



IAC-AH-PC-V1

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

Appeal Number: AA/05800/2013

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons Promulgated  
Birmingham  
On 24<sup>th</sup> July 2015**

**On 5<sup>th</sup> August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**M H  
(ANONYMITY DIRECTION GIVEN)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Paul Draycott (Counsel)

For the Respondent: Mr David Mills (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Parkes, promulgated on 16<sup>th</sup> July 2014, following a hearing at Birmingham Sheldon Court on 29<sup>th</sup> April 2014. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Afghanistan, who was born on 10<sup>th</sup> January 1997. He appeals against the decision of the Respondent dated 31<sup>st</sup> May 2013, refusing his application for asylum under paragraph 339C of HC 395, and his application for humanitarian protection, on grounds that if he is returned to Afghanistan his paternal uncle would hand him over to the Taliban or possibly kill him. The Appellant's claim is that his family members are unable to protect him. He believes additionally that the authorities in Afghanistan are also unable to protect him and that he is unable to relocate elsewhere in Afghanistan.

## **The Appellant's Claim**

3. The Appellant's claim is that his father was in the Taliban and away from home for lengthy periods of time returning only occasionally, and at night before going away again. The Appellant states that he did not see much of his father. Nor, did he speak to him. He did not know what his father did and only notes what his mother has told him. His father died some years ago. The body was not returned to the family. There was no funeral. The Appellant has not been formally educated. After his father died, his mother was supported by her brother who lived nearby and was quite wealthy but the Appellant did not know what he did. His mother married his father's brother. The brother was also in the Taliban. He also rarely came home. When he did arrive, he left as his father used to leave. An intention was expressed by the Appellant's stepfather of getting the Appellant to join the Taliban. When this happened, the Appellant's mother and brother arranged for an agent to bring the Appellant to the UK leaving his mother and younger brother in Afghanistan.
4. The Respondent rejected these claims. It was noted that there were differences in what the Appellant had said about the events in Afghanistan and in respect of his journey to the UK. The Appellant suggesting that his father earned money by fighting for the Taliban was inconsistent with the evidence set out in paragraph 23. The Secretary of State took the view that the Appellant had been inconsistent about whether his paternal uncle had told the Appellant and his brother about his plans or whether the Appellant had been told by his mother and her brother after they had been told.

## **The Judge's Findings**

5. The judge dismissed the appeal on the basis that the Appellant exhibited "the vagueness of his account and the unexplained issues relating to his family's situation in Afghanistan" (paragraph 19). He did not claim asylum upon arrival and nor upon being fingerprinted.

## **Grounds of Application**

6. The grounds of application state that the determination is inadequately reasoned and does not engage with the evidence at various points.
7. On 5<sup>th</sup> August 2014, permission to appeal was granted.
8. On 13<sup>th</sup> August 2014, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the determination was entirely sustainable.

### **Submissions**

9. At the hearing before me on 24<sup>th</sup> July 2015, Mr Draycott, appearing on behalf of the Appellant, drew my attention to the fact that there had been an earlier First-tier Tribunal Determination by Judge Telford in September 2013, which had been successfully appealed by the Appellant to the Upper Tribunal when Judge McCarthy, in a determination promulgated on 1<sup>st</sup> May 2014, had expressed concerns with the determination below as to whether the Appellant had provided sufficient evidence, bearing in mind his young age and the lower standard of proof, to establish that his father and uncle were linked to the Taliban as claimed and it could not be said that the judge below had been able to show that such evidence did not exist.

10. First, Judge Parkes erred in stating that,

“The Appellant’s account of his father’s lengthy absences and being told he was fighting for the Taliban does not explain how his father supported the family. The evidence cited by the Home Office indicates that there may be one off payments but not continuous wages or payments ...” (see paragraph 12).

Mr Draycott submitted that this was patently not the case because the refusal letter does not conclusively rule out regular payments to insurgent fighters (see paragraph 23(a)). There was evidence that, “money is an important recruitment driver. In a country (where) many young men are unemployed and poverty is widespread, the offer of a payment is attractive. A Taliban fighter can get hundreds of dollars in a month or even if a week ...”. The expert report from Dr Giustozzi confirmed this.

11. Second, the judge materially erred in drawing an adverse inference against the Appellant by reason that his younger brother was left in Afghanistan on the grounds that, “I do not believe that the Appellant’s departure would have been arranged in circumstances which would have left his remaining family member in danger from the man he claimed to fear ...” (paragraph 14). This was unsustainable, submitted Mr Draycott, because it irrationally failed to have regard to the fact that, when the Appellant arrived in the UK in autumn 2011, his younger brother was only 10 years of age. The expert report of Dr Giustozzi makes it clear that young children as opposed to adolescents, are not told about or involved in insurgent activities for security reasons. Furthermore, Deputy Upper Tribunal Judge McCarthy’s determination of 1<sup>st</sup> May 2014 had made it clear

that not all children are in danger of being recruited by the insurgents, but only those “men and boys of fighting age”.

