



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

Appeal Number: PA/00281/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**NA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Mr T Gaisford, Counsel instructed by Aston Bond Law Firm  
For the Respondent: Ms A Broklesby Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appeal arises out of a decision of the respondent, dated 12th June 2015, whereby it refused to grant the appellant asylum or humanitarian protection and determined that his removal from the UK would not be in breach of Article 8 ECHR. The appellant appealed and his appeal was dismissed by the First-tier Tribunal ("FtT"). The appellant now appeals the FtT's decision, which was promulgated on 7<sup>th</sup> October 2015.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal

or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

### Background

3. The appellant is a citizen of Afghanistan born on 1 January 1986. He arrived in the UK in October 2008, by clandestine means, having travelled through a number of countries since leaving Afghanistan in June 2008. On 15 April 2014 he applied for an EEA residence card as the spouse of an EEA national and his application was refused. On 13 May 2015 he was served notice of intention to remove him and detained pending removal after being arrested following an attempt to enter into a sham marriage. On 18 May 2015 he applied for asylum. That application was refused for the reasons given in the respondent's Reasons for Refusal Letter of 12 June 2015. The respondent was not satisfied that the appellant had demonstrated a well founded fear of persecution in Afghanistan. The appellant's Article 8 ECHR claim was also rejected.
4. The appellant's claim is that he is an uneducated illiterate mechanic who owned his own garage from the Loghar Province in Afghanistan who was forced by the Taliban to participate in a suicide bombing but threw away the suicide vest and fled. He believes his father has been killed by the Taliban. He claims to have received a "night letter" from the Taliban and to be at risk from them because of his refusal to participate in a suicide bombing. He further claims that he is wanted by Afghan authorities because he was identified by a member of the Taliban.
5. The respondent did not accept the appellant's account, describing it as inconsistent and incoherent, and rejected his asylum application. The appellant appealed and his appeal was heard by FtT Judge Robinson.

### Findings of the First-tier Tribunal

6. The FtT did not find the appellant credible. It rejected his claim to have been forced to undertake a suicide mission and described him as having exaggerated and embellished his story to avoid removal from the UK. The FtT identified several discrepancies which were said to undermine the appellant's credibility. These include:
  - a. The appellant stated, at interview, that the Taliban sent a letter (the "night letter") saying that if he did not hand himself over they would kill his father. However, the night letter did not threaten the appellant's father or even mention him. The FtT did not accept the appellant would have been uncertain as to the contents of the night letter if it were genuine.
  - b. The appellant gave inconsistent accounts about his location when [MT] (the Taliban member the appellant claims implicated him) escaped from the Afghan authorities. He originally claimed to have been in Afghanistan at the time of the escape. However, this is inconsistent with the summons for his arrest, dated 15 August 2008,

which stated that [MT] was in custody. On 15 August 2008 the appellant had already left Afghanistan.

- c. The appellant did not mention the death of his father in his original statement.
7. The FtT took into account the time that had elapsed from the appellant's entry to the UK in 2008 until his application for asylum as well as his failure to apply for asylum in safe countries he travelled through on route to the UK. The FtT noted the appellant, whilst in the UK, had applied for a new Afghan passport and had taken advice in respect of a residence card but had not made an asylum claim.
8. The FtT also took into account that forgeries of documents such as Taliban night letters and Afghan arrest warrants are available for sale in Pakistan and the appellant spent two months there on his way to the UK. The FtT found these documents to not be reliable.
9. Having made findings of fact to the effect that the appellant has not experienced any problems with the Taliban or Afghan authorities, the FtT concluded that he would not be at risk on return either in Kabul or in his home area. In so finding, the FtT relied on 2013 UNCHR Guidelines and the country guidance in *AK (Article 15(c) Afghanistan CG* [2012] UKUT 163 (IAC). The FtT also referred, at paragraph [35] to "an August 2015 update" that was highlighted by Counsel for the appellant.
10. The FtT then considered the appellant's Article 8 ECHR claim and concluded that the evidence before it did not substantiate there being a family or private life in the UK that engaged Article 8.

#### Grounds of appeal and submissions

11. There are five grounds of appeal:
  - a. First, that the FtT failed to address the up to date country evidence that was before it in respect of subsidiary protection/indiscriminate violence.
  - b. Second, that the FtT relied on a material error of fact in stating that the appellant's father was not named in the night letter. Moreover, it is argued that the FtT overlooked the particular circumstances, including that the appellant was illiterate and the emotions involved, that might have resulted in him thinking the night letter threatened his father.
  - c. Third, that the FtT misdirected itself by adopting the respondent's credibility findings which were speculative and it cannot be discerned which inconsistencies in the refusal letter were being relied on when they were referenced at paragraph [54].
  - d. Fourth, that the FtT's finding that the appellant's closest family were in Afghanistan and Lithuania was made without there being an evidential basis for such a finding.
  - e. Fifth, that there is a material conflict of fact which remains unresolved in respect of the appellant asking for voluntary removal to Lithuania

and his uncle advising him against return for fear of death, and the finding that he would not be in fear of the Afghan regime.

12. Mr Gaisford started his submissions by challenging the basis of the credibility findings. He argued that the FtT had failed to properly take into consideration, and make allowances for the fact, that the appellant was uneducated and illiterate. The interview record confirms that the appellant is unable to recollect dates. Accordingly, the FtT should not have based its credibility findings, and placed so much weight, on the appellant's inability to recall the timing of certain events. Mr Gaisford also argued that the credibility findings are undermined because the FtT failed to appreciate that the appellant could have been under an honest misapprehension as to what the night letter said. He also submitted that the FtT's inaccuracy about what the night letter said about the appellant's father weighed heavily and coloured the credibility findings. Further, the appellant's failure to mention his father's death was given inappropriate weight because the appellant was never asked a direct question that would have elicited this information. In addition, Mr Gaisford argued that the FtT had failed to take into account that the appellant thought he had made an asylum claim in 2008 and in 2012 had followed it up.
13. In respect of the current situation in Afghanistan, Mr Gaisford submitted that the appellant's family are in Kabul where the circumstances are bleak and the up to date evidence indicates the appellant would face serious obstacles upon return irrespective of previous conduct. Mr Gaisford explained that he had provided the FtT with important up to date country information post dating AK in the form of the UN's Afghanistan Midyear report 2015: Protection of Civilians in Armed Conflict and Country Information and Guidance - Afghanistan: Security and humanitarian situation (August 2015) but this had not been taken into account in the decision. He argued that the evidence before the FtT showed that the 15(c) threshold may be met.
14. Ms Broklesby-Weller submitted that the FtT was aware, and took into account, the issue of the appellant's illiteracy and lack of education. Having done so, it identified genuine and significant inconsistencies in the evidence and the FtT's findings on credibility were based on consideration of all of the evidence in the round. She also argued that the FtT had proper regard to the applicable Country Guidance.

### Consideration

15. My starting point in considering this appeal is that I am satisfied that it was open to the FtT to find the appellant not credible. There were significant discrepancies in the appellant's account. They included, but were not limited to, his explanation of where he was when Mullah Timor escaped, which was inconsistent with documentary evidence he produced; and the content of the Taliban's night letter. Mr Gaisford sought to argue that the discrepancies may have arisen because the appellant was uneducated and illiterate. However, the nature of the discrepancies was such that they cannot adequately be explained by illiteracy or lack of

education. The FtT had a range of reasons for finding the appellant to not be credible and when the evidence before the FtT is considered cumulatively and in the round it is clear that it was entitled to so find.

