Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13698/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 11th September 2018	**On 3rd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

AHMADSHAH [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Karnick (Counsel)
For the Respondent: Ms H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Thorne, promulgated on 19th January 2018, following a hearing on 20th December 2017 at Stoke-on-Trent. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and was born on 1st January 1978. He appealed against the decision of the Respondent Secretary of State dated 24th November 2016, refusing his claim for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant

3. The essence of the Appellant's claim is that he comes from the province of Nangahar in Afghanistan. His father was an attorney in Khogani. The Appellant joined the Taliban in Kabul for some four years to work for them. He then returned to his parents in 1998. He went to Jalalabad to see if he could then join the Afghan Army. However, he saw someone from his home village at the recruiting office. He was told by the army office to go home where they would inform him if he had been accepted into the army or not. However, a few weeks later the Authorities came to his father's house looking for the Appellant who was out at the time. His father told the Appellant that they had come because of his previous involvement with the Taliban. The Appellant believed that his neighbour had told the military office that the Appellant had been involved with the Taliban. The Appellant went into hiding in Kabul. In 2008 his father advised him to leave Afghanistan because he was wanted by the Afghan Authorities and the Taliban. He left Afghanistan with the help of an agent. He travelled through Iran, Greece, Italy, and France, before entering the UK on 17th March 2009 and claiming asylum. In his asylum interview, the Appellant stated that he feared the Afghan Authorities, because he had worked for the Taliban, and he feared the Taliban, because they would also target him as well.

The Judge's Findings

4. The judge accepted that "like many other men of his age" the Appellant did join the Taliban to work for them for about four years, before returning to his parents in 1998. (Paragraph 44). The judge also accepted that "the Taliban may very well have characterised his behaviour as desertion" (paragraph 45). Indeed, the judge accepted that the Taliban sent five letters to his family at their home between April 2008 and October 2009 "containing threats against the Appellant that they detained his father", and that the Appellant's account "is supported by the expert report which states that the letters are generally from the Taliban" (paragraph 45).

5. Accordingly, the judge was led to the conclusion that the Taliban had an adverse interest in the Appellant in 2009 and that "in his home area there was a real risk that they would persecute him on account of his imputed political opinion" and that the risk of persecution "in his home area from the Taliban may still exist" (paragraph 46).

6. The judge did not accept that the Appellant faced a risk of persecution from the Afghan Authorities or that they had any adverse interest in him (paragraph 47). He did not accept that the Appellant went to the army office in Jalalabad and that "by an extraordinary coincidence it still happened by chance that he saw someone from his

home village at the recruiting office" (paragraph 48). He did not accept that the "Authorities have an adverse interest in the Appellant on account of him being someone suspected of having been in the Taliban or seeking to infiltrate the Afghan Army on behalf of the Taliban" (paragraph 49).

7. The judge went on to say that whilst moving to Kabul may be consistent with a fear of the local Taliban in his home area, it was not consistent with the fear of the Authorities who control Kabul (paragraph 49). Accordingly, the Appellant may well have a real risk of persecution in his home area by the Taliban. However, "as a person who deserted the Taliban many years ago, the Appellant would only be seen as a very low level priority for that group to pursue" and "the Appellant could safely relocate to Kabul or some other Government controlled area" (paragraph 50).

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge did not apply "anxious scrutiny" to the claim because due regard was not given to the expert report produced by Dr Giustozzi, who had stated that the Taliban themselves had verified to the independent expert that the Appellant "is now on the Taliban's blacklist" (APP 21). The judge also erroneously had regard to case law which had not been submitted by either side. Moreover, in concluding that it was not plausible that the Appellant's attempt to join the army had been frustrated by someone who had recognised him from his own village, the judge gave a conclusion without a reason, overlooking the explanation given by the Appellant at question 89 of his interview (CC 2).

