



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02548/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
Given extempore on 7th August,
2019**

**Decision & Reasons Promulgated
On 19th August 2019**

Before

Upper Tribunal Judge Chalkley

Between

**FAZI [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Ms Georgette Thomas, a Solicitor with Compass
Immigration Law*

For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Afghanistan, born on 22nd February 1999 and who appealed against the respondent's decision taken on 1st March 2019, to refuse to recognise him as a refugee. The appellant appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Siddiqi at Manchester on 23rd April, 2019.

2. The judge dismissed the appeal, but in doing so has made material errors of law.
3. There were three challenges to the judge's determination. The first alleges a failure to consider material evidence, namely the UNHCR eligibility guidelines from August, 2018, The second alleges that the judge applied too high a standard of proof and the third erroneously applying country guidance which has been found to be legally flawed by the Court of Appeal, namely *AS Afghanistan v the Secretary of State for the Home Department* [2019] EWCA Civ 873.
4. On reading the determination it is clear that the judge gave a correct self-direction at paragraph 7 as to the standard of proof, however throughout the determination the judge uses the words "*I was not persuaded*" in finding against the appellant. For example:
 - at paragraph 23(b) he says "***I am not persuaded*** that his brother's death is linked to his father's work, particularly taking into account there is nothing to suggest that the Taliban claimed responsibility for the attack";
 - at paragraph 27 where he says "***nevertheless, I'm not persuaded*** that the appellant and his family have been threatened";
 - 28 where he says "*although the appellant claims his brother was killed by the Taliban,, I am not persuaded that this is the case.*"; and "*however, his account of his family being threatened is vague and I am not persuaded that this is due to his age, given that he is in contact with his family and could have clarified any details he was struggling to recall*";
 - paragraph 30, "*He claims his brother was killed but his brother appeared to be working as a police officer at the time which in itself carries risks and I am therefore not persuaded that this shows the Afghan authorities have not provided sufficient state protection to the appellant and his family*";
 - and "*as such, I am not persuaded that the appellant would be at risk on return as there would be sufficiency of protection*"; and
 - paragraph 35 "*however, I am not persuaded that there has been a significant increase in these security incidents in Kabul*";
 - and "*I am not persuaded that the objective evidence, including the UNHCR Report, establishes that there are very strong grounds to depart from AS*"; and
 - paragraph 37 "*it is the appellant's father rather than the appellant who is of interest to the Taliban and therefore I am not persuaded that he would be at risk from the Taliban if he relocated*";
 - and paragraph 38 "***I am not persuaded*** that he would be at risk on the basis of ethnicity".

5. The words “I am not persuaded” have no place in any asylum determination.
6. A judge does not need to be persuaded of anything; the standard of proof is low because of the difficulty for an asylum seeker in proving events that have taken place in a foreign country in the past and because often the asylum seeker has had to flee for his or her life and has not had time to collect evidence.
7. The standard is “a real risk” or “a reasonable degree of likelihood”. By using the words “*I am not persuaded*” the judge has demonstrated that he has applied the wrong standard and a much higher standard of proof. It has not been necessary for me to consider the other two challenges.
8. The appellant has therefore been denied a fair hearing. I set aside the determination and I remit the appeal for hearing afresh for a judge other than First-tier Tribunal Judge Siddiqi. A Dari interpreter will be required and two hours should be allowed for the hearing of the appeal.

Richard Chalkley
Upper Tribunal Judge Chalkley
15th August 2019