



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10639/2018 (V)

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 12 February 2021

Decision & Reasons Promulgated  
On: 2 March 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SS  
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Amin, instructed by Sohaib Fatimi Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was skype for business. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a citizen of Afghanistan, born on 12 February 1982, from Logar province. He arrived in the UK on 14 April 2018 and applied for asylum the same day. His claim was refused on 23 August 2018 and his appeal against that decision was initially dismissed by First-tier Tribunal Judge Williams on 18 December 2018. However, that

decision was set aside by the Upper Tribunal and the case was remitted to the First-tier Tribunal and heard on 22 October 2019 by First-tier Tribunal Judge Malik, who dismissed the appeal again. Judge Malik's decision was then set aside by the Upper Tribunal and the case came before me for a resumed hearing.

3. By way of background, the appellant claimed to have completed a professional accounting course called Certified Accounting Technician at the Association of Chartered Accountants, Glasgow; a BSC in Applied Accounting at Oxford Brookes University; the Association of Chartered Certified Accountants (ACCA) exams, Glasgow; and an MSC in Professional Accountancy at the University of London, all as distance learning online courses. From September 2004 to May 2010 he worked for an International Telecom company, Roshan, starting as accounts assistant and working up to finance and accounting manager and financial controller. At that time, he and his family lived in Kart-e-naw area of Kabul. In May 2010 they moved to Makroyan, also in Kabul, and in June 2010 he started working for the Etisalat Telecom company as an accounts manager and then in May 2013 became a senior finance manager. In September 2014 he became a senior manager reporting planning and budgeting, and at the same time was the Head of Finance at Mhawala, a subsidiary of Etisalat, which specialised in mobile banking. He also worked for some time, part-time, from August 2014 to December 2014, with the American University as FIA and ACCA instructor, and part-time from April 2015 to September 2015 with Pearl Horizon Consulting as financial management trainer. In July 2017 he became a member of the professional conduct committee of Certified Professional Accountants (CPA) for the Ministry of Finance and continued as such until he left Afghanistan.

4. The appellant's claim is based on his fear of the Taliban in Afghanistan because of his refusal of their demands and his refusal to cooperate with them in relation to his work in finance and accountancy. He claimed that in 2016 a Taliban Judge from Logan province came to his house in Kabul asking for money to help with expenses of the Islamic School and he gave him some money, not knowing at the time that he was a member of the Taliban. His uncle then told him that the money was used for training the Taliban and that he should not give more in the future and, as a result, when the same judge came to his house again asking for more money, his father told the judge that they could not help. The appellant later heard that the judge had been arrested in Kabul and was in prison in Bagram. He hoped that people would not know that the judge had come to his house and thought that that was the end of the matter. However, in September 2017 three Taliban members came to his house telling him that they were aware of his senior position with Etisalat and demanded that he monitored telephone numbers of Afghan and foreign officials and also that he transferred their money through the company via mobile banking to the various provinces to their members. He told them that he could not do that. In late September 2017 he was approached by one of the three at a funeral ceremony and asked whether he had considered their demands. He again refused, but the Talib said he would be in contact again.

5. The appellant said that he kept a low profile after that and went to Dubai for a while and then, in November 2017, he came to the UK to attend his graduation at the University of London. He took pictures of his graduation and put them on social media. On 11

December 2017 he participated in an ACCA event in Kabul and was awarded a certificate and recognised to be the first Afghan national who was a member of ACCA and who had obtained a Masters degree in Chartered Accountancy in the UK. The event was broadcast on Afghan national TV and he became well-known as a result in Kabul. After the event he was contacted by the Presidential Office and offered a position as the chief financial officer for the Afghan Telecom and Salam Telecom. He met President Ghani at his office in December 2017. Subsequent to that he started receiving direct threats from the Taliban.

