



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03789/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29 June 2018

Decision & Reasons Promulgated  
On 6 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M S  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Knight, Counsel instructed by Malik & Malik solicitors

For the Respondent: Mr Nigel Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Afghanistan born on 2 March 1988. He arrived in the United Kingdom with a valid student visa on 27 January 2010. On 3 January 2013 he was encountered attempting to leave the UK using forged Italian documents and was sentenced to six months in prison. He claimed asylum on 5 February 2013.
2. The basis of his claim is that in 2008 he had begun work as an interpreter for an American company, the Afghan Welfare Organisation, who assisted women who had been victims of torture. Shortly after he started work he said that he received a letter

from the Taliban telling him to stop working for the company and then approximately a year later he received a second letter threatening him. The Appellant then shortly thereafter quit his job. One month after that he was kidnapped by four men in a bazaar by the Taliban. He was detained, ill-treated and injured by being stabbed in the arm and wrist and hit in the back with a screwdriver whilst escaping from detention following twelve to thirteen days. He returned home whereupon his mother and stepfather arranged for him to flee to Pakistan and thereon to the United Kingdom.

3. The Appellant's application for asylum was refused in a decision dated 12 April 2017. He appealed against that decision and his appeal came before Judge of the First-tier Tribunal Rahman for hearing on 10 July 2017. In a decision and reasons promulgated on 10 August 2017 the judge dismissed the appeal having rejected the credibility of the Appellant's account and finding he would not be at risk of persecution if returned to Afghanistan.
4. Permission to appeal to the Upper Tribunal is sought on the following bases
  - 4.1. The judge failed to consider material evidence in concluding that the Appellant's account was untrue. The claim was supported by substantial documentary evidence in particular the two night letters written by the Taliban and an authentication report by Jawad Hassan Zadeh; two letters from Mastoorat Hospital also authenticated by Mr Zadeh; reference letters from an Afghan MP, Al Haj Baidar Zazia which had been translated and authenticated and a reference letter from Sherali Ahmadzia, member of the Kabul Provincial Council and authentication report and a reference letter from the Appellant's neighbours with translations and authentication. It was submitted that the judge erred in his approach to these documents at paragraphs [95] and [96]. There was also the Appellant's identity card from the Afghan Welfare Organisation and it was submitted that on any proper view these documents represented important corroboration of the Appellant's claim yet received no anxious scrutiny from the Tribunal.
  - 4.2. Secondly, it was submitted that the judge misdirected himself in his findings at paragraphs [85] to [90] all of which were premised on the judge's assumptions about how the Appellant or third parties would or would not have acted in Afghanistan which is contrary to the approach of Lord Justice Neuberger as he was then was in HK [2006] EWCA Civ 1037 and the judge further erred in failing to take account of the background evidence particularly in light of fact that he seemingly accepted that the Appellant had worked as an interpreter but failed to consider the plausibility of his claim in light of the evidence as a whole.
5. Permission to appeal was granted by Upper Tribunal Judge Martin in a decision dated 15 March 2018, albeit the application had been made out of time due to the fault of the representatives, on the basis that it was arguable that the judge had failed to give proper consideration to the numerous supporting documents submitted by the Appellant and the expert's report thereon which may corroborate the Appellant's claim.

*Hearing*

6. At the hearing before me, Mr Knight appeared on behalf of the Appellant. He sought to rely on a skeleton argument that he had drafted as he was not the author of the grounds of appeal.
7. Mr Knight took me through the judge's decision and the evidence in some detail also pointing out that the Appellant's uncle and cousin have been murdered in Afghanistan by the Taliban since he had been in the United Kingdom and that his claim for asylum had come about because whilst attempting to leave the United Kingdom to travel to Canada using false documents he was arrested and imprisoned but had met a probation officer whilst in prison who had advised him as to how to claim asylum in the UK.
8. He also took me to the background evidence in the Home Office CPIN dated December 2016 at 8.6.2 and pages 294 to 299 of the Appellant's bundle which confirmed that interpreters and employees of NGOs have been targeted by the Taliban.
9. In his submissions, Mr Bramble opposed the appeal. He submitted that the judge did take account of the documents at [40] and the expert report at [41]. He found a discrepancy as to the Appellant's account of his injuries at [91]. At [85] in respect of the night letters from the Taliban he found that there was no credible explanation as to why he continued to live at home and work in Kabul following the first letter and why he had no problems until after he received the second letter about a year later. He submitted the letters from the hospital did not take the matter any further and in terms of the Afghan Welfare Organisation it was not accepted that the identity card in itself, absent any supportive documentary evidence, took the matter any further and that the Secretary of State had been unable to find any mention of this organisation on line.
10. In his reply, Mr Knight submitted there was no actual decision by the judge as to whether the documents were genuine or not and this of course should have been the starting point rather than the other way round see Mibanga [2005] EWCA Civ 367.
11. In respect of the identity card, Mr Knight made the point also made in the expert report of Mr Zadeh, that the use of information technology is rare, large parts of Afghanistan are without computers and internet and with reference to page 111, the majority of Afghan organisations utilise written communication and mobile phones and in any event the Appellant worked for the organisation nine years ago and it no longer exists.
12. Mr Knight also in respect of the Appellant's credibility took a further point and that was that the Appellant was only, it appears, served with an IS151A advising him as to his liability to removal and not actually removal directions. Therefore he had not claimed asylum after he was informed that he was being removed but only of his liability to be removed.

13. Mr Bramble helpfully found copies of the IS151A and part 2 which does inform the Appellant of his liability to removal. However neither of these documents are signed and although they are dated 4 February 2013 it is not at all clear that they were served on the Appellant.
14. Mr Knight also specifically addressed the individual points regarding the Appellant's credibility at [67] of his skeleton argument with regard to paragraphs [85] to [94] of the judge's decision. He submitted the judge's approach fell foul of the guidance set out in HK (*op cit*). He submitted that the judge had shown survivorship bias i.e. that he held the claim was inherently implausible because the Appellant was able to escape.
15. Mr Knight submitted that in truth there were no meaningful discrepancies in the Appellant's account of how he sustained his injuries and he drew my attention to question 22 of the Asylum Interview Record where the Appellant stated he had been stabbed in his hand; question 24 where he referred to being stabbed in the arm and being hit with a screwdriver and question 108 that he had been stabbed with a knife and hit with a screwdriver.
16. In his witness statement dated 9 December 2014 at [18] to [19] the Appellant stated he had been stabbed in the right arm and in the wrist too and stabbed with a screwdriver and photographs of the three injuries had been appended to that statement. The witness statement for his appeal hearing dated 11 May 2017 also refers to the injuries and photographs. The judge at [24] of his decision referred to the fact that the Respondent found the Appellant to be inconsistent in his account of the injuries at [22] but failed to properly take into account the full extent of the Appellant's account and the photographs of the injuries which were submitted. Therefore the judge's finding at [19] that the Appellant failed to provide a credible explanation for inconsistencies is simply unsustainable.
17. Mr Bramble when given the opportunity to reply to the credibility submissions accepted that paragraph [89] was hard to defend but that [85] to [88] and [90] to [93] were sustainable. The judge had been perfectly entitled to come to the conclusions he did and the grounds in this respect were simply a disagreement with those findings of fact.
18. I reserved my decision, which I now give with my reasons.

### *Findings*

19. The judge's findings of fact and credibility run from [83] to [97] of his decision and reasons. At the outset of his findings, the judge at [83] states that he has taken account of the documentary evidence in addition to the oral evidence and submissions.
20. I find the judge erred in his assessment of the Appellant's claim for the following reasons.
  - 20.1. Firstly, the judge considered the issue of the Appellant's credibility at [84] through to [94]. He then addressed some of the documentary evidence before him finding at [95]

in respect of the letters from the two Afghan officials “*even if these two letters were genuine it does not follow that I must accept what is stated in those letters even applying the lower standard of proof*” and at [96]

*“I have considered all the letters/reports/articles relied on by the Appellant and I note the evidence from Mr Zadeh. However even if these documents have a genuine provenance it does not mean that what they state is the truth. I remind myself in line with the judgment in the case of Tanveer Ahmed [2002] UKIAT 00439 that I must consider these in the light of all the other evidence placed before me and in the context of my assessment of the Appellant’s overall credibility. I have serious doubts about the credibility of the Appellant’s claim. The points I have noted above when considered cumulatively significantly undermine the Appellant’s credibility. I therefore attach very little weight to these documents.”*

I find the judge’s approach as set out above to be erroneous in that it is now trite law that it is necessary to consider the issue of credibility in light of all the evidence including background expert and evidence specific to the Appellant cf. Mibanga [2005] EWCA Civ 367. Even if, in fact, the Judge did consider credibility in light of the substantial documentary evidence personal to the Appellant and the authenticating report of Mr Zadeh, I find he did not indicate that he had given proper consideration to those documents considered both individually and as a whole and he appears to have applied in practice too high a standard of proof to the evidence.

20.2. I further find that, although some of the judge’s findings in respect of the Appellant’s credibility may carry weight, in light of the fact that his entire approach to the credibility of the claim was infected by his error to the assessment in light of the background expert and specific evidence, that none of his findings can stand.

### **Notice of Decision**

I find material errors in the decision of First-tier Tribunal Judge Rahman. I remit the appeal for hearing de novo before the First-tier Tribunal.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*

Deputy Upper Tribunal Judge Chapman

Date 5 July 2018