



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

Appeal Number: PA/08871/2018

THE IMMIGRATION ACTS

Heard at Field House

On 7th March 2019

**Decision & Reasons
Promulgated**

On 2nd April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Singer instructed by Courtney Smith & Co
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State of 6th July 2018 to refuse to grant him asylum and humanitarian protection. First-tier Tribunal Judge CAS O'Garro dismissed the appeal in a decision promulgated on 27th

September 2018. The Appellant now appeals to this Tribunal with permission granted by Upper Tribunal Judge Blum on 21st December 2018.

2. At the hearing before me Mr Singer summarised grounds contending that there are two major errors of law in the First-tier Tribunal Judge's decision. In the first ground it is contended that the judge failed to properly apply the case law to the facts as found. The second ground contends that the judge failed to have regard to the evidence.
3. In my view the first ground has been made out. As Mr Singer pointed out the Secretary of State accepted most of the Appellant's case in the Reasons for Refusal letter. At paragraphs 40 to 42 of the reasons for refusal letter the Secretary of State set out the Appellant's background. The Secretary of State accepted that the Appellant is Shia and Tajik, that his brother was attacked and abducted by the Taliban and that the Taliban had threatened his mother to hand him over to them.
4. Mr Singer pointed out that this conclusion was based on the Appellant's evidence as set out consistently in his screening interview, asylum interview and witness statement that he had been accused by the Taliban of being a government spy (at screening interview 4.1, asylum interview Q46). The Appellant claimed that the Taliban considered that he was a spy because he had studied in the UK. At Q46 the Appellant described how his brother had been beaten up and accused of being a collaborator and that he was abducted and that his mother was warned that she would have to report the Appellant as well as he was also considered as a collaborator and a spy. At paragraph 43 of the Reasons for Refusal letter the Secretary of State stated that the Appellant claimed that on return he feared that he would be killed by the Taliban because they accused him of being a government collaborator. The Secretary of State accepted at paragraph 44 that the Appellant had demonstrated a genuine subjective fear on return to Afghanistan.
5. However the Secretary of State concluded that the Appellant's fear was not objectively well-founded because he could internally relocate to another part of the country. The Secretary of State went on to consider the country guidance case of **AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** and concluded that, as the Appellant was a low profile person and was still in contact with his mother, he could relocate to Kabul.
6. In my view there are some inconsistencies in the Reasons for Refusal letter. At paragraph 44 it is concluded that the Appellant could internally relocate but at paragraph 49 it appears that the Secretary of State did not accept that the Appellant had a genuine fear on return to Afghanistan. The Secretary of State went on to consider internal relocation from paragraph 50 and at paragraph 55 again stated that the Appellant was not at risk in Kabul from the Taliban because he is considered to be low profile and would be supported by his family on return.

7. The judge appears to have proceeded on the basis that the Appellant's claim was accepted for example at paragraph 25 the judge said

"The Appellant's claim is that he would be at risk if he was returned to Afghanistan because he is at risk of harm from the Taliban. He claims that the Taliban is looking for him and will kill him because they perceive him to be a spy".

This is restated at paragraph 29 where the judge says the Appellant will be returned to Kabul "the Appellant's case is that the Taliban is everywhere including Kabul and as they are looking for him because they view him as a spy and they will find him in Kabul".

8. The judge went on to consider the guidance in **AS (safety of Kabul)**. The judge set out paragraph 174 of that decision where the Tribunal concluded:

"The risk of a specific individual being successfully targeted depends upon their identification as a target (for example, due to past or present actions/circumstances) and the ability of the Taliban to locate and then carry out an attack on that person, as well as their will or priorities in doing so. The evidence was broadly in agreement as to the order of importance of targets for the Taliban in Afghanistan being (i) senior serving government officials and the security services, (ii) spies, and at the lower level, (iii) other collaborators (including the wider security forces, government authorities, foreign embassies, the UN, NGOs and anyone passing information to the government about the Taliban) and deserters. Dr Giustozzi's evidence was that the Taliban keep a blacklist of all those who are wanted by the Taliban/identified as legitimate targets, some of whom are included just because of their high-profile position and others at a lower-level are identified because they have been through a system of sentencing and only then are they a legitimate target."

9. It is clear from paragraph 174 above that those who are considered to be spies are targets for the Taliban in Afghanistan. However at paragraph 33 of the decision the judge extrapolated from the decision in **AS** that the Taliban did not have the manpower or resources to search and find in Kabul individuals who are of interest to them in their home area and that, unless the individual is a high profile, the chances of being identified by the Taliban as a person of interest in Kabul is small. I accept Mr Singer's submission that it appears from paragraph 34 that the judge accepted that the Appellant is a target in his own area because he is a spy. I accept Mr Singer's submission that in accepting that the Appellant was a spy or perceived to be a spy the Appellant comes within the identified targets identified in **AS**.
10. Ms Jones accepted that this submission was put forward to the First-tier Tribunal as recorded at paragraph 31 of the judge's decision. She accepted that the Appellant's account was accepted by the Respondent and that relying on the guidance in **AS** a person who is a spy would be at risk in Kabul. Ms Jones was unable to forward any objection to this interpretation.

11. In my view it is clear that, based on the findings made by the judge based on the reasons for refusal letter and applying the guidance in **AS** at paragraph 174, the Appellant is at risk in his home area from the Taliban and is at risk in Kabul as a result of the fact that the Taliban perceive him to be a spy.
12. In these circumstances I find that the judge made a material error of law in the application of the country guidance case of **AS**. I set the decision of the First-tier Tribunal aside maintaining the unchallenged findings of fact. In these circumstances I remake the decision by allowing the Appellant's appeal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside.

I remake the decision by allowing the Appellant's appeal on asylum grounds.

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: 28th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT **FEE AWARD**

No fee was paid or payable therefore there is no fee award.

Signed

Date: 28th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes