



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

Appeal Number: PA/02844/2019

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On the 12 November 2019**

**Decision & Reasons Promulgated  
On the 20 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**MR O  
(ANONYMITY DIRECTION MADE)**

Appellant

**AND**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Akram, Counsel instructed on behalf of the Appellant  
For the Respondent: Mr McVeety, Senior Presenting Officer

**DECISION AND REASONS**

**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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Afghanistan. He appeals with permission against the decision of First-tier Tribunal (“FtTJ”), promulgated on the 26 June 2019 dismissing his appeal against the decision to refuse his protection and human rights claim.
2. The appellant’s history is set out in the decision letter of the 13 March 2019 and the decision of the FtTJ at paragraphs 1-5. The appellant arrived in the United Kingdom in 2015 having been fingerprinted in Hungary on the 4<sup>th</sup> August 2015 and made a claim for asylum on 4<sup>th</sup> October 2018.
3. He provided a screening interview and was interviewed about the factual basis of his claim on the 18<sup>th</sup> February 2019. In addition, there is a witness statement dated 21 January 2019 which was sent with a Preliminary Information Questionnaire completed by appellant on the same date.
4. The basis of his claim can be summarised as follows. The appellant feared returned to Afghanistan because the Taleban would kill him. He was a farmer, but he and his father were transporting weapons for the Taleban by swimming across the river and taking weapons to some men identified as A and AS. He claimed that if he and his father had refused to carry out the tasks for the Taleban they would be killed.
5. After about three months of transporting the weapons, the appellant’s father told the Taleban that they no longer wished to transport the weapons for them. They felt that it was a matter of time before the authorities discovered what they were doing, and the Taleban made it clear that they would blow the appellant’s house up if the authorities discovered that they were transporting such arms.
6. One evening, following the request to leave the Taleban they were beaten up by them and told that they would be killed. On other occasions when the Taleban could be seen to approach the house from a distance the appellant escaped and went to live with his maternal uncle for two weeks. On another occasion the appellant hid in a bread oven when he returned to the family home.
7. The appellant’s father decided to sell some land to fund the appellant’s journey out of the country. He travelled to Kabul to meet an agent who helped him leave. He travelled across Iran and Turkey before arriving in France. He stayed in Calais before boarding a lorry to the UK. He lived in the UK as a homeless person for a period of three years before claiming asylum.
8. In a decision letter dated the 13 March 2019, the respondent refused his claim for asylum and humanitarian protection. It was accepted the appellant was an Afghan national but did not accept his claim that he had been of interest to the Taleban (see paragraphs 35-41).

9. As can be seen within those paragraphs, the Secretary of State set out a number of credibility issues relating to the core aspects of his claim to be of interest to the Taliban.
10. The appellant sought to appeal that decision. When the appeal came before the FtTJ, she recorded that the appellant was unrepresented but had provided a witness statement (page 28 RB) which he confirmed as his evidence and he also adopted the interview (see ROP). She also recorded his oral evidence that given in cross examination within her decision at paragraphs 19-27.
11. In a decision promulgated on the 26 June 2019, the FtTJ dismissed the appeal having concluded that the appellant had not given a credible or plausible account as to his activities in Afghanistan and that he would not be at risk of persecution or serious harm contrary to Article 3.
12. Following the dismissal of his appeal, grounds of appeal were issued for permission to appeal and that application was refused by Judge O'Brien on the 7 August 2019. On reconsideration was granted by Upper Tribunal Judge Kopieczek on the 24<sup>th</sup> September 2019.
13. As a result of the grant of permission the appeal comes before the Upper Tribunal, Mr Akram of Counsel relied upon the grounds as drafted. He submitted that the judge failed to take into account the evidence given by the appellant in his asylum interview at question 73 - 94. In this context he made reference to the decision in SB (Sri Lanka) v SSHD [2019] EWCA Civ 160 and the general principles referred to in that decision concerning the assessment of credibility.
14. As to the particular findings made by the judge, he submitted that the appellant had given an explanation in his interview that the Taleban could not swim but he and his father could and was also able to explain that the river had deep parts in it and there were shallow parts. That evidence was not taken into account by the judge in the finding made at paragraph 30. He submitted there was no evidence as to whether the Taleban could swim or not. Therefore the finding was not properly reasoned.
15. He submitted that as the grounds set out at paragraph 3.3 the appellants local knowledge was key and that the Taleban chose him and his father because of their local knowledge of the river as explained by him at question 73.
16. As to the finding reached at paragraph 31 he submitted that there was no explanation as to how that conclusion was reached and there was a lack of reasoning.
17. As to paragraph 32 he submitted that there was no evidence of the terrain or what the best method was to transport such goods and that swimming may have been the best method. There was no explanation made by the judge as to why this was not a "sensible plan". As to the boxes not getting

wet, the appellant's evidence was that they were carried on his back and one at a time (see paragraph 3.3 of the grounds).

18. He submitted that the discussion of mules in the FtTJ's findings did not refer to any evidence before the Tribunal and even if it did, to reach that finding it required some evidence about the area.
19. He submitted that paragraph 33 and the reference made to a "realistic plan" was not reasoned by reference to any evidence and the FtTJ did not refer to any information about the area. In any event, the appellant's claim was that he was carrying out covert actions so that they were not seen by the army base. The alternative methods suggested by the judge were not reasoned by reference to any evidence about the river.
20. Mr Akram submitted that the errors were material because they went to the core of the appellant's account and that the other findings set out at paragraphs 34 onwards were ancillary to the appellant's claim given that the central plank was the transportation of weapons.
21. Mr McVeety on behalf of the respondent submitted that whilst consistency of an account was one of the elements used in the assessing overall credibility of an account, if the account itself was not plausible, the fact that it had been given consistently did not assist.
22. Hr submitted that the factual backdrop to the appellant's account concerned the Taleban who are a military organisation of some efficiency. The FtTJ was entitled to consider the appellant's evidence in that light. Hr submitted that there was no illogicality in the judge's reasoning and that on the evidence now advanced there was illogicality, for example. it was being suggested that the appellant was able to get across the river without the weapons getting wet but that did not explain why the Taleban would need the appellant if that was the case as they could have done it themselves or by other methods which was the FtTJ has set out in her findings. He submitted that the FtTJ was entitled to use common sense and assess the appellant's evidence in the light of his evidence as to the events.
23. Mr McVeety took issue with the submission made by Mr Akram that the other findings made (which were not the subject of any real challenge in the grounds) were peripheral. He submitted that they went to the core of the appellant's account and were additional reasons given by the judge as to why he had not given a plausible or credible account.
24. In his reply, Mr Akram reminded the Tribunal that assessment of credibility involves looking at consistency of evidence and whether there are any omissions in details given by an appellant. Here the appellant had not been inconsistent. He invited the Tribunal to find that the judge had erred in law in her assessment of the evidence.

25. I am grateful for the submissions made by each of the advocates and I have taken into account the matters raised both in the written grounds and in the oral submissions. Having done so, I am not satisfied that the decision of the FtTJ involved the making of an error on a point of law. I shall set out my reasons for reaching that decision below.
26. The grounds assert that the judge failed to properly consider the appellant's evidence when reaching her conclusions on the credibility of the appellant's factual account. I have been referred to the decision in SB (Sri Lanka) v SSHD [2019] EWCA Civ by Mr Akram which stated as follows:
- "41. The decision of the FtTJ turns upon the credibility of the Appellant's evidence. The credibility of an appellant often lies at the centre of these cases. Evidence is often indirect. So, in this case there was no direct evidence of the risk posed to the Appellant if returned, for example, from the Sri Lankan authorities confirming or denying that the Appellant was of interest to them and, if so, for what reason. The Judge did not have the "stop" list referred to in the Country Guidance. He did not have evidence from those supposedly detaining Major Alwis confirming that he was in fact detained, and for what, and whether he had named the Appellant as potentially complicit in anti-Government activities. Evidence before a tribunal will therefore frequently be circumstantial and based upon the credibility of an Appellant's account.
42. Some of the indirect evidence is recognised (in Country Guidance) as a fair proxy measurement of risk, such as whether a person has been able to pass unhindered through an airport at a point in time when he or she should have been at risk, or whether the person has engaged in activities known to place that person in present jeopardy of arrest. But other pieces of evidence are remote from any indicia of, or proxy for, risk and concern only whether the individual is telling the truth which itself is *then* used in deciding whether the individual's account of the risk posed by return, is credible and truthful.
43. In this case certain pieces of evidence fell within the Country Guidance (especially paragraph 7(a) and (d)) as being pertinent to the assessment of risk. But much of the evidence was remote from the issue of risk and went only to general credibility. Such background material can be relevant to the analysis, but it needs to be borne in mind that *per se* it indicates little about risk and, as the Judge properly recognised, even genuine asylum seekers might exaggerate or fabricate evidence in order to reduce the risk that their case is wrongly rejected.
44. All of this explains why first instance judges need carefully to assess credibility and why appellate courts will accord due deference to the fact finder who is experienced in sifting evidence of this sort. But it also explains why an appellate court needs to be able to satisfy itself that the fact finder has at least identified the most relevant pieces of evidence and given sufficient reasons (which might be quite concise) for accepting or rejecting it.

45. Tribunal judges are experienced at resolving the sorts of evidential disputes which arise in cases such as the present. Different countries tend to throw up issues of a similar type and cases involving Sri Lanka are no exception. Judges hearing these cases become versed in dealing with such disputes. They have a good grasp of what is credible, and what is not. Equally on an appeal to the Upper Tribunal the appeal judge, as a specialist in the area, is also familiar with these sorts of evidential disputes. By contrast the Court of Appeal does not have that institutional, every-day, experience and it is two steps removed from the initial fact finding. To this extent, where the issue on appeal is as to the evaluation of the facts by the trial judge, an appropriate degree of deference will apply (see authorities referred to paragraph [63] below).
46. In cases (such as the present) where the credibility of the appellant is in issue courts adopt a variety of different evaluative techniques to assess the evidence. The court will for instance consider: (i) the consistency (or otherwise) of accounts given to investigators at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) whether, on facts found or agreed or which are incontrovertible, the appellant is a person who can be categorised as at risk if returned, and, if so, as to the nature and extent of that risk (taking account of applicable Country Guidance); (iv) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (v), the overall plausibility of an appellant's account.
47. This list is not intended to be exhaustive. In this case the Judge adopted all these techniques. The criticisms now made of the Judge are not however as to his reliance upon such techniques but instead focus upon (a) the intrinsic logic of the inferences that he drew from the facts and (b) the failure to identify and address what is said to be *prima facie* relevant evidence which contradicts his findings.
48. If a judge makes material errors in the evaluation of evidence, for instance because the inference drawn from a fact found is logically not one that properly can be drawn, then an appellate court will interfere. A material error in logic is an error of law. In *ME* (ibid) the appellant was a Tamil who was well known to the Sri Lankan authorities and had already been beaten and tortured by them. The Court of Appeal allowed an appeal and concluded, in relation to inferences drawn by the judge about the risk to the Appellant if returned, that there was a "*serious gap in the FTTs chain of reasoning which is sufficient to amount to an error of law*".
49. Equally, the evaluation of the evidence must bear in mind that the relevant question that the court is dealing with is risk, not actuality. In *ME* (ibid) the Court was critical of the way the judge expressed his understanding of risk: "*I also consider that it is unsatisfactory in a case of this kind for the fact-finder to express*

*findings of fact in the negative. For example, at [35] the FTT said (more than once) "I do not find that he is now perceived as a threat." If the test were that of the balance of probability, a finding expressed in that way is equivalent to a finding that he is not perceived as a threat. That is because whether a fact has been proved is a binary question, which can only be answered "yes" or "no". But where the question is whether there is a real risk that ME is perceived as a threat; a finding expressed in those terms does not squarely confront the relevant question" (ibid per Lewison LJ at paragraph [18])."*

27. In the context of this appeal, the appellant's factual account was not supported by any other evidence, either by way of country materials or any other type of evidence. There was also no direct evidence of any interest in the appellant by the Taleban, such as in the Sri Lankan cases by way of arrest warrants or other court documentation or as in other cases involving the Taleban such as "warning letters."
28. The core of the appellant's account related to his fear of the Taleban and in particular the account given that he and his father had been forced to carry weapons across the river and their refusal to carry on with this caused them to be in fear of the Taleban.
29. The grounds advanced on behalf of the appellant challenge those findings which are set out at paragraphs 30 - 33 of the judge's decision. It is plain from reading those paragraphs that the judge did not believe the appellant's claim to have been carrying weapons across a river to be credible or plausible.
30. The grounds seek to challenge each paragraph of the decision by reference to the appellant's evidence in his interview. In summary, the argument advanced by Mr Akram is that the judge made her findings of fact without properly considering all of the evidence contained in the interview and that in reaching her findings they were also illogical and without any evidential foundation.
31. Dealing with the points that have been raised, it is submitted that at paragraph 30 the judge failed to consider the appellant's answer at question 73 in his interview that he knew about the river and also that at question 94 it was because of their local knowledge about the river which was relevant. It is submitted at paragraph 3.2 of the grounds that the reason the appellant and his father were chosen to cross the river was because of their local knowledge and not just because the Taleban did not know how to swim.
32. The findings of fact made by the judge should not be read in isolation but should be read in conjunction with the determination as a whole including the evidence given by the appellant orally and recorded in the judge's decision at paragraphs 19 - 27.

