



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/06850/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> September 2015**

**Decision & Reasons  
Promulgated  
On 14<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**SS  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr R Reynolds, Counsel instructed by Luqmani Thompson & Partners Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan born on 19<sup>th</sup> November 1995 and he appeals against a decision of the respondent dated 2<sup>nd</sup> September 2014 to refuse to vary his leave to enter or remain and to remove him from the United Kingdom following a refusal to grant him asylum, humanitarian protection and protection under the European Convention. His asylum claim was previously considered in August 2010 and refused in a decision letter dated 24<sup>th</sup> August 2010. That decision of the respondent does not appear to be attached to the file and does not appear to have been considered in evidence.

2. The appellant's essential claim is that he had feared return to Afghanistan because his father was a general in the Afghan National Army and he was a member of a political party which used to be called the People's Democratic Party of Afghanistan (PDPA or Khalq). He set out in his witness statement that he was a child when the events occurred and even now was not interested in politics. He stated that his family moved around and he lived in Pakistan. When the family returned to Afghanistan at the beginning of 2010, they were stopped by the Afghani authorities and his father was identified. The appellant was detained because of his connection with his father and tortured for three months and he was interrogated repeatedly about his father's activities until a friend managed to bribe the authorities to release him. A friend of his father's called D then helped him escape the country. He feared that if he was sent back to Afghanistan where he was previously identified as the son of his father, and where he was fingerprinted by the authorities and detained and tortured his life would be at risk.
3. He arrived in the UK in June 2010 as an unaccompanied minor and was taken into the care of Social Services and lived in foster care for some months before being allowed to move in with his maternal cousin.
4. He had not been able to find out news of his family since his arrival in the UK and had no contact with his mother or brother or sisters and had no news about his father.
5. The appellant claims that he was ill-treated whilst he was in detention in Afghanistan and he still has depressive flashbacks. He also says that when he was in prison he was beaten by a [sic] electric cable all over his body and generally mistreated. He maintains that he only lived in Afghanistan between 1996 and 2001 when he was very young and had no memories of what it was like there and could not remember anything about the place where he lived in Kabul. He believed if he was sent back to Afghanistan he would be arrested at the airport once identified. He believed that he would be killed if he was returned to Afghanistan due to his family's links to the old government.
6. Judge of the First-tier Tribunal Hanbury heard the appeal on 13<sup>th</sup> November 2014 and dismissed the appeal in a decision promulgated on 16<sup>th</sup> December 2014.
7. An application for permission to appeal asserted that the judge had first failed to make findings on oral evidence given by three witnesses attending the Tribunal in line with the requirements set out in **MK (duty to give reasons) Pakistan [2013] UKUT 00641**.
8. I note that credibility goes to the heart of this determination. The judge set out in his decision the following:

*"38. However, the core of the appellant's account invariably turns on his honesty and truthfulness as a witness. First, to deal with the background, I am not satisfied even to the low standard which applies to these proceedings, that the appellant's father*

*and other family members were persecuted by Marshal Fahim. According to the appellant's own account, Marshal Fahim had killed the appellant's uncle, also called D, 'before the appellant was born'. That would have been when Mujahedin defeated the communists and took control of Kabul in 1992 when Najibullah's regime collapsed. It is incredible that the PDPA still posed a threat to the Afghan state by the date the appellant left in 2010. The PDPA was a socialist party which ceased to exist as long ago as 1977. It was then renamed as the Waatan Party but banned by President Mojaddidi and President Karzai. It is not credible that the appellant and his family would continue to fear Marshal Fahim long after the collapse of the party. In any event, Marshal Fahim is now dead. The respondent did not accept the appellant's story as to the involvement of General Fahim in his family's life. I agree with the respondent's representative, Ms Mohammadi, that the case is 'speculative'.*

*39. There were a number of other aspects to the appellant's case which did not appear to be truthful. For example, he claimed in interview that his father's party, the PDPA, joined the Taliban to assist them with logistics after they took over in 1996. That seems most unlikely given that the appellant's father's party was a socialist party completely opposed to the views of the Taliban. The appellant appears to say that the Taliban 'protected his father' but why would they do so given their diametrically opposed views?*

*40. The identity of the S family was not accepted by the respondent. It was not accepted that the appellant's father was a general in the Afghan Army or that the appellant's identity had been established satisfactorily. It was incumbent upon the appellant to produce some evidence to support these claims. The appellant has extremely limited knowledge of his father's political activities and no knowledge of his whereabouts. I am not satisfied, even to the low standard of proof that applies to these claims, that there is a real of risk of persecution to the appellant due to his father's involvement with the PDPA. I am not satisfied that the appellant has told the truth about his father and his background. It seems convenient that he lacked any greater knowledge of family members, as this may have assisted the respondent in tracing those family members. The appellant has a large number of members of the family in Afghanistan (see paragraph 6.6 of his screening interview) yet he claimed not to know the whereabouts of either his mother or his father."*

9. Three witnesses were brought forward and attended the hearing, namely A W A N, SN and MAN. Determinations for the granting of asylum for the first two appellants were submitted in evidence. The key point is that the credibility of those witnesses was accepted by the judges who allowed their appeals.

10. Although their evidence is recorded there are no conclusions drawn in relation to their evidence contrary to **AK Turkey** [2004] UKIAT 00230. This confirms the necessity to make proper findings on the evidence of *all* witnesses called before adjudicators.
11. Ground 2 of the application for permission to appeal states that there was an absence of findings in relation to the written evidence concerning the N family in the context of the expert evidence (Dr Guistozzi) which suggested at paragraph 12 that the position of the S family was analogous to that of the N family. It was pointed out in the permission to appeal that all three witnesses were granted refugee status specifically on the basis that they were members or connected to the members of the PDPA. I note that the determination in relation to SN was made on 3<sup>rd</sup> April 2013 which would appear to contradict the judge's finding at paragraph 38 that "it is incredible that the PDPA still posed a threat to the Afghan state by the date the appellant left in 2010. The PDPA was a socialist party which ceased to exist as long ago as 1977."
12. Ms Isherwood submitted that there were no risk to the appellant on his return and this could be gleaned from the expert report from Dr Giustozzi but the report noted at paragraph 8 that the attention of the government would depend on their personal background and as such an assessment of the identity and credibility of the appellant is important and material. I was presented with **HK & Ors v Secretary of State for the Home Department** and particularly referred to paragraph 28 by Mr Stirling where it states that even though an appellant's story may seem inherently unlikely that does not mean that it is untrue. The ingredients of the story, and the story as a whole, should be considered against the available country evidence and reliable expert evidence. Judge Hanbury at [39] found that the appellant's account was untruthful suggesting that the Taliban protection would be "most unlikely given that the appellant's father's party was a socialist party completely opposed to the views of the Taliban". This is in direct contradiction of what is stated in the report of Dr Guistozzi [28], who referred to the recruitment of former members of the regime of the Najibullah, the communists, by the Taliban.
13. The judge makes reference to the fact that "the appellant has extremely limited knowledge of his father's political activities and no knowledge of his whereabouts", but there was no consideration given by Judge Hanbury that the appellant was in fact a child when his evidence was taken in 2010 on entry to the UK. This was important for the assessment of whether there was a risk of persecution to the appellant due to his father's involvement with the PDPA.
14. It was Ms Isherwood's contention that notwithstanding the appellant's credibility the appellant would not be at risk on return but it is clearly important to establish and take note of the appellant's witnesses as to the identity of his father, his status as it was and the attendant risk to the appellant.

**Notice of Decision**

The Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

**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 his 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

Deputy Upper Tribunal Judge Rimington

