Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07093/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th October 2018	**On 8th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR T N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Ali, Solicitor Advocate instructed by Sohaib Fatimi Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 26th May 2018 to refuse

his application for protection in the UK. First-tier Tribunal Judge James dismissed the appeal in a decision promulgated on 18th July 2018. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Landes on 17th August 2018.

Discussion and conclusions

2. The Grounds of Appeal put forward two grounds. The first ground contends that the judge made a misdirection as to the standard of proof. I do not accept that this ground has been made out. Although the judge used a number of different phrases in assessing the evidence at paragraph 26 it is clear that she had the appropriate burden in mind.

3. It is contended in the second ground that the judge made a number of errors of law, undertook speculation and made a misdirection as to the evidence, had a lack of reasoning and reached irrational conclusions. The grounds put forward a number of suggested mistakes of fact and matters of speculation. In the course of his submissions Mr Tufan accepted that the judge made several mistakes of fact, however he submitted that these were not material errors.

4. At paragraph 26(b) the judge said:-

> "…Moreover, having never met this commander, I am not persuaded that the Appellant would know who he was even if he met him, let alone what pair of shoes the Appellant owned in order to place them into the commander's shoes. In addition, it is highly unlikely that the Appellant would be able to identify the commander's shoes from amongst very many shoes left outside the prayer room of a mosque, and equally unlikely that a person putting their shoes back on would not feel a sim placed in their shoes, or that such a high profile Taliban commander with five person security detail would leave this potential security risk unattended (Q78)".

5. As accepted by Mr Tufan, some of these findings are based on a misreading of the Appellant's responses in his asylum interview. At question 52 the Appellant said that he knew who the commander was because sometimes he came to the Appellant's village and that he was famous and that he had seen him in the mosque and that he was senior in the Taliban (52 to 56). The Appellant described what happened when the commander arrived at the mosque – he described how he watched where the commander put the shoes, what they looked like, and described putting the sim card in the shoes (Q78-87). Accordingly, it Is clear that at paragraph 26(b) the judge failed to assess the Appellant's evidence in relation to the issues considered there.

6. At paragraph 26(e) the judge said:-

> "It is difficult to reconcile that the Appellant claimed he lived in the Loghar province and that he heard the bomb kill the Taliban

> commander, even though he then claimed the commander was killed in Sangar (Q96)".

And at paragraph 26(t) the judge said that the commander was killed in Eastern Laghman province which was:-

> "…nowhere near Logar (sic), the centre sector, where the Appellant lived and thus he could not have been in the mountain with the sheep near the village mosque where he claims he heard the explosion that killed this Taliban commander".

7. Again, Mr Tufan accepted that this was a mistake of fact. Mr Ali could not find any reference to the Appellant saying that he lived in Loghar. In fact he said that he lived in Sangar. Mr Tufan was unable to point to anywhere in his interviews where the Appellant said that he lived in Loghar. Accordingly, at paragraph 26(e) and (t) the judge made a mistake of fact as to where the Appellant claimed that he lived.

8. At paragraph 26(r) the judge noted that the Appellant claims to have left Afghanistan at Eid-ul-Adha in 2014 and that the assassination of the commander occurred the following early morning. The judge said *"Ei-al-Adha took place on 29th July 2014, and thus again the Appellant's claims regarding the chronology or date of events are awry"*. In his submissions Mr Ali contended that there was no evidence for the judge's conclusion that Eid-ul-Adha took place on 29th July 2014. He pointed out that at paragraph 18 of his witness statement of 21st June 2018 the Appellant said that Eid-ul-Adha started on 4th October 2014. He submitted that this was consistent with the Appellant's claim that he left Afghanistan after the commander's death. Neither Mr Ali nor Mr Tufan were able to point to any evidence before the judge indicating that Eid-ul-Adha took place on 29th July 2014. Accordingly, the judge's conclusion at paragraph 26(r) is not based on any evidence before her.

9. There are a number of other submissions in relation to other aspects to the judge's decision but in my view these have not been made out on the evidence. Mr Tufan submitted that the errors identified above were not sufficient to undermine the judge's findings overall. However, I disagree with that submission. It is clear that each of those conclusions separately and certainly all of them read together are sufficient to amount to material mistakes of fact and misunderstandings of the evidence which are capable of fundamentally undermining the credibility findings made by the judge.

10. In my view the judge made a number of material misunderstandings in relation to the evidence which amount to material mistakes of fact. In these circumstances all of the findings of credibility made by the judge are undermined. Accordingly I set aside the decision of the First-tier Tribunal in its entirety.

11. In light of the Presidential Practice Statements the nature or extent of the judicial fact finding which is necessary for the decision in the appeal to be

re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal Judge contains a number of material errors and I set it aside.

I remit the appeal to the First-tier Tribunal for the decision to be made afresh.

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 his 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 Date: 31st October 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As the appeal is being remitted to the First-tier Tribunal the issue of a fee award is to be considered by the First-tier Tribunal Judge remaking the decision.

Signed Date: 31st October 2018

Deputy Upper Tribunal Judge Grimes