Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07952/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 4th January 2018	**On the 30th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

M L
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Aslam, Counsel instructed by Lohaib Fatimi Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Rhys-Davies, promulgated on the 18th September 2017, to dismiss his appeal against refusal of his Protection Claim.

2. The appellant is a citizen of Afghanistan who was born on the [ ] 1976. The judge accepted (as had the respondent) that the appellant's father and grandfather were influential men within their tribe and that he had been employed by the International Medical Corps and USAID between 2001

and 2003. It was also accepted that (a) he had thereafter been an advisor and provider of security services to various organisations in Kabul and elsewhere, and (b) from 2006, had built up a business employing around 10 people policing the [ ] Customs Post on the border with Pakistan, and that this had continued up until the point of leaving Afghanistan in April 2016. Finally, it was accepted that the appellant had stood as a candidate for election to the [ ] Assembly in 2014. The judge did not however accept that in doing so he had raised his profile any higher than the other 500 candidates who had also stood for election, or that he had received threatening "night letters" from the Taliban due to his supposed refusal to support their cause during his election campaign.

3. The grounds before me can conveniently be summarised as follows:

    1. The judge's findings are contrary to "country information, the country guidance case law, and Dr Giustozzi's expert report" [paragraph 8 of the grounds];
    2. The judge failed to consider the possibility of an innocent explanation for the fact that the night letters bore two different signatures whilst purporting to be from the same person;
    3. It was wrong for the judge to suggest that the appellant's account of the threats he had received (two warning letters, as well an earlier telephone call and a visit from local elders) was inconsistent with the procedures described by Dr Giustozzi, given that Dr Giustozzi had in fact said that the due process of the Taleban involved the issuing of <u>at least</u> two warnings;
    4. The finding that the Taleban target the family members of suspected collaborators is misconceived and contrary to background country information;
    5. The finding that the appellant would not have an enhanced local public profile during the election campaign was perverse given the accepted background of him coming from an influential family, his membership of the Lagthe Judghman's People's Council, and his association with the deputy head of the intelligence service who had been killed in September 2009.

    I take them in turn.

4. In my judgement, the first ground is simply a general statement of disagreement with the judge's conclusion and does not identify any error of law. I therefore turn to the grounds that contain a degree of specificity.

5. Mr Aslam accepted that the second ground was not his strongest. Whilst it is doubtless incumbent upon a judge to have regard to (if not necessarily accept) any explanation that an appellant may advance for discrepancies in the evidence upon which he relies, this does not extend to an obligation to speculate upon what possible 'innocent' explanations there may be where none has been forthcoming from the appellant himself. The appellant now seeks to rely upon explanatory evidence for the discrepancy

in question, notwithstanding that this evidence was not before Judge Rhys-Davies. It is not however an error of law for a judge to fail to anticipate evidence that was not before him. Where fresh evidence arises after the dismissal of an appeal, the appropriate remedy is to place it before the Secretary of State in support of a fresh claim.

6. The third ground represents a challenge to what is perhaps the weakest part of the judge's reasoning. It is true, as the grounds state, that Dr Giustozzi does at one point in his report refer to the Taleban issuing "at least" two warnings before taking further action against a suspected collaborator. However, that phrase is used within the context of Dr Giustozzi explaining the circumstances in which the Taleban does not give any warning *at all*. However, where Dr Giustozzi directly addresses the issue of what might be described as the 'usual process' adopted by the Taleban towards suspected collaborators, he does indeed refer to the issuing of just two warnings, as the judge suggested. Nevertheless, given the arguably contradictory statements in the report of Dr Giustozzi upon this point, I would have been deeply troubled had the adverse credibility findings of the judge rested entirely upon this basis. As it is, the judge gave other sustainable reasons for disbelieving the appellant's account of receiving two warning letters, not least of which is that which I explored in the previous paragraph.

7. In considering the fourth ground, it is necessary to set out the context within which the judge made his findings. The Secretary of State had argued that the appellant's account of being at risk of harm from the Taleban was not credible given that (amongst other things) he did not claim that its members had attempted to harm his wife following his departure from Afghanistan. This argument was, on the face of it, supported by the relevant 'Country of Origin Information Report' [COIR] which, at paragraph 8.5.6, states that "… AGE's have been reported to target family members of individuals with the above profiles, both as acts of retaliation and on a 'guilty by association' basis". The appellant's answer to this argument (quoted at paragraph 76 of the judge's decision) was that the Taleban do not normally target women and that the absence of any attacks upon her was not therefore relevant to his situation. The judge rejected that explanation because, in his view, the background country information stated that, "anti-government elements are certainly not squeamish about attacks on women" [paragraph 76 of the decision]. Mr Aslam argued that the judge had thereby stated the position too widely, drawing attention to various passages in the background country information that suggested that attacks by the Taleban upon women in Afghanistan were confined to those who were (a) involved in public life, or (b) related to "government officials and members of the ANSF". Given that the appellant's wife fell into neither of these categories, Mr Aslam argued that the judge was wrong to reject the appellant's explanation for why the Taleban had not attacked his wife in his absence. I reject that submission. It seems to me that this argument is based upon an over-simplistic reading of paragraph 8.5.6 of the December 2016 COIR. It does <u>not</u> state that attacks by the Taleban are confined to family members (including women

and children) of "government official and members of the ANSF"; it merely states that family members of government officials and members of the ANSF are particularly at risk from the Taleban. The judge was thus entitled to conclude that the appellant's decision not to bring his wife and child with him when he left Afghanistan and the absence of any suggestion that they had been harmed in his absence were matters that undermined the credibility of his claim that he would be at risk of harm from the Taleban upon return to Afghanistan.

8. The fifth ground suggests that given such facts as were agreed, including the accepted influence and political connections of the appellant's family, it was perverse for the judge to conclude that his candidacy in the provincial elections of 2014 would not have attracted the attention of the Taleban. However, I agree with Mr Clarke's submission that this argument fails to take account of several countervailing factors. Firstly, it was open to the judge to conclude that the Taleban were not reasonably likely to be interested in *any* of the candidates unless elected to office, given that until such time they would not have influence beyond that which they already possessed. Secondly, there was no evidence to suggest that the appellant had subsequently expressed any interest in continuing with his political activities after his electoral defeat. Thirdly, and notwithstanding their undoubted tribal influence, there was no evidence to suggest that either the appellant, his father, or his grandfather, had previously come to the attention of the Taleban. It was therefore reasonably open to the judge to conclude that the appellant would not have been any more likely to come to the adverse attention of the Taleban than the other 500 people who had stood as candidates in the same election.

9. In conclusion, the grounds of appeal seem to me to be no more than a quarrel with the Tribunal's evidence-based findings of fact, and accordingly do not identify any arguable error of law in the determination of the appeal.

Notice of Decision

10. The appeal is dismissed.

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.

Judge Kelly Date: 28th January 2018

Deputy Judge of the Upper Tribunal