16. I now turn to the five grounds of appeal.
17. The first ground is that the FtT failed to consider up to date country guidance about indiscriminate violence in Afghanistan. The FtT's consideration of the risk the appellant would face on return is set out at paragraphs [69] - [76]. The decision includes consideration of the 2013 UNHCR Guidelines and AK. Earlier in the decision there are references to more up to date objective evidence: at paragraph [31] the FtT states that it was asked to consider the country update which indicated the security risk was heightened and generic and at [36] the FtT referred to Mr Gaisford highlighting relevant parts of the objective evidence to show Kabul was unsafe. However, the up to date country information is not mentioned in the section of the decision where the FtT evaluates and makes a finding in respect of the risk of return.
18. As is made clear in the Tribunal Practice Direction at paragraphs 12.2 and 12.4, the FtT must treat as binding any country guidance authority relevant to the issues in dispute unless there is good reason for not doing so, such as fresh evidence which casts doubt upon its conclusions, and a failure to follow the country guidance without good reason is likely to involve an error of law.
19. The country guidance in force in respect of indiscriminate violence in Afghanistan is AK. The headnote to that decision states, *inter alia*:
  - (ii) Despite a rise in the number of civilian deaths and casualties and (particularly in the 2010-2011 period) an expansion of the geographical scope of the armed conflict in Afghanistan, the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.
  - (iii) Nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may now be taken to include Ghazni but not to include Kabul), at such a level."
20. The appellant submitted to the FtT evidence post dating AK which, it was argued, justified a departure from that case. The fresh information took the form of the UN's Afghanistan Midyear report 2015: Protection of Civilians in Armed Conflict and Country Information and Guidance - Afghanistan: Security and humanitarian situation (August 2015). Mr Gaisford handed to me even more recent articles indicating an upsurge in violence.
21. The FtT has assessed the appellant's risk of return on the basis of the relevant country guidance - AK - as well as the 2013 UNCHR Guidelines. It does not appear to have taken into account the up to date information supplied by the appellant. I accept that a failure to take into account up to

date information can amount to an error of law. However, having carefully considered the material in question, it is clear that any error of law was not material. The country evidence submitted by the appellant about Afghanistan, although describing a situation where there is suffering by and harm to civilians, is by no means sufficient to cast doubt on the conclusions reached by the Upper Tribunal in AK, which were based on a careful consideration of a considerable volume of evidence. Although the fresh evidence is more recent, it fails to show a significant difference in the overall circumstances in Afghanistan in general or Kabul in particular from that which was before the Upper Tribunal in AK. Accordingly, I find that the FtT did not make an error of law in following AK and any failure to address more up to date evidence that was before it was not material.

22. The second ground of appeal concerns the night letter that the appellant claims was sent by the Taliban. The appellant argues that the FtT made a material error of fact in stating that the appellant's father was not mentioned in the letter. However, the night letter refers to the appellant's father only as a way of identifying the appellant. It is clear from the context in which the FtT stated that the appellant's father was not mentioned that it was contrasting the wording in the letter, which makes no threat against the appellant's father and does not mention him (other than to identify the appellant) with the appellant's statement that his father was threatened in the letter, which is not the case.
23. The third ground concerns the FtT's findings as to the appellant's credibility. I have already explained why it is my view that the FtT was entitled to conclude the appellant was not credible and for these reasons I find that this ground has no merit. The fifth ground of appeal is rejected for the same reason: given that the appellant's account has been rejected on the basis of him not being considered credible, there is not a material conflict of fact arising from his claim (which is not believed) that his uncle advised him against returning to Afghanistan because of a fear of death.
24. The fourth ground takes issue with the FtT's approach to Article 8, arguing that the FtT did not have a basis for its assertion that the appellant's closest family were in Afghanistan and Lithuania and that it overlooked that the appellant's cousin and cousin's family in the UK are the appellant's only family. There is no merit to this ground. The FtT found that the relationship between the appellant and his cousin, who do not live together and who only see each other on special occasions, does not engage Article 8 ECHR. That finding was open to the FtT irrespective of whether or not the appellant has closer family elsewhere and there is no basis for arguing the FtT has made a material error of law in respect of its assessment under Article 8.

### **Decision**

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c. An anonymity order is made.

Signed

A handwritten signature in black ink, appearing to be 'S. Sheridan', followed by a horizontal line extending to the right.

Deputy Upper Tribunal Judge Sheridan

Dated: 1 February 2016