6. The appellant claimed that the Taliban sent a letter to his house on 14 December 2017 telling him that it was his duty to give them the information they required and to follow their instructions. He took the letter to the police the following day, but they could not assist him. He then went to meet his local MP and told him what had happened and his MP wrote a letter for him to take to the Kabul police commandant which he did, but was told that the Head of Police was not there and they could not help. The appellant stated that he went to stay with a family friend in another part of the city and then travelled to Dubai from January to February 2018 with his family as he was not feeling safe in Kabul. He returned in March hoping that the situation would have settled down, but he was contacted by the Taliban soon after he returned, on 17 March 2018, who again asked for his response to their demands. On 21 March 2018 he was approached by four armed Taliban members when he was leaving the Large Tax Payer office of the Ministry of Finance and was waiting for a taxi to go home, at around 7.30pm, and they attacked him and tried to push him into their car. When people heard him screaming and starting running over to him, the Taliban left him and escaped. On 26 March 2018 the Taliban sent a second letter to his house threatening to kill him and his family and accusing him of being involved in the imprisonment of the Taliban Judge, of being a spy and of helping the government and foreigners. They said they were giving him ten days to meet their demands or else they would kill him and bomb his house. He was to pay them compensation, release the Taliban Judge and share the information they had previously requested. The appellant claimed that he contacted the MP again who advised him to leave the country. On 30 March 2018 he called the police who said they could not do anything. He moved to another place for safety purposes, but received a threatening text from the Taliban.

7. The appellant claimed that on 4 April 2018 he was again attacked by four Taliban members who hit him on the back of his head with a weapon. His wife was injured when she tried to stop them hitting him. The Taliban left when the local people came out of their homes after hearing screaming and his wife had to have surgery in the hospital as a result of her injuries. On 7 April 2018 he went to the police again and then again the following day and they told him to put everything in writing and make an official report which he did on 9 April 2018. He went back to the police on 10 April 2018, but they did not treat him well and he left the police station. He realised that he was not safe in Afghanistan and on 14 April 2018 he left the country, using a visa he already had in his passport. He claimed asylum on arrival in the UK. He feared being killed by the Taliban if he returned to Afghanistan.

8. The respondent, in refusing the appellant's claim, considered that he had provided an inconsistent and implausible account of threats and problems from the Taliban and rejected his claim. Little or no weight was given to the documentary evidence produced, in the form of threatening letters from the Taliban and reports to the police and the appellant's MP. The respondent considered that in any event the appellant would not be of any ongoing interest to the Taliban now that he had left his job and could no longer provide them with the information they wanted. He would be able to return to Kabul and would be at no risk on return. His removal to Afghanistan would not breach his human rights.

9. The appellant's appeal came before First-tier Tribunal Judge Williams on 23 November 2018. The appellant's employment history and qualifications were all accepted by the judge, in light of the evidence produced in that regard, but his account of threats from the Taliban was rejected and it was concluded that he was at no risk on return to Afghanistan. That decision was, however, set aside by DUTJ Juss on 4 June 2019, who found that the judge had erred by failing to give proper consideration to the guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 when rejecting the plausibility of the appellant's account.

10. The case was remitted to the First-tier Tribunal to be heard afresh and came before First-tier Tribunal Judge Malik on 22 October 2019. The appellant gave evidence before the judge. He said that his wife, four children, mother and sister remained in Afghanistan and had recently moved to another area, Khair-Khan, in the north of Kabul, due to threats in the form of a letter and an attack on his property in Logar three months previously. The judge accepted, on the basis of the evidence that the appellant had worked in Afghanistan for a telecoms company and had acquired qualifications as a certified accountant. She also accepted, in light of the background information, that individuals who worked for such organisations and the government in Afghanistan could be targeted. However, she did not consider that the appellant had given a credible account of being threatened.

11. The judge considered that if the appellant genuinely considered himself and his family to be at risk, and given that he had the ability to live and work in the UAE, it was not credible that he would not have done so. The judge did not find it credible that the Taliban would have sought to kidnap the appellant from outside the Ministry of Finance and considered that the account was inconsistent with the information provided in the expert report. Neither did she find it credible that, if the appellant had met the President of Afghanistan and that the government had wanted him to work for them, he would not have raised the threats from the Taliban with the relevant government department and he would not have been provided with some form of protection. The judge considered that the appellant's return to Afghanistan from the UK, the publicising of the ACCA ceremony, the fact that he did not seek to change his telephone number after receiving a threatening text from the Taliban and the fact that he chose not to go with his family to Dubai where he had a job and they all had residence permits, all undermined his claim to be at risk. The judge accordingly found that the appellant was at no risk of return to Afghanistan and that he could safely return to Kabul and she dismissed the appeal on all grounds.

12. The appellant sought permission to appeal to the Upper Tribunal against Judge Malik's decision on the following grounds: inadequate consideration of the expert report; disproportionate weight given to the Dubai permit issue; material misunderstanding of fact in regard to the appellant not having raised the Taliban threat with the relevant government department after meeting the Afghan President; and inadequate consideration of documentary evidence.

