



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

**Appeal Number: PA/09371/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 May 2017**

**Decision & Reasons Promulgated  
On 9 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**A Z  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Saleem, solicitor of Malik & Malik  
For the Respondent: Mr Staunton, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan born on 7 November 1993. He appealed against the decision of the respondent on 22 August 2016 to refuse asylum. His appeal was dismissed by Judge of the First-tier Tribunal Swaniker (“the FTTJ”) in a decision promulgated on 29 November 2016.
2. The appellant sought permission to appeal which was granted in the Upper Tribunal by Upper Tribunal Judge McWilliam in the following brief terms:

“The appellant seeks permission to appeal against the decision of JFtT Swaniker to dismiss his appeal on asylum grounds.

It is arguable that the judge did not make a finding in respect of the appellant's father's role and this is arguably material to the assessment of risk. All grounds are arguable."

3. Thus the appeal came before me today.
4. Mr Saleem, for the appellant, relied on the grounds of appeal to this tribunal which can be summarised as follows:
  - (i) There was no finding as to the appellant's father's role in Afghanistan. There was extensive documentary evidence of that role. While the FTTJ explicitly rejected the appellant's account of being at risk on account of his connection to his father (eg [23] in particular), she made no finding as to whether his father was the Chief Prosecutor in Ghazni, as claimed. His role was the foundation of the claim.
  - (ii) The respondent had made no verification enquiries as regards the appellant's documentary evidence pursuant to **PJ (Sri Lanka) [2014] EWCA Civ 1011**. These were central to the request for protection. A simple process of enquiry would have resolved their authenticity, eg a telephone call to the Chief Prosecutor. Had the FTTJ considered the issue she would have found the respondent was prevented from mounting an argument (as she did at [13] of the refusal letter) that the appellant relied on false documents: [31] of **PJ (Sri Lanka)** refers.
  - (iii) The FTTJ had failed to consider evidence material to the appellant's own role such as those appended to the appellant's skeleton argument. These were relevant to the FTTJ's finding that there was a discrepancy over whether the appellant was employed by the Ministry of the Interior (MOI) or the International Office of Migration (IOM). The overlooked documents corroborated the appellant's account. The FTTJ noted the employment contract appeared to indicate a fixed term of employment, contrary to the appellant's evidence of continuing employment.
  - (iv) The FTTJ had misdirected herself as to the standard of proof and nature of the documentary evidence as self-serving.
5. Mr Saleem identified those documents in the appellant's bundle which, he submitted, could have been verified by the respondent with an email to the Attorney General in Afghanistan, whose contact details were publicly available. Such checks would not put the appellant at risk. He submitted that fact finding as regards the appellant's father's role was required as the starting point: all other matters flowed from it. The appellant's father's claimed role entailed arresting and prosecuting individuals who were a threat to the Afghan authorities; this would inevitably have put him at risk of harm from such people, including the Taliban. The FTTJ had misunderstood the evidence of the appellant to the effect that his father had continued to work in Ghazni albeit the family had moved to Kabul; he had been able to do so because he lived and worked in secure accommodation. The FTTJ's findings as regards the appellant's father's activities were based on a misunderstanding of the evidence.
6. Mr Staunton, for the respondent, relied on the Rule 24 reply. He accepted there was no specific finding as to the role of the appellant's father but submitted that, given the FTTJ's finding that the appellant was not credible, it could be inferred she did not accept the appellant's father's role was as claimed. In any event, the failure to make such a finding, even if an error of law, was not material to the outcome given the FTTJ's other findings on credibility. The FTTJ had taken the appellant's case at its highest and addressed it. As regards the respondent's alleged failure to verify the documentary evidence relating to the appellant's father's role, Mr Staunton asserted the respondent was usually unable to verify documents for various reasons, including the safety of the appellant. The fact she did not do

so was not an error of law. It was not incumbent on the FTTJ to make findings on all aspects of the claim, just sufficient to identify the reasons for the outcome. The FTTJ had given close consideration to the evidence before her. There were significant adverse credibility findings; it was open to the FTTJ to give such weight as she considered appropriate to the documentary and witness evidence. Given the FTTJ had not found the appellant a credible witness, she could not place significant weight on the documents. She had reached conclusions which were open to her on the evidence.

7. Mr Saleem responded by stating that the mere fact of finding the appellant himself lacked credibility was not sufficient to dismiss out of hand the many documents which he had adduced in support of his hearing. The FTTJ had not made sufficient findings on core aspects of the appeal and her findings lacked reasoning on the evidence.

### **Analysis and Findings – Error of Law**

8. The core of the appellant’s appeal was the risk on return from the Taliban and/or other anti-government elements for two reasons: first, as a result of his father’s work as a prosecutor (latterly the Chief Prosecutor) in Ghazni, and, secondly, as a result of his own work for the Ministry of the Interior, in a department funded by the International Organisation for Migration. The appellant’s claim was that his father had been targeted and killed by the Taliban in 2015 and that he was at similar risk on return. The FTTJ did not find the appellant a credible witness.
9. There are indeed no specific findings in the FTTJ’s decision with regard to the claimed role of the appellant’s father. Mr Staunton sought to persuade me that it could be inferred from the adverse credibility findings overall that the FTTJ did not accept the appellant’s father had had a thirty year career as a prosecutor. However, the FTTJ herself states, in summary, at the outset of her findings of fact at [13] that “the appellant is not an overall credible witness”. This infers that there were aspects of his evidence which she did find credible. That said, she goes on to say at [14] that “even taken at its highest there is no credible evidence before me to substantiate the appellant’s account of his father being of adverse interest to the Taliban and being murdered by them in March 2015”. Whilst it could be argued that any member of the Attorney General’s staff could be considered to be of adverse interest to the Taliban and that, therefore, by inference, the appellant had not demonstrated his father was such a member, the role and activities of the appellant’s father warrant specific findings given that this one of the two central planks of the appellant’s claim to be at risk on return.
10. The FTTJ’s adverse findings, insofar as they relate to the appellant’s father, are principally based on the implausibility of the appellant’s account. By way of example, the FTTJ notes that his father was able “continue to operate caught [sic] as his father did, including in areas where the Taliban had a substantial representation, without their catching up with him and doing him harm well before the date in March 2015”. She goes on at [15] to find it not credible “the Taliban would have continued to simply make threats against the appellant’s father over many years and not sought to act on these threats long before the alleged killing of his father in March 2015, particularly given the appellant’s assertions as to his father’s position arresting and interrogating members of the Taliban over many years as per the nature of his alleged job”. Whilst the FTTJ finds no substance in the appellant’s explanation for this at paragraphs 8-9 of his witness statement, her reasoning for this is flawed. She finds the appellant had not stated in interview that his father had remained in Ghazni while the family went to Kabul. However, it is clear from the interview record that the appellant had only referred to himself when asked when he moved to Kabul (question 36). Later in the interview he referred to his father being killed in 2015 when travelling from Ghazni to visit his family in Kabul. In her reasons for refusal, the respondent identified an apparent discrepancy in that the

appellant appeared to have failed to provide a reasonable explanation as to why his father returned to Ghazni, a Taliban area, in 2015 despite Taliban threats. Both the respondent and the FTTJ assumed that the appