



IAC-AH-KEW-V1

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

Appeal Number: AA/00440/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 February 2016**

**Decision & Reasons  
Promulgated  
On 18 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**[A S]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms C Physsas, Counsel  
For the Respondent: Ms N Willocks-Briscoe, HOPO

**DECISION ON ERROR OF LAW**

1. The appellant is a citizen of Afghanistan born on [ ] 1982. He appeals against the decision of First-tier Tribunal Judge Lucas dismissing his appeal against the decision of the respondent made on 18 December 2014 to refuse to grant him leave to remain and to refuse to grant him asylum under paragraph 336 of HC 395 as amended.

2. The basis of the appellant's claim for asylum is that he used to work for intelligence along with his brother providing information about the Taliban for the government. His brother worked for the police and was an informer about the trade in narcotics in the local area. His brother was specifically targeted by the Taliban who arrested him and beheaded him in the summer of 2013 because of his job as an informer.
3. The appellant said he worked for a man called [M], who was linked to the Americans, for which he was paid \$500 per month. He started this job a year before leaving Afghanistan and it involved observing the local area of [S] where there is a large Taliban presence. Approximately six months after he started work, he reported someone called [K] for having weapons at his house. [K]'s home was raided by the Americans and the Afghan army. During the raid, two of his sons were killed but [K] managed to escape. He went on the run but was later killed. In the spring of 2013 the appellant located a man called [Mh] in the village of [A] and identified another person called [AR]. In a later raid, the latter was killed and [Mh] was arrested. He said it was common knowledge that he was involved in the arrest of [Mh]. He later learned that [Mh] had been released in a prisoner exchange. He was informed that some people had come from [A] village to look for him and asked about his whereabouts. He travelled to [J] where he remained in hiding with his wife's relatives for a period of two weeks. His father-in-law's house was raided a week before he left Afghanistan. He fears that on return to Afghanistan, he will be targeted and killed by the Taliban. Internal relocation is not an option as he will easily be located and targeted.
4. I was persuaded by the arguments put forward by Ms Physsas that the judge arguably erred in law in his credibility findings. The judge did not find the appellant credible because of lack of corroboration rather than assessing the oral evidence given by the appellant in the context of the objective evidence that was before the court.
5. Ms Physsas sought to rely on a Country of Origin Information Report on Afghanistan produced by the European Asylum Support Office (ESO) which had been submitted with the application for permission to appeal. This document was not before the judge and was not in the objective bundle of documents submitted in support of the appellant's original appeal. Ms Physsas sought to rely on the objective evidence contained in the ESO Report to support her argument that the judge erred in law in failing to consider this report and that had he relied on the ESO Report, he would have found that the appellant's evidence was not lacking in credibility. I found that the judge could not be criticised for his failure to rely on the ESO Report which was not before him.
6. The judge at paragraph 56 placed little or no weight on the handwritten note which the appellant had said had been left beside his brother's body by the Taliban. In reaching his conclusion, I find that the judge failed to

consider the objective evidence that was before him to the effect that the use of night letters was a primary form of communication by the Taliban to express their demands.

7. I find that the judge failed to consider that the nature of the appellant's employment was such that he would not have a contract of employment. The judge at paragraph 49 did not believe the appellant's evidence of his employment because he had come to the UK as a matter of choice, having travelled through European countries. This was not a safe basis for an adverse credibility finding.
8. I find that the judge's requirement for the appellant to corroborate his claim also makes his decision unsafe.
9. For the above reasons I find that the judge erred in law in his decision.
9. I was not persuaded by Ms Physsas that the judge failed to consider Article 15C in his determination. The judge did consider it and had regard to the country guidance decision on Article 15C that was before him. Until that decision is overturned by the Court of Appeal it remains good law and the judge did not err in law in relying on it.
10. I take the point that the Court of Appeal granted permission in **Nazari** and heard it in January 2016. I was informed by Ms Physsas that one of the issues before the Court of Appeal was the security situation in Afghanistan. The judgment is yet to be delivered.
11. Having found that the judge erred in law, his decision cannot stand. It is set aside in order to be re-made by a different judge.
12. The appellant's appeal is remitted to Taylor House for re-hearing.

Signed

Date

Upper Tribunal Judge Eshun