33. In his oral evidence the appellant gave a reason as to why the Taleban did not transport the weapons themselves which was because “none of them could swim.” In his interview the answers that were elicited from him demonstrated that the members of the Taleban concerned had never had any issues with the appellant’s father nor had either of them ever been known to the Taleban. At question 65 the interviewer suggested to the appellant that it was “highly implausible” that “members of the Taleban would turn up your farm and demand and force you and your father to transport goods for them, given the family had not any issues or direct contact before this. Is there anything you can tell me about how this actually started?” The appellant’s responses set out at questions 66 to 67 did not provide any explanation as to why the Taleban would suddenly approach him and his father when they had not done so before (see question 66).
34. At question 68, the interviewer clarified the appellant’s claim which was that on one evening he was working on his family’s father and two Taleban members appeared and demanded he transport goods for them. During the course of the interview when the appellant was being asked about why the Taleban would have chosen him and his father to be involved in this work, the appellant gave no explanation as to how that had happened. There was no reference made by the appellant that he had any special or local knowledge as the grounds assert. Question 73 and 94 do make reference to the appellant’s evidence which he states that he had his father knew the river and that parts of it was shallow, but those questions were referring to the appellant’s description of the river itself. It is not said that they were chosen because of any local knowledge. Had that been the case the appellant would have said so when being asked about this at questions 65 to 68.
35. At paragraph 30, the judge was making the point that the appellant provided no information (which I take to mean any additional explanation or evidence) as to why he and his father were able to swim but no one else in the local area was able to. The FtTJ here was taking issue with the reasons given as to why they were the ones identified to carry out the task. Given the appellant’s evidence that the men came to their house suddenly one night having previously had no direct knowledge of the appellant or his father, this required an answer which the appellant had not given beyond the answer that they could swim.
36. Paragraphs 32 and 33 relate to the transportation of the weapons across the river. The evidence in his interview was that the boxes he carried across the river were 2 to 3 feet long (question 74) and that he and his father tied them on their backs (question 75) and he knew what parts of the river was shallow and if the water was deep they would be swimming (Q75). He stated that the boxes were very heavy and had to be transported to the area on the backs of a donkey or a horse because the Taleban could not use motorcycles as they would be seen from the post and base (question 83). The boxes were transported by the appellant to people waiting on motorcycles (question 78). Each box took 5 to 9 minutes



to transport across the river. He described it would depend if the water was higher and it would take longer (question 85). When transporting the boxes it might take 25 to 30 minutes (question 86).

37. He was asked in interview at question 88 “how did you go about trying to avoid any suspicion in transporting these goods?” The appellant replied, “if anyone doubted or suspected they would have informed the police, we knew it was not a good thing to do but we had no choice we were forced.”
38. In summary, the appellant’s account in interview and in his evidence was that he carried up to 12 boxes across the river each box being 2 to 3 feet long and each containing heavy weapons. Against that factual background, it was open to the judge to reach the conclusion that the appellant had not given a credible account as to how that was practical. The inference drawn from the judge’s findings at paragraphs 32 and 33 was that the method described was both impractical and a risky method for the transfer of valuable weapons by the Taleban. He was asked in interview at question 88 “how did you go about trying to avoid any suspicion in transporting these goods?” The appellant replied, “if anyone doubted or suspected they would have informed the police, we knew it was not a good thing to do but we had no choice we were forced.” The appellant did not offer any explanation that adequately answered that important question.
39. At paragraph 31, the judge reached the conclusion from the evidence that it was not a credible account that the Taleban would transport weapons near water, and this would not be a reasonable or a “sensible plan” given the risk that the weapons would get wet after the river crossing. That was a finding that was open to the judge to make and was one of based on the evidence in the interview. At questions 90 – 92 the appellant was asked questions concerning damage to the weapons in the water for any sustained period and he was asked to explain how he transported them safely across the river without them being damaged. The reply was at question 91 “I was transporting, we were not concerned whether it was damaging or not we just transport and give it to them.” It was followed up with a question at question 92 that that was thought to be highly implausible and lacking any credibility that he was able to swim with a two – 3-foot-wide box tied to his back given the weight of the boxes as well as the weapons. He was asked to explain how he was able to do this and the response given at question 92 was that he knew what part of the river was shallow and which part was not. However, as the interviewer pointed out to the appellant, he had previously stated that he transported the goods by swimming (see question 85) and question 94 he was asked for a second time if he wanted to add anything else to his account in support of his claim to have transported goods by swimming one side of the river to the other in the light of the size and weight of the boxes. His response is recorded at question 94 as follows “so why I said before part of the river is deep some shallow so those parts which are not deep we will be kind of walking, in the deep we will be swimming we knew the area and we were using the passage because these boxes were wooden and it does not

make you sink in the water easily.” It was against that factual background that the judge made her findings at paragraphs 31 and 32. Paragraph 3.3 of the grounds can be properly characterised as a disagreement with those findings and do not demonstrate any error of law.

40. In her findings at paragraph 32 the judge made reference to the use of mules as an alternative way of transporting the weapons. This was not something unconnected to the appellant’s account because he had stated that the Taleban had brought the weapons on donkey or horseback and therefore it was open to the FT TJ to reach the conclusion that as that method been used before, no reasons been given as to why that method had not been used again. Given his claim that there were parts of the river that was shallow, it must follow that if that were true it would not prevent the same mode of transport going across the river. Thus in reaching that finding the FtTJ did take into account evidence given by the appellant in his interview.
41. I would agree that the reference to the use of a pulley system at paragraph 33 does not appear to have any evidential foundation. Nor was there any evidence provided by the appellant himself about the river other than it being called the Laghman River and his own description of it.
42. However, in my judgement the findings made concerning the transport of weapons should not be seen in isolation but also seen in the context of his account as a whole and the other findings that were made by the judge. I do not accept the submission made by Mr Akram that the core of his account was the moving of weapons and the other findings were peripheral. It is the appellant’s account that he was at risk from the Taleban. While part of this account was that he had been transporting weapons, his account was that because his father told the Taleban that they would not do this anymore they were assaulted and threatened, and it was due to this at the appellant was in fear of the Taliban and left the country. The judge made a number of other findings which went the core of his account which was whether he demonstrated to the lower standard of proof that he was at risk of harm from the Taleban.
43. The other findings made by the judge set out paragraphs 34 - 39. The judge considered the action taken by the appellant and his father in the light of the claim made the Taliban had threatened and assaulted them both. The judge found that it was not credible nor reasonably likely that the appellant’s father having been threatened in that way and visited at their home, that the appellant’s father would remain and only the appellant would relocate to his maternal uncles house (see paragraph 34).
44. Furthermore, the judge found that the appellant’s account of other family members (his two younger sisters, brother and mother) who were left in the family home, was not consistent with his account that the Taleban was seeking revenge on the appellant and his father and thus his family (paragraph 34). As the FtTJ stated at paragraph 35, other family members

such as the younger brother would also be a target if the appellant's claim were true.

45. The appellant's claim was that his father told the Taleban that he would no longer transport the weapons. As the judge said, given the nature of the Taleban and against the factual backdrop of the appellant's own evidence and the power of the Taleban, that it would not be credible to have informed them rather than leaving and all relocating to safety.
46. The judge also found at paragraph 36 that when staying with his uncle for two weeks (when in fear of the Taleban) he left the house to go shopping. The judge recorded that she asked the appellant why he would do this if he was fearful of Taleban reprisals.? The explanation was that the women could not leave the house. It was therefore open to the judge to find as she did that this was not a reasonable or credible explanation in the light of his evidence as to risk of harm ( and see the additional finding at paragraph 37) .The grounds at paragraph 3.6 relied upon by Mr Akram where it is said "he had to go shopping" is simply a disagreement with the finding and does not demonstrate any arguable error of law.
47. At paragraph 38, the judge also found that if the appellant was genuine in fear of his life he would not have returned to the family home exposing him to further risk of harm.
48. Even if the judge had accepted that he had transported the weapons, given the other findings made, it demonstrated that his account to be of interest to the Taleban was not well-founded.
49. In my judgment, when the findings are viewed cumulatively, the FtTJ gave adequate and sustainable reasons for rejecting the core of his claim to be interest to the Taleban on return to Afghanistan.
50. The grounds also assert at paragraph 3.10 that the appellant was not represented and was not conversant in English and that the solicitors have been instructed that "terms were not clear to him" and that this had an "adverse impact on his evidence and the decision". This is not been the subject of any witness statement or any explanation as to what terms were misunderstood or in what context. It is for the applicant to make out his grounds and there is no reference in the face of the determination that there were any problems with the translation of the evidence.
51. Consequently it is not been demonstrated that the decision of the First-tier Tribunal judge involved the making of an error on a point of law. The assessment of appellant's account was one that was reasonably open to the judge to make on the factual evidence provided before the Tribunal.

## **Notice of Decision**

52. The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision of the First-tier Tribunal shall stand

**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. 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 Upper Tribunal Judge Reeds

Date 14/11/2019

Upper Tribunal Judge Reeds