13. Following the grant of permission by the First-tier Tribunal, the matter came before Upper Tribunal Finch on 20 March 2020. UTJ Finch found material errors of law in the judge's decision on the basis of all the grounds and set aside the decision. She directed that the decision be re-made in the Upper Tribunal.

### **Hearing and submissions**

14. The matter then came before me. Mr Jarvis clarified that he was not pursuing the question of internal relocation, and that the only issue was credibility which the respondent did not accept.

15. The appellant then gave evidence before me, adopting his four witness statements, of 24 July 2018, 21 September 2018, 12 November 2018 and 7 October 2019. He confirmed that his family remained in Kabul and were facing danger because of him. He was suffering from depression and lack of sleep because of the situation and was taking medication. He explained the problems he had faced from the Taliban and the demands they were making on him, namely to share with them the telephone numbers and records of communications of foreign delegations and high officials and to channel their money to their supporters throughout Afghanistan through the money transfer company Mhawala.

16. In cross-examination, the appellant gave details of his mental health concerns and said that he had had counselling for six months but had not been to a psychiatrist and did not have a psychiatric report. He explained that after the threats in December 2017 he lived with friends for a while, moving to three different locations, but then after the attack on 21 March 2018 he moved with his family to Arzan Kimat in Kabul city. It was whilst they were living there that there was the second attack when his wife was injured and after that they moved to Makroryan for a few days and he left the country. His family then moved to Takia Mashan, then Khair Khana and then to Qasabah, all in Kabul City. They were currently in Qasabah and he would contact them through Viber. The appellant said that his brother-in-law was the person helping his family move and keep safe. The Taliban came to know that he had left and they burned their fruit orchards and removed all the farmers from their land in Logar. His wife and children were still living on the money he had left them as well as money borrowed from his brother-in-law and from his wife selling her gold. The appellant said that his wife and children could not move to another part of Afghanistan or leave the country as they needed a male with them. His brother-in-law was taking responsibility for them but could not move with them as he had his own family to look after. The appellant said that he still had a temporary residence visa for the UAE when he left Afghanistan, but it would have been revoked when he resigned from his job, and in any event it would have been automatically revoked after six months'

absence. The appellant then gave details of the two attacks by the Taliban. In response to my enquiry as to why he did not take his family to the UAE rather than leaving them in Afghanistan, the appellant said that there was no option of claiming asylum in the UAE and further his MP had advised him that many people, including Taliban members, travelled to Dubai and so he should go somewhere where he could seek protection.

17. Both parties then made submissions.

18. Mr Jarvis submitted that the appellant's claim was not supported by the country guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 and AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 or the EASO report, which found that a person of a lower level of interest to the Taliban was not at risk in Kabul and that only a small proportion of people, of very high profile, were targeted by the Taliban. He submitted that the appellant's core claim was not credible, that he had overplayed his evidence in regard to his mental health and that it should not be accepted that there was a deterioration in his mental health because of concerns about his family. Mr Jarvis submitted that if the appellant was so concerned about his family he would not have returned to Afghanistan from Dubai and would not have left them behind and neither would he have remained in Kabul for so long. It was not credible that he would have been able to escape from the Taliban on those two occasions and not credible that the Taliban, who were hardened terrorists, would have run off simply because of the reaction of passers-by. It was not plausible that the appellant would have left his family in Kabul for three years if they were in such danger.

19. Mr Jarvis submitted further that the documentary evidence provided by the appellant should be considered to be unreliable and little weight should be given to Dr Giustozzi's report, as he had been criticised by the Upper Tribunal in the country guidance in AS [2018] and had not been used as an expert at all in AS [2020]. His opinion about there being a Taliban blacklist should not be accepted, as it was based upon information obtained through an unreliable source. Mr Jarvis relied upon the cases of AAW (expert evidence - weight) Somalia [2015] UKUT 673 and LP (LTTE area, Tamils, Colombo, risk?) Sri Lanka CG [2007] UKAIT 00076 in that regard. In any event, the appellant's account of the two failed assassination attempts by the Taliban was inconsistent with Dr Giustozzi's opinion of the sophistication and professionalism of the Taliban. Mr Jarvis submitted that the appellant's account of being at risk on return should be rejected and it should also not be accepted that there were any significant obstacles to his integration in Afghanistan.

20. Ms Amin relied on the Asylum Policy Guidance version 9 as to the approach to asylum claims and she submitted that there was a lack of anxious scrutiny by the respondent of the documentary evidence produced by the appellant and a failure to consider his claim in the round. The appellant's account was entirely consistent. It had been considered in a piecemeal fashion by the respondent. The appellant had provided a credible account of threats from the Taliban and of moving his family around to protect them. Dr Giustozzi's report should be relied upon and it should be safely inferred that the appellant was on a Taliban blacklist and was at risk on return. The appeal should be allowed.

## Consideration and findings

21. As detailed at [3] and [4] of the grounds of appeal, the appellant's background in terms of his qualifications and employment, including senior posts at a high salary, were all accepted by Judge Malik, as was his account of his graduation ceremonies for his Masters degree and his ACCA qualification being broadcast on TV and social media. It was also accepted that individuals like the appellant could be targeted in Afghanistan on account of their work and background information was provided to show that the Taliban was targeting and killing employees working for the Telecom companies. None of that is in dispute. What is in dispute is the credibility of the appellant's claim to have been personally targeted by the Taliban and to thus be at risk on return to Afghanistan.

22. Contrary to the case for the respondent, it seems to me, however, that there is no proper reason to disbelieve the appellant's account, to the lower standard of proof, given that it has remained entirely consistent throughout the various times it has been recounted, at interview, in statements and in oral evidence before three judges (including myself) and is supported by the evidence of a known expert, Dr Giustozzi, as well as documentary evidence and country background information.

23. Mr Jarvis made much of the lack of evidence of the appellant's claimed mental health concerns and the absence of a psychiatric report in challenging the truthfulness of his account and his reliability as a witness, but this is not a case where reliance is placed on such matters to explain an inconsistent or contradictory account. Indeed it seems to me that the appellant's mental health is a peripheral matter. I accept, from the evidence that is available, that the appellant suffers from insomnia and depression, but that could be for any number of reasons including the simple fact of separation from his family and the uncertainty of his immigration status, and therefore his mental health is a matter which, in this case, neither particularly enhances his case nor detracts from it.

24. With regard to the submissions made by Mr Jarvis on the reliability of Dr Giustozzi as an expert, it seems to me that the concerns expressed about his opinion can go no further than showing that his conclusions should not, without more, be determinative of the appellant's case. I have regard to, and take full account of, the Tribunal's rejection, at [173] to [188] in AS [2018] of Dr Giustozzi's account of a blacklist held by the Taliban of those it was targeting, but it was not considered that his evidence in general was of no value. Accordingly, in so far as the submissions suggest that no weight should be accorded to his opinion in the appellant's case, I disagree, and consider that the report adds some weight to an already consistent and well-evidenced account.

25. The respondent's case, aside from seeking to undermine the weight to be given to the appellant's account of his mental health and to the expert report, is otherwise based upon plausibility, namely the plausibility of the appellant remaining in Afghanistan if he was at such threat from the Taliban, the plausibility of him leaving his family in Afghanistan if they were in danger and the plausibility of the Taliban not completing their assassination/kidnapping on two occasions. However, that is not a proper basis for rejecting a claim as incredible, to the lower standard of proof, where there is otherwise an entirely detailed

and consistent account supported by a significant amount of documentary evidence which is not, on its face, unreliable. As already mentioned, the documentary evidence produced to support the appellant's claim about his qualifications and employment history has not been challenged and those matters are not in dispute. It is the documentary evidence submitted in regard to the threats from the Taliban, namely two letters and a text, and the reports given by the appellant to the police and his MP, which are challenged by the respondent. However, the submissions made about the limited weight to be given to that evidence rest not on any particular features of the documents which give rise to concerns, but on the overall picture of what is said to be a claim lacking in plausibility and on the background reports of fake documents being easily obtained in Afghanistan.

