



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09004/2018**

Appeal Numbers:

PA/

09225/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated
On 12th April 2019**

Reasons

On 3rd April 2019

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

M H R

H R

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Sellwood, Counsel instructed by Fountain Solicitors
(Walsall)

For the Respondent: Miss A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by twin brothers, both of whom are citizens of Afghanistan. They had made protection claims which were refused by the Secretary of State and their appeals in respect of those decisions came before Judge E M M Smith sitting at Birmingham on 17th August 2018. He dismissed their appeals in a decision promulgated on 23rd August 2018.

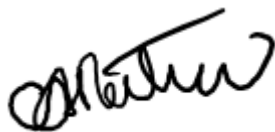
2. The basis of the Appellants' claim was that they were at risk in Afghanistan as a result of their mother working for the Red Cross and both she and the family as a whole being targeted by the Taliban.
3. Permission was granted by Judge of the First-tier Tribunal O'Keeffe on the basis that it was arguable that the judge had made factual errors in his Decision and Reasons.
4. Before me Miss Everett on behalf of the Secretary of State accepted that the decision was tainted by material errors of law and should be set aside in its entirety. Among those errors are, firstly, that the judge made an adverse finding in relation to Section 8. The Secretary of State had in one of the brother's refusals accepted there was a reasonable explanation for not having claimed previously, but then the judge found that they could and should have claimed asylum in France and there was no reasonable explanation why they had not. The judge came to that conclusion because they had a brother in France who had claimed asylum. However, that brother was not in fact in France at the relevant time, so that was a factual error.
5. Secondly, the judge made findings on the basis of internal inconsistencies between the brothers' evidence. In particular he found they were inconsistent as to when their mother had been injured in a rocket attack. The judge found that one brother had said that it was when he was 16 years old and the other when he was very young. He based an adverse finding on that inconsistency. However, looking at the evidence there was no such inconsistency in that one brother had said it was around sixteen years ago and the other one when he was very young.
6. Thirdly, the judge made adverse findings on the basis of how letters from the Taliban came to be in the brothers' possession. Those letters were produced in evidence. The judge had speculated as to whether those letters had in fact been provided by their parents as opposed to their sister. That was speculation and an error.
7. Fourthly, at paragraph 32 of the Decision and Reasons, again regarding the letters from the Taliban, the judge finds that the brothers had been inconsistent about how they had obtained those letters, when in fact there was no such inconsistency. Both said that they had contacted their sister whose husband had arranged for a friend to send them the letters to the brothers in the UK. The judge had clearly made his findings based on the oral evidence rather than taking all of the evidence, including the screening and asylum substantive interviews, into account.
8. Fifthly, at paragraph 36 of the Decision and Reasons, one of the reasons the judge gave for not accepting the Appellants were at risk was because he had rejected the suggestion that the rocket attack was linked to their mother working for the Red Cross. In fact, they had never claimed that rocket attack had anything to do with her work, but rather it was a random attack.

Notice of Decision

9. For all those reasons, Miss Everett accepts that the decision contains material errors of law. I therefore set it aside in its entirety. Because there has to be a de novo hearing on all matters, it is appropriate to remit it to the First-tier Tribunal for a full rehearing and the appropriate Tribunal centre is Birmingham.
10. On the basis that this is a protection claim I also make an anonymity direction.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 8th April 2019

Upper Tribunal Judge Martin