



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08424/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 28 June 2018

Decision & Reasons Promulgated  
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

SS  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Brown, instructed by Legal Justice Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, SS, was born in 1989 and is a male citizen of Afghanistan. He appeals against a decision of the respondent dated 15 August 2017 to refuse him international protection. The First-tier Tribunal (Judge Moxon) in a decision promulgated on 27 November 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. I find that the First-tier Tribunal erred in law such that its decision falls to be set aside. My reasons for reaching that decision are as follows. The appellant claims to

have been born in Qalam Gozer, Imim Sahab in Afghanistan. The appellant claims that the Taliban attempted to recruit the appellant ultimately trying to persuade him to undertake a suicide attack. When the appellant had moved from his home area to Kabul in order to avoid the Taliban, he claims that he encountered problems with the Sham Academy and local commanders and politicians. The appellant now claims to be involved in a blood feud involving the Sham Academy. The appellant claimed that his family including his father, siblings and step-siblings live in Kabul. He stated in his written statement that these relatives have to live in hiding in the countryside outside Kabul because they feared ill-treatment at the hands of the Taliban and its associates.

3. At [24] the judge stated that it was “accepted the appellant originates from an area of Afghanistan that is controlled by the Taliban.” I note from the refusal letter [75] that the Secretary of State did not accept the credibility of the appellant’s claim and his account of past events. The Secretary of State wrote:

“However, further consideration has been given to your claim at its highest. This means that it is not accepted you will face a risk of persecution or real risk of serious harm on return to Afghanistan because internal relocation is a viable option within your case.”

4. At [76-77] the refusal letter makes it clear that the appellant’s nationality was accepted but his “problems with the Taliban” and “issues due to the involvement of the Sham Academy” were not accepted.
5. The judge proceeded to analyse the evidence of the appellant and rejected the credibility of his account. However, at [71], the judge wrote:

**“It is not in dispute that the appellant could not return to his home area** and I have therefore considered whether he can return to Kabul. In considering the reasonableness of this I remind myself that he has lived in Kabul in the past.” [*my emphasis*]

6. It is not clear to me where this statement originates. The refusal letter, as I have noted above, rejected the Appellant’s claim for asylum on account of fear of return to his home area. The rejection was emphasised again at [53] of the refusal letter where it was, “noted that [he]originated from Kunduz, an area currently under the control of the Taliban, as verified by the external information. However previously residing in Kunduz does not verify your claim to have been targeted.” There is no acceptance in the refusal letter of the appellant’s claim to be at real risk in his home area. Indeed, the appellant’s claim to fear the Taliban in his home area (because he had previously rejected their advances) is specifically rejected.
7. The judge’s assertion at [71] is not supported by any evidence of a concession by the Presenting Officer at the hearing. The refusal letter, as I have noted above, does deal with internal relocation but only in the alternative that is, hypothetically taking the appellant’s account “at its highest.” The failure of the judge to provide reasons for his finding that the appellant could not return to his home area causes more

difficulties in the analysis of the internal flight alternative. The judge states [73] that “[the appellant] has family in Kabul and therefore he has access to support.” The judge makes no findings on the appellant’s evidence that his family were living in hiding. There is no assessment of the amount of support which the family could provide to the appellant in such circumstances or, indeed, whether the judge accepted that the family were living in hiding at all. But there is also evidence in Dr Salah’s expert report that the Taliban may be a threat to particular individuals in and around Kabul. It was necessary for the judge to make some assessment of the appellant’s claim that his family was in hiding and, if he accepted that they were in hiding, their reasons for doing so. If they remain in hiding because of a fear of the Taliban, that would need to be taken into account in any assessment of the viability of internal flight for the appellant.

8. Overall, I find that the judge’s findings from [71] onwards are incomplete and confusing. The judge’s assessment of the risk on return for this appellant is consequently flawed. I considered whether I should preserve any of the findings of fact but have decided that I should not do so; Mr Brown, for the appellant, acknowledged that it would be difficult for the Tribunal to preserve the positive finding that the appellant could not return to his home area whilst rejecting the negative credibility findings.

#### **Notice of Decision**

9. The decision of the First-tier Tribunal which was promulgated on 27 November 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Moxon) for that Tribunal to remake the decision.

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

10. 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

Date 20 JULY 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane