



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

Appeal Number: PA/06954/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 May 2017**

**Decision & Reasons Promulgated  
On 10 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**JANALI ZAMANI  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Mohamed of Counsel

For the Respondent: Miss Holmes a Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The Respondent refused the Appellant's application for asylum or ancillary protection on 22 June 2016. His appeal against this was dismissed by First-tier Tribunal Judge Courtney ("the Judge") following a hearing on 20 January 2017.

**The grant of permission**

2. Upper Tribunal Judge Perkins granted permission to appeal (29 March 2017) on the basis that it is arguable that the Judge materially erred in failing to give proper reasons for dismissing the appeal where he was a

credible witness whose concerns were supported by an expert's report, his primary claim being that he would be particularly vulnerable as a member of the Hazara community in Afghanistan and due to the length of time he had been out of the country. Permission was granted in respect of all the grounds.

### Respondent's position

3. It was submitted in the rule 24 notice (13 April 2017) that the Judge directed herself appropriately. The findings were adequate. The Judge properly considered the country material and the expert's report. The Judge was entitled to find that the witnesses evidence did not demonstrate that the Appellant would be at risk on return.
4. Miss Holmes submitted additionally that the Judge went through the evidence with a fine tooth comb and was entitled to look at the source of the evidence that was contained within the expert's report. The failure to take the parties view on that was not a material error of law as the Judge only dealt with this as an aside and that evidence related to young men whereas the Appellant is middle-aged. The Judge was entitled to find as she did regarding attacks on the Hazara and was entitled to point out that there are between 1.7 million and 2 million Hazara's living in Kabul. The Judge was entitled to find that not all Hazara's are at risk on return. The Judge was not requiring the Appellant to change his identity to avoid persecution.

### Appellant's position

5. Despite the lengthy grounds and submissions, the Appellant's case in fact turns on one point. Mr Mohamed submitted, in essence, that the Appellant's account was accepted as being credible, and the Appellant should have been given the opportunity of commenting on a report that was referred to in the expert's report but read in full by the Judge before the Judge made adverse findings.

### Discussion

6. The Judge stated at [44]

"The Appellant had been out Afghanistan for 37 years, having lived in Iran between 1980 and 2006, and coming to the UK. In Ms Stahlmann's view, "Given the many decades Mr Zamani has lived abroad it is virtually impossible that he could blend into the social fabric without identifying himself as a stranger and thus exposing himself as a target". She takes the view that "the presumed assessment that he would have amounted riches increases the risk of being kidnapped for ransom considerably [39]. This assertion is sourced to the 2013 study by Schuster & Majidi. However, having read that report in full I cannot see that any such reference is made in it..."

7. I accept, as indeed did both representatives, that the Judge is entitled to consider a report which is referred to in an expert's report. I also agree with both representatives that the Judge should have given both parties the opportunity of commenting on a document prior to making a determination based upon it. I disagree with Miss Holmes that this was not a material error of law, as how he would reasonably be likely to be viewed on return actually goes to the heart of the case. The Judge should have given the opportunity to the parties to comment on the fact that the source of the evidence contained in the footnote did not appear to the Judge to match with the expert assessment of that report. It was the crux of the case.
8. For the avoidance of doubt, I was satisfied that there was no material of law regarding the assessment of the witnesses evidence as the reached conclusions she was entitled to on that.
9. Having heard submission, I was satisfied that it is appropriate to remit the matter de novo as the error goes beyond those contained within the Presidential Guidance for retention in the Upper Tribunal. The witnesses evidence will be considered afresh within the context of the expert and background evidence, as regarding the issue of risk on return, the findings are set aside.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a de novo hearing, not before Judge Courtney.

Deputy Upper Tribunal Judge Saffer  
9 May 2017