12. Third, in the light of this, it was an error of law for the judge to say that the Appellant’s appeal could not succeed, despite his continuing minority, due to “the basic fact of the vagueness of his account and the unexplained issues relating to his family’s situation in Afghanistan” since Dr Giustozzi had made it clear that the evidence was entirely consistent with the workings of Afghani society, whereby the Appellant at his age would know very little about the affairs of his father and his uncles.
13. Fourth, the judge had held (at paragraph 13) that the claimed circumstances in which the Appellant had left Afghanistan would “given the patriarchal nature of Afghan society ... suggest that his mother would be in danger from her husband, if her brother would not protect the Appellant within Afghanistan, why would he be able to protect the Appellant’s mother there”, because this was contrary to the fact that there was no evidence whatsoever before the judge that the Appellant’s paternal uncle knew that the Appellant was in the UK or that his mother and maternal uncle had arranged his departure.
14. Fifth, the judge erred in concluding that,
 

“... given the level of expenditure that sending him to the UK would represent against the level of wages in Afghanistan I do not believe that the Appellant when he claims that he has not had any contact with his relatives there. I do not believe that they would have paid the entire costs upfront and would want to know that he had arrived before paying off the agent” (paragraph 15).

This is because the refusal letter itself makes it clear that, “there are no adequate reception arrangements in (Afghanistan) to which (the Appellant) would be returned if leave to remain was not granted”.

15. In his submissions before me, Mr Mills submitted that if one had regard to the rule in **Budhathoki (reasons for decisions) [2014] UKUT 341**, it was plain that, it is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail raised in a case. “This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases ...” In this case, the judge has made it quite clear why the Appellant cannot succeed at paragraph 13 of the determination, where he makes it clear that, “given the patriarchal nature of Afghan society that would suggest that his mother would be in danger from her husband, if her brother could not protect the Appellant within Afghanistan why would he be able to protect the Appellant’s mother there?”
16. Second, the Appellant cannot have it both ways. He maintains that he is at risk because he is of an age where he is expected to join the insurgency, but his younger brother is not at risk because he is too young. At the same time, the Appellant maintains that he does not know anything

about fighting in the insurgency and following in the footsteps of his father and uncle. It has to be either one or the other. The fact that the Appellant is ambivalent shows that he has not been able to make out his claim even on the lower standard.

17. In reply, Mr Draycott submitted that it was significant that the Appellant's father had died and that his mother had remarried and that the stepfather did not have the kind of relationship with the Appellant that the Appellant had with his father, so that if it was deemed to be his duty to join the insurgency and to go out and fight, the stepfather would put him under pressure to do so.

### **Error of Law**

18. I am satisfied that the making of the decision by the judge does involve the making of an error on a point of law such that I should set aside the decision (see Section 12(1) of TCEA 2007).
19. First, Deputy Upper Tribunal Judge McCarthy had earlier made it clear in his determination of 1<sup>st</sup> May 2014, that the UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan, confirms that not all children are in danger of being recruited by the insurgents, but only those "men and boys of fighting age". In the circumstances, the judge erred in concluding (at paragraph 14) that the Appellant was not credible because his younger brother was left behind in Afghanistan and that, "I do not believe that the Appellant's departure would have been arranged in circumstances which would have left his remaining family member in danger from the man he claimed to fear". However, the younger brother was only 10 years of age. He was not a boy of fighting age. Such boys are generally over the age of 13 and around 15.
20. Second, the judge erred in holding (at paragraph 12) that the Appellant's account of his father's lengthy absences and being told he was fighting for the Taliban does not explain how his father supported the family because "the evidence cited by the Home Office indicates that there may be one off payments but not continuous wages or payments and the Appellant has not suggested an alternative occupation or source of income ...". However this is incorrect in the light of the refusal letter itself which makes it clear (at paragraph 23(a)) that regular payments are made to insurgent fighters and that this is confirmed by "the European Asylum Support Office Report, 'Afghanistan - Taliban strategies - recruitment'" published in July 2012, which makes it clear that "money is an important recruitment driver." Moreover, Dr Giustozzi makes it clear in his report of 5<sup>th</sup> September 2013 that, "The Taliban and Hezbi Islami ... offer financial incentives to recruits".
21. If this is correct, then the evidence is actually quite plausible given that it is internally consistent as between the way in which the Appellant's father behaved and his stepfather behaved, both of them coming home rarely

and then leaving at night in a similar way. What this suggests, accordingly, is that the judge has erred in his concluding paragraphs in stating that the Appellant's appeal fails, notwithstanding his continuing minority, due to "the basic fact of the vagueness of his account and the unexplained issues relating to his family's situation in Afghanistan" (see paragraph 19).

22. Finally, the determination, especially in circumstances whereby DUTJ McCarthy has given a very ample and fulsome account of the nature of the Appellant's claim following the earlier impugned decision of Judge Telford, is rather short at just under four pages, which is most unusual for an asylum claim, thus suggesting that matters may not have been as well-looked at as they ought to have been.

### **Notice of Decision**

23. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal at Sheldon Court in Birmingham to be determined by a judge other than Judges Parkes and Telford on a *de novo* basis because the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing and to enable the party's case to be put and considered by the First-tier Tribunal. It is important that next time around findings are made on all of the issues that are put before the Tribunal so as to obviate the need for this matter to return back to the Upper Tribunal again.

Anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

1<sup>st</sup> August 2015