



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09081/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 July 2018

Decision & Reasons Promulgated  
On 01 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

KY  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms G Loughran, Counsel instructed by Harrow Law Centre

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant, a citizen of Afghanistan, appeals, with permission against a decision of Judge of the First-tier Tribunal Freer, who in a determination promulgated on 4 January 2018 dismissed his appeal against a decision of the Secretary of State, made on 4 September 2017, to refuse his application for asylum.
2. The appellant said that he feared cousins, whom he believed had connections in the police force, who had taken over his family farm. He also stated that he had been unable to trace his mother and father in either Afghanistan or Pakistan.

3. The judge accepted that there was a family feud but found that the appellant could relocate to Kabul. He found that there was insufficient evidence to show that the appellant had been subjected to any violence in Afghanistan and, indeed, did not accept that he could not make contact with family members. He stated that it seemed improbable that, as initially claimed, six cousins would suddenly take over a farm and he did not accept the appellant's explanation that he had meant that two cousins had appeared but that they represented six cousins. The judge accepted the appellant came from a province north of Kabul and had lived in a village where his father was a farmer and said that there were certain elements of the appellant's claim which he would accept. He accepted the appellant's claim that he suffered from PTSD, and wrote sections in the determination headed "aspects suggesting credibility of the account" and "aspects suggesting the account is not credible". His conclusion, however, at paragraph 48, was that:

"The appellant may truly have experienced the core of his account in Afghanistan, when he was a minor, and for that reason I will give him the benefit of the doubt. I find factors suggesting both possibilities, that he has given in essence a credible or not credible account."

4. Having addressed what risks the appellant might face he stated that the "local risk in his village is the highest one. If that location were his only option his claim would have to succeed on the low threshold. It is not so." He then considered the issue of relocation and concluded that the appellant could relocate to Kabul.
5. However, in reaching that conclusion he made no findings on a report by Dr Giustozzi which referred to conditions in Kabul. He did say he gave considerable weight to the report but did not state whether he accepted it or not nor analyse the report.
6. The grounds of appeal stated that the judge speculated in his conclusions, particularly a conclusion such as that Smartphones were commonplace and his reasons for not accepting the appellant's claim not to be able to use social media. It was claimed that the judge had erred by making no findings about where the appellant's parents were. They asserted that he had erred in not taking into account the report of Dr Giustozzi.
7. Before the hearing before me a further bundle of documents was submitted. They indicated that the appellant had now been able to trace his parents and that further evidence was awaited from them. Furthermore, there was an additional report from Professor Giustozzi. Reference was also made to the country guidance case **AS (Kabul) [2018] UKUT 00118 (IAC)**. Clearly matters had moved on since the hearing. While the further evidence is not relevant to the issue of whether or not there is an error of law in the determination of the judge Ms Everett accepted that there was merit in the grounds of appeal particularly with regard to the judge's speculative conclusions regarding Smartphones and social media and also the fact that the judge

had not analysed the report of Professor Giustozzi and given clear findings thereon. The judge had merely said that he had placed weight on the report but there was nothing to indicate what weight he had given to it and why he did not accept the final conclusions of the report.

8. In these circumstances, Ms Everett and Ms Loughran agreed that it was appropriate this appeal should be remitted to the First-tier Tribunal for a hearing afresh. Although Ms Loughran indicated that the judge's positive findings should be maintained Ms Everett argued that it would be appropriate that the hearing should be a hearing afresh on all issues.
9. For the reasons identified and accepted by Ms Everett I find that there are material errors of law in the determination of the judge in the First-tier Tribunal and I set aside his decision. I consider it is appropriate that this appeal be remitted to the First-tier Tribunal as further findings of fact will require to be made. In the light of the additional evidence that has been produced I consider it is appropriate that there be a further hearing afresh on all issues.

### **Notice of Decision**

9. The determination of the First-tier judge is set aside.

### **Directions**

The hearing will proceed to a hearing afresh on all issues in 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 

Date: 25 July 2018

Deputy Upper Tribunal Judge McGeachy