



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12356/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 17 September 2018**

**Decision & Reasons
Promulgated
On 01 October 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR SAYD HASHEM QUORESHI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss B Faryl, Counsel, instructed by Johnson's Solicitors
For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Afghanistan, has permission to challenge the decision of Judge Hudson sent on 17 May 2018 dismissing his appeal against the decision made by the respondent on 14 November 2017 refusing his protection claim.
2. The appellant's grounds as amplified by Ms Faryl raise essentially six points, contending that the judge (i) wrongly fixed the appellant with the adverse findings of fact made by IJ Herwald in January 2004; (ii) wrongly characterised the appellant's evidence as being that he was not at risk due to family connections; (iii) failed to take into account that the appellant was a minor at the time of the key events he was recounting; (iv) wrongly relied on mere speculation in rejecting the appellant's evidence that his father had been kidnapped and his father's brother had

been imprisoned by the Taliban but had managed to escape and wrongly rejected the appellant's evidence regarding his father being deliberately killed by a landmine and for political reasons rather than due to any dispute over land; (v) incorrectly identified an inconsistency in the evidence given by the appellant regarding his claimed atheism; (vi) failed to take account of the copious evidence supporting the appellant's claim that he had not absconded.

3. As regards ground (1), I cannot agree that Judge Hudson erred in concluding that the findings of fact made by Judge Herwald in January 2004 were still valid. The appellant was unsuccessful in challenging the decision of Judge Herwald, becoming appeal rights exhausted on 10 February 2005. He made further submissions to the respondent which were considered and refused on 10 December 2007; these were not challenged successfully. In response to the respondent's decision of 14 November 2017, the appellant did not produce any further evidence from Afghanistan relating to any of the assertions he had advanced unsuccessfully before Judge Herwald. Whilst his grounds of appeal did include an Appendix entitled "Discrepancies and misunderstandings evident from the papers" this contains no explanation for why (to the extent they sought to rely on points not made in the original appeal) they had not been raised earlier. Bearing in mind the guidance given in the starred case of **Devaseelan** this ground fails to identify any legitimate basis for the judge departing from or revisiting the findings of fact made by Judge Herwald. The judge properly noted at paragraph 16 that Judge Herwald had found the appellant's evidence unreliable and implausible. Judge Hudson went on to conclude that taking Judge Herwald findings of fact as a starting point "I conclude that Mr Quoreshi is not at risk of persecution in Afghanistan due to the political or property activities of his relatives." In the absence of any new cogent evidence or a clear explanation for why points were now being raised against Judge Herwald's findings when they had not been raised earlier, Judge Hudson was unarguably right to reach this conclusion.
4. Seen in this context the appellant's other grounds, save for (v) and (vi), have no traction since they, in one way or other, take issue with Judge Hudson's own stated reasons for finding the appellant's claim lacking in credibility.
5. In this regard it can be said, as a criticism of the judge, that having concluded that there was no basis for departing from the findings of fact made by Judge Herwald (which is the effect of her paragraph 16), it was superfluous (and somewhat confusing) for her to have revisited the evidence regarding the political and property activities of the appellant's family. Be that as it may, I cannot see that this resulted in any material error because none of the arguments raised in the appellant's grounds (ii) - (iv) contained any justification for revisiting the underlying facts as found by Judge Herwald. (I would observe that in any event I consider they really amount to no more than mere disagreements with Judge Hudson's findings and, to the extent that they complained of the judge relying unduly on speculation, they in turn rely unduly on mere counter-speculation, they also fail to make any challenge to important negative findings of Judge

Hudson at paragraph 21 regarding submission of dishonest and misleading documentation purporting to be from the “General Director of Espionage”).

6. Ground (v) does stand on its own because it was essentially a fresh ground of asylum based on fear of persecution as an atheist. The basis of the appellant’s challenge is that the judge wrongly rejected this ground because the appellant’s evidence in his 2016 witness statement on this matter was not inconsistent. However, it is clear from paragraph 20 that inconsistency about this matter was only one of the difficulties. The judge also rejected it because the assertion had not been made until 2016, fourteen years after the appellant entered the UK and the appellant’s attempted explanation for this omission was unsatisfactory. First of all, I consider the judge was entirely right to reject the appellant’s explanation for this (in terms of being unable to raise it because all his previous representatives were Muslim): in point of fact that was incorrect but even if all his previous representatives were Muslim (and even assuming a complete lack of professionalism on the part of such persons), there was nothing to stop him obtaining non-Muslim representation. Second, it was open to the judge to find inconsistency in the appellant’s witness statement on the issue of whether his family went to the mosque or not. I also find that the judge was entitled to find at paragraph 24 that in addition to inconsistency, there was also vagueness in the appellant’s account.
7. As regard ground (vi) (which concerned whether he was an absconder), it has no bearing on the issue of the appellant’s credibility; nor was it relied on by the judge in the context of her adverse credibility finding. It is at best a complaint against the respondent’s reliance on his record of non-compliance, but that was confined to the issue of whether there were any compassionate circumstances warranting a grant of leave outside the asylum, humanitarian protection and human rights contexts. Further, as Mr Tan correctly observed, it is beyond dispute – compliance or no compliance – that the appellant’s immigration status has always been precarious.
8. Ms Faryl has also sought to argue that the judge failed to properly evaluate the medical evidence but not only was that not a ground raised in the appellant’s grounds. but the judge addressed the medical evidence in paragraphs 28 – 32 in very considerable detail and reached entirely sustainable conclusions based on a close analysis of the medical evidence and relevant COI.
9. For the above reasons I conclude that the grounds fail to identify a material error of law in Judge Hudson’s decision.

No anonymity direction is made.

Signed:

Date: 26 September 2018

H H Storey

Dr H H Storey
Judge of the Upper Tribunal