10. On 13th February 2018, permission to appeal was granted.

Submissions

11. At the hearing before me on 11th September 2018, Mr Karnick, of Counsel, appearing on behalf of the Appellant made two basic submissions. First, that the judge had failed to take into account material evidence, in the form of the expert report. This was important because the judge had found the substantial part of the Appellant's own evidence to be credible. There had been three expert reports. One of the experts had confirmed that the Appellant's identity had been verified as a defector, and that he was a wanted man by the Taliban. The experts had confirmed that there had been five threatening letters sent by the Taliban, and this had been accepted as being the case by the judge. The Appellant was on the blacklist of a wanted person in his own home area, Nangahar. Even though the Appellant's Taliban activities had been in Kabul, and not in Nangahar, this only helps to reinforce the expert's view that there had been a high level of information exchange taking place between the Taliban. Second, insofar as the judge did have regard to the decided cases, he had referred to the wrong cases. He had referred to the case of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 163**, but this was a case on "indiscriminate violence" in Afghanistan, and was an entirely different matter to being specifically targeted by the Taliban. Against this background, insofar as the judge did give any reasons for his findings,

these were questionable because what the judge is doing (at paragraphs 48 to 50) is stating his conclusions for rejecting the appeal, rather than giving his reasons for doing so.

12. For her part, Ms Aboni submitted that the judge had directed himself appropriately. The findings that he had made were open to him. He had concluded that the Appellant could relocate to Kabul (see paragraph 49). The judge had given reasons for why he came to this view. He had made it quite clear that,

> "Moving to Kabul is perhaps consistent with having a fear of the local Taliban in his home area but is not consistent with a fear of the Authorities who controlled Kabul. There is no reason to suppose that the Appellant told the Authorities in Kabul that he used to be in the Taliban or tried to join the Afghan Army" (paragraph 49).

Secondly, the judge came to the conclusion that, in any event, the Appellant "would only be seen as a very low level priority for that group to pursue" (paragraph 50). This was despite the fact that the Appellant had deserted the Taliban "many years ago" (paragraph 50).

13. In reply, Mr Karnick submitted that even though the judge had referred to country guidance cases, a particular feature of the appeal here was that the Appellant was active in the Taliban in Kabul, but is found to be on the blacklist in Nangahar. Against this background, the judge did not take into account the expert reports, which confirm that the Appellant is mentioned as a person who is wanted by the Taliban, and this exhibits a high degree of information exchange amongst the Taliban, such that the Appellant would be at risk. The judge's conclusions that the Appellant "would not be at risk of harm in Kabul from the Authorities or the Taliban" (paragraph 56) was unsustainable.

Error of Law

14. I am satisfied that the making of the decision by the judge did involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

15. First, the present appeal is one which uniquely involves a situation where the Taliban themselves have verified to the independent expert that the Appellant is on the Taliban's blacklist. Although this is the case in Nangahar, and not in Kabul, where the judge decided the Appellant could relocate to, it is nevertheless, a significant aspect of this appeal. This is because the Appellant, even though a low level defector, could still be subject to persecution, because low level defectors have been punished, and the judge did not approach the Appellant's situation on this basis.

16. Second, the evidence suggests that there has been no high level defectors at all, but only low level defectors, who have then gone on to be punished.

17. Third, it is plain from the background in this appeal that there is a high level of information being exchanged between various components of the Taliban. The

evidence does show that the Taliban has intelligence at Kabul Airport and monitors new arrivals and receives regular reports.

18. In addition, insofar as the judge has referred to the decided cases, cases such as **AK (Afghanistan) [2012] UKUT 163**, deal with the risk to an applicant of "indiscriminate violence" and do not deal with a situation whereby an applicant is specifically known to be a wanted person. The failure of the judge to so recognise was a material error against the background of the existence of expert reports which were so telling in the Appellant's favour.

Remaking the Decision

19. I have remade the decision on the basis of the findings of the original judge. The evidence before him and the submissions that I have heard today. I am allowing this appeal to the extent that there is an error of law in the judge's determination, so that it should be remitted back to the First-tier Tribunal, with all the positive findings in favour of the Appellant being preserved (as was agreed by the parties appearing before me).

Notice of Decision

20. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed under practice statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal, to be heard by a judge other that Judge Thorne.

21. No anonymity direction is made.

22. This appeal is allowed.

Signed Dated

Deputy Upper Tribunal Judge Juss 28th September 2018