100 men under him. She said that detail was not part of the appellant's evidence.
28. Miss Isherwood submitted that a lot of Dr Giustozzi's latest report concerns the security situation and the way the police act. It does not directly add to how the insurgents or his family members would approach him on his return to his home area. At paragraph 17 Dr Giustozzi said that in his home area, the appellant would be most exposed to the pressure from his family and from the insurgents to join the Taliban as an active member. The status of the family within the insurgency depends on Mr Bismillah's willingness to join; the uncle in particular could by now be senior enough to qualify for a promotion, but that could be endangered if there were doubts about the ideological alignment of the family as a whole. Miss Isherwood submitted that this assertion is based on an assumption as we do not know if the uncle is in a high position. She submitted that the report does not take into account the support package that would be given to the appellant on his return to Afghanistan. At

paragraph 23 Dr Giustozzi states that at the MoI, high ranking officers admit that in some areas there might be informal ceasefires with the armed opposition. Miss Isherwood said Dr Giustozzi did not identify these areas. She asked me to place little weight on Dr Giustozzi's report.

29. Mr. Bazini submitted that the starting point should be the findings of fact that have been made in this case – the appellant's father was killed fighting coalition forces and that he was a supporter of Hizb-e-Islami and then the Taliban. The appellant's father was a commander, although he was not a high ranking Taliban official or high level officer, would have been in charge of between 70 and 100 men. Upper Tribunal Judge Perkins found at paragraph 122 that Dr Giustozzi's explanation of the inquisitive nature of Afghan society to be persuasive in all the circumstances and accepted that there was a real risk of the appellant being identified if he tried to establish himself in Kabul. This is because as the appellant's father was a Taliban commander sooner or later those links would become apparent.
30. Mr Bazini submitted that there is little doubt that if the appellant is going to be discovered in Kabul, with his profile, he will become apparent immediately in his home area. He is somebody returning to an area where he has not lived since 2008. He will stand out like a sore thumb. Many of the findings in respect of the risk to him in Kabul are relevant to how he will be perceived in his home area.
31. Mr Bazini submitted that Upper Tribunal Judge Perkins seemed to accept at paragraph 123 that the appellant would be at risk from the Taliban because he is not prepared to support them and from the government because they think that he is. At paragraph 124 Upper Tribunal Judge Perkins accepted that pressure from members of the Taliban, whether or not they happen to be a member of the appellant's family too, *could* amount to persecution if, for example, it was accompanied by credible threats of serious adverse consequences if the appellant did not comply but whether or not he did would depend on particular findings of fact.
32. Mr Bazini submitted that at the time of Dr Giustozzi's report in 2011 his position was that there was some risk to the appellant from the Taliban and the family but the main risk to him was from the authorities. However his opinion which was genuine at the time has changed and deserves weight and respect. Dr Giustozzi, who has been accepted as an expert by the Tribunal, could have maintained his position as at 2011 and relied on that report to support the appellant's case. However, he does not do that. He recognised that the situation has changed with the withdrawal of coalition forces from the appellant's home area and has seen it desirable to express what the current position in those areas and the risk to the appellant as a result. Mr Bazini said that Dr Giustozzi's new report bears out his expertise and his independence in this field.
33. Dealing with Miss Isherwood's submissions, Mr Bazini said that on the appellant's first arrival in the UK he lost contact with his family. In the meantime the family moved to Pakistan and now he has been able to establish contact. There was nothing

in this evidence that should lead to an adverse credibility finding. In any event, we do not know the position with the family in his home area because he left four years ago. The question is whether there is a real risk that family members are still there in the area bearing in mind the background material that the area is now in the hands of insurgents and the Taliban again.

34. Mr Bazini said that at question 15 the appellant's answer was that he never liked to fight and therefore Miss Isherwood's submission that the appellant fought when he was younger was without foundation. He said that the OGN report refers to honour. This is important because that has been part of the appellant's evidence which Dr Giustozzi touches on. The evidence in this case is that because the appellant's father was a commander and was killed, there is a burden on him and the family and the Taliban that he seeks honour and revenge and that is a fundamental part of Afghan society. Dr Giustozzi says that if the appellant refuses to join he would be seen as being sympathetic with the authorities which would put him at risk.
35. IJ Pullen's determination, paragraph 16, which was referred to in UTJ Perkins's determination at paragraph 8 refers to the appellant's account of being put at risk after being told by friends of his late father to join the Taliban as being in doubt. Mr Bazini said that IJ Pullen's decision on this issue was on narrow grounds. He did not believe the appellant because he did not know the names of these friends even though they were always with his father as part of his team and the appellant himself had hosted them on previous visits to his home with his father. IJ Pullen found that there was no objective evidence to support the appellant's claim that the Taliban pursue relatives of dead commanders who decline to join the fight. Mr Bazini said that this evidence was now in Dr Giustozzi's report and the OGN. The evidence was that honour and revenge were the reasons why pressure would be put on the appellant to join the Taliban. It was this evidence which was in Dr Giustozzi's report which led to the fresh claim by the appellant. It is also this new evidence the appellant now relies and which is also set out in Dr Giustozzi's new report.
36. Mr Bazini said that **AK (Afghanistan)** is about Article 15(c). It may be out of date as the situation on the ground has significantly changed because of the pull out by the authorities.
37. Mr Bazini said that the appellant's claim has to be seen in the context of what is now happening in the appellant's home area. The authorities have pulled out and it has now become an area with strong insurgency. It is controlled by the Taliban and the insurgents. If the appellant returns to that area within moments people would know that he has not lived in that area for some time and he would be picked up. He would be asked who he is and where he has been and what he has been doing and according to case law, he is obliged to tell the truth and say that he has been in the UK and claimed asylum. The fundamentalist fanatics would assume that he had become westernised and lost his faith. They would expect him to take up arms immediately. There is a real risk that his refusal would lead to persecution of him by the Taliban and the insurgents. In the light of the findings in his favour and the

powerful report from Dr Giustozzi, Mr Bazini said that the appellant has a well-founded fear of persecution in his home area. Internal relocation to his home area would put him at risk. In any event Dr Giustozzi does not suggest that there is a ceasefire in the appellant's home area.

Findings

38. I shall first deal with the credibility issues raised by Miss Isherwood. The appellant's evidence that his father was a commander and had 72 to 100 men under him was accepted by UTJ Perkins, contrary to what Miss Isherwood said. The appellant had not said in his answer to question 15 that he fought when he was younger. Her submission in that regard was without foundation. I find that the appellant's evidence that his father wanted him to remain at home and be the head of the household does not affect the appellant's credibility because he did just that while his father was away fighting. I find that the appellant did not remain in his home area long enough, after his father's death, to be threatened with violence or retaliation for not joining the insurgents.
39. I find that this is not an Article 15(c) case. In any event, as submitted by Mr. Bazini, **AK (Afghanistan)** may be out of date as the situation on the ground has significantly changed because of the pull out by the authorities.
40. In the light of the accepted findings and the report by Dr Giustozzi, I find that the appellant's appeal stands to be allowed for the reason that relocation to his home area would put him at risk of persecution by the Taliban and the insurgents who now occupy his home area as a result of the withdrawal of the authorities from that area.
41. I attach significant weight to Dr Giustozzi's report. I accept that it contains a lot of information about what risk, if any, the appellant is likely to suffer should he be arrested by the authorities as a result of the withdrawal of foreign troops from almost all the outposts in the villages in Afghanistan and areas of strong Taliban presence, such as western Nangahar, which have witnessed a rapid fall of government presence and influence. I take note of his conclusion that the appellant could reside in this area and face little risk of being persecuted by the authorities, unless he got caught up in a raid aimed at targeting insurgent leaders. I find that this gives objectivity to his report and does not in any way diminish the significance of his report.
42. From paragraph 17 Dr Giustozzi deals with the risk the appellant will be exposed to in his home area, that is, pressure from his family and from the insurgents to join the Taliban as an active member. He said that as an adult man the appellant could in principle reject such invitations, but the family members in particular would feel humiliated if he persisted in refusing to replace his father in the ranks of the insurgency and avenge his death. The status of the family within the insurgency also depends on the appellant's willingness to join the uncle in particular could now be

senior enough to qualify for promotion but that could be endangered if there were doubts about the ideological alignments of the family as a whole. A confrontation with his family member is likely to escalate and could become violent, the more so now that they hold sway in Chapliyar.

43. I accept Miss Isherwood's submissions that we do not know what family members remain in the appellant's home area. It was his paternal uncle, according to his evidence, who wanted him to go and fight with the Taliban and avenge his father's death. It is speculative to suggest that this uncle could now be senior enough to qualify for promotion and this could be endangered because of doubts about the family's ideological alignment. The appellant's mother his wife and two sons remained in Zgho after he left the area. They are now in Pakistan and he is in contact with them. We have no evidence that when the family remained in Zgho, there were any reprisals by the paternal uncle as a result of the appellant's absence or his failure to join the Taliban. We have no information about this paternal uncle or his whereabouts. In the absence of such evidence I am not persuaded that whatever family there is remaining in the Nangahar Province is likely to put the appellant under pressure to join the Taliban. According to his evidence he left home not because of family members putting pressure on him to join the Taliban but because of the request by his paternal uncle. In the circumstances I am not persuaded that there is a reasonable risk of persecution from family members in his home area.

44. I am however persuaded that the appellant would be at risk of persecution from the insurgents in his home area. In this regard I place great weight on the report by Dr Giustozzi from paragraphs 17 to paragraph 25 of his report. At paragraph 17 Dr Giustozzi said this:

"Mr Bismillah would become a potential suspect, government spy or collaborator if he insisted on staying aloof from the insurgency, particularly given the long time he spent away from the village. The insurgents would presume that he resided in government controlled areas, or if they were aware of his time spent in the UK they would assume that he became westernised and lost his Islamic faith. The insurgents are certainly convinced that there are plenty of spies within their ranks and among the population, as they regularly announce the execution of members accused of having supplied information to the Americans. One recent example of this was an announcement by the Taliban of Kapisa Province, who claimed to have executed one of their own on the accusation of spying on 29 July 2008 ... The arbitrary executions of individuals on the basis of simple suspicion of spying is a major source of complaint against the Taliban, whose commanders are under pressure to show their men that they are able to take action in response to the raids, which cause high casualties."

45. At paragraph 18 Dr Giustozzi states that "such peer and social pressure would take place in an already violent environment. During 2012 overall levels of violence had declined in Afghanistan, due to the start of the withdrawal of foreign troops

(paragraph 1). However, Afghan on Afghan violence has actually increased, while violence involving groups decreased quickly (paragraph 2). “

46. He said at paragraph 19 that the Taliban’s intelligence operations have grown increasingly sophisticated and their ability to track down individuals is very sophisticated. A former Taliban commander in Musa Qala, now hostile to the movement, said there were 200 to 250 agents of Taliban in the intelligence service of government when he was leader of a group of Taliban. Their number must have increased by now. Dr Giustozzi also says that government officials even in areas of weak Taliban presence believe that the Taliban are informed of everything that happens. In the villages Taliban and elders all confirm the existence of these informers. At paragraph 24 he said that in other instances various forms of collaboration of the police with the Taliban were alleged. In Helmand the British office suspected the police of passing on information on British troops to Taliban. Dr Giustozzi in summary said that the risk to Mr Bismillah from the authorities would be low in his home village, where the authorities have little or no reach now; however at the same time the insurgents are more powerful there and would be able to bear even more pressure on the appellant to join. If he refused he would be at risk of being suspected of collaborating with the government because of his long spell away from the village.
47. The appellant has been away from Afghanistan since 2008. His home area is now controlled by the insurgents. The OGN relied upon by Miss Isherwood indicates that there would be pressure on someone like the appellant with his background to join the Taliban and avenge the killing of his father by the coalition forces. The objective evidence from Dr Giustozzi shows that were the appellant to refuse, he would be seen as a spy and a collaborator and the risk to him would be very high.
48. In the light of the accepted findings, the report by Dr Giustozzi and the objective evidence, I find that the appellant would be at great risk of persecution by the insurgents and the Taliban in his home area. Internal relocation is not an option for the appellant. It has already been found that Kabul is not a safe place for an individual like the appellant with the profile that he has. For these reasons, I find that the appellant has established a well-founded fear of persecution were he to return to Afghanistan.
49. The appellant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Eshun