



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

Appeal Number: AA/07851/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 27th November 2014**

**Determination Promulgated
On 22nd December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**SHAH MOHAMMED RAHMATI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani of Counsel instructed by Paragon Law
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.
2. On 20th March 2014 Judge of the First-tier Tribunal Cruthers gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal Grimmatt who allowed the appeal of the appellant, a male citizen of Afghanistan, against the decision of the respondent taken on

2nd August 2013 to refuse asylum, humanitarian and human rights protection and to issue removal directions.

3. In granting permission Judge Cruthers thought it arguable that the judge had not dealt with two aspects of credibility arguments raised by the respondent in the grounds of application. First, that the judge should have taken into account that the appellant had not called his brother who was said to have failed to secure asylum on the basis of similar claimed facts. Second, the judge should not have relied upon letters from the Taliban without further consideration of an expert's view that he had never seen such letters on headed stamped paper.
4. At the hearing in the Upper Tribunal before me I heard submissions from both representatives which I summarise, below.
5. Mr McVeety confirmed that the respondent relied upon the grounds of application although he acknowledged that the second ground to which I have referred in the paragraph 3, concerning the Taliban letters, is not particularly strong. However, he thought that the judge should have considered the rejection of the appellant's brother's asylum claim although he acknowledged that the brother's appeal determination was not in front of the judge. The Presenting Officer had, however, in submissions and cross-examination commented that the appellant's brother was present at the hearing but had not given evidence. The judge was asked and should have made findings on this issue.
6. Mr Bandegani relied upon the detailed seven page response submitted by the appellant under Rule 24 of the Upper Tribunal Procedure Rules.
7. In relation to the ground concerning the Taliban letters it is argued that the judge gave a number of reasons in paragraph 11 of the determination to reject the respondent's submission that such letters were not sent. Reference was also made to paragraph 12.14 of a Human Rights Watch Report indicating the use of such letters as a means of intimidation by the Taliban, and that such threats sometimes bear a Taliban stamp. The country expert had also referred to this.
8. As to the ground concerning the appellant's brother's failed asylum claim the response argues that the judge had to determine the appeal on the evidence before her. Neither the appellant nor his brother had been witnesses in each other's appeal and each had been entitled to an individual assessment of their claims. The respondent had not explained how the absence of evidence from the brother undermined the credibility of the appellant, it simply did not materially bear on the outcome. The judge had made unimpeachable findings based on the evidence put before her. Additionally, at the adjourned hearing of the appellant's appeal (which the Tribunal records as taking place on 12th December 2013), directions were given for the respondent to serve further information relating to the brother's asylum claim but did not. If the respondent wished to rely upon that information then she should have filed and served it.

9. Additionally Mr Bandegani pointed out that paragraph 13 of the determination showed that the judge had considered information about the appellant's abduction by the Taliban with a view to forcing him to fight for them and that occurred after the appellant's brother had left Afghanistan.
10. Mr McVeety made no further submissions.
11. After hearing submissions and considering the matter for a few moments, I announced that I was satisfied that the decision of Judge Grimmett showed no material error on a point of law and should stand. My reasons for that conclusion follow.
12. The decision is comprehensive and well reasoned. The findings run to over two pages. It is evident that the judge fully considered the evidence of the appellant's expert, Mr Marsden, who was known to have considerable experience working with agencies in Afghanistan. The expert had indicated that the documents produced were consistent with the standard letter issued by the Taliban examples of which he had already seen. Although the expert indicated that those he had seen had not been stamped the judge correctly refers to other objective material which showed that such letters were stamped.
13. The judge acknowledged that the respondent challenged the authenticity of the letters which, it was claimed, had not been accepted in the appellant's brother's asylum claim, but she points to the fact that the respondent did not file any additional documents relating to the brother's claim despite having been directed to do so on 12th December 2013. The judge was therefore entitled to reach the conclusion, for the reasons given, that the claimed threatening letters had been sent to the appellant's family. The decision does not reveal that the Secretary of State's representative requested any adjournment in order to have additional time to comply with the direction given almost three months before nor would the judge have been obligated to grant it, in any event. The judge was not in error in proceeding to determine the appeal on the evidence which had been put before her.
14. Similar arguments apply in relation to the second ground regarding the rejection of the appellant's brother's asylum claim said to have been made on similar grounds. In paragraph 12 the judge had already commented on the respondent's failure to produce information about the brother's claim. Further, and most significantly, the judge takes into consideration, in paragraph 13, the kidnapping incident which, for the copious reasons given, the judge was entitled to conclude had occurred. This incident happened after the appellant's brother had left the country and was clearly significant in the judge's consideration of the credibility of the appellant's claim to fear serious harm if returned to Afghanistan. It also serves to distinguish the appellant's claim from that of his brother who was not present when the kidnapping occurred. It should also be borne in mind that, as indicated in paragraph 19 of the determination, the judge also found that the appellant suffers from a medical condition making him a "very vulnerable young man" who would additionally be at risk on return to Afghanistan on this account. The determination is, therefore, able to stand on its own despite the adverse

findings in relation to the asylum claim made by the appellant's brother the details of which had not been put before the Tribunal by the respondent.

DECISION

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

The First-tier Tribunal did not make an anonymity direction nor do I consider one appropriate for the purpose of the Upper Tier Tribunal proceedings.

Signed

Date **19th December 2014**

Deputy Upper Tribunal Judge Garratt