26. The appellant's account of receiving threatening letters from the Taliban and being attacked by them and the chronology of that account was considered by DUTJ Juss at [30] of his decision setting aside Judge Williams' decision as being one which was not inherently implausible. Indeed the account is consistent with the UNHCR refworld report at C178 of the appellant's bundle 1 and the EASO report for December 2020 (pages 12, 51, 57, 59). There is nothing in the petitions, reports and letters to the police and higher officials, at pages B59 to B77 of Bundle 1 which is inherently unreliable or which is inconsistent with the appellant's account or the background information or country guidance. On the contrary they all interlink consistently with the appellant's account in his oral evidence and witness statements. Likewise, the findings of UTJ Finch, at [8] to [10], when setting aside Judge Malik's decision, were that there was nothing implausible about the appellant's account of the attacks by the Taliban and that the accounts were supported by the expert report of Dr Giustozzi. It is of note that the description the appellant gave in his evidence before me of the attacks was entirely consistent, in every small detail, with the accounts previously given. Mr Jarvis asked me to find the account lacking in credibility because it was not plausible that a team of hardened terrorists would have been stopped from a few passers by from carrying out their kidnapping/ assassination. However, I do not find that to be a sufficient basis, when considering the evidence as a whole and applying the lower standard of proof, to conclude that the appellant had fabricated his evidence.

27. The same applies to the other reasons given by Mr Jarvis for rejecting the appellant's claim, namely that it was implausible that he would have returned to Afghanistan from Dubai and then from the UK, and would have left his family behind in Afghanistan, if he was genuinely in fear of the Taliban and genuinely considered that they were in danger. The appellant has provided a response to those concerns. At [7] of his second witness statement of 21 September 2018, he explained how he moved around after receiving the first threatening letter and how he relocated his family to protect them and at [9], as well as [19] of his first statement, he explained why he believed it safe to return to Afghanistan from Dubai. It is also relevant to note that it was only after his return from the UK that the more serious threats and incidents occurred. My own concern, as I raised at the hearing, was that the appellant had chosen to leave his family in Afghanistan and come to the UK, when he knew they were not safe there, rather than all of them going to the UAE when he still had a residence permit. That concern was partially addressed by UTJ Finch at [11] of her decision, but was also addressed by the appellant's response before me, namely that



there was no option of claiming asylum in the Emirates and further that he was advised by his MP that many people could travel to Dubai, including Taliban, and that it was better to go somewhere where he could seek international protection. I do not consider there to be anything implausible or unreasonable about such a response.

28. In all the circumstances, having regard to the consistency of the appellant's evidence throughout his various accounts, the supporting documentary evidence provided, the background information and the expert report, it seems to me that the lower standard of proof has been more than adequately met and that the appellant's account of his experiences in Afghanistan and his fears on his return are genuine. I do not agree with Mr Jarvis that the appellant's claim is at odds with the country guidance in AS. Much of that case deals with returns to Kabul as a place of relocation, whereas Kabul was the appellant's place of residence at the time he experienced his problems with the Taliban. In so far as AS considered Kabul as the home area, Mr Jarvis relied upon the finding that "*A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*" However, it seems to me that the guidance does not specifically address circumstances such as those of the appellant, and that the Tribunal's observation at [188] is therefore relevant: "*there was only limited evidence before us of other possible risk factors to individuals in Afghanistan (which were not relevant to the Appellant in this appeal) which are outwith the ambit of this appeal and we make no specific findings on them.*" Whilst the Tribunal rejected Dr Giustozzi's view as to there being a blacklist of targeted individuals, I do not agree that the findings of the Tribunal in AS preclude circumstances such as those of the appellant being considered as giving rise to a risk on return.

29. Neither do I accept the submission that any previous risk to the appellant has been alleviated by the fact that he no longer holds the positions he previously held which led to the Taliban's interest in him. It is pure speculation to conclude that there would be no further interest in him and there is adequate evidence to suggest that the Taliban maintain an ongoing interest in those with whom they have previously had conflict such that, to the lower standard of proof, I accept that there remains a risk on return. The respondent has not pursued any suggestion of sufficiency of protection from the Afghan authorities and indeed the appellant has produced evidence to support his claim that he had sought protection on various occasions but had been unable to secure any such assistance and had been advised to seek protection in another country. Neither has the respondent pursued a suggestion of internal relocation and I accept that that would not be a viable option, in particular given that the appellant's problems arose in Kabul, the city to which Afghans were usually expected to relocate. Accordingly, I accept that the appellant has demonstrated that he is, and remains, at risk on return to Afghanistan and that he is entitled to international protection.

## DECISION

30. The making of the decision of the First-tier Tribunal involved an error on a point of law and has been set aside. I re-make the decision by allowing the appeal on asylum and

Article 3 human rights grounds. As such there is no need to undertake any separate consideration of humanitarian protection and Article 8.

Signed *S Kebede*  
Upper Tribunal Judge Kebede

Dated: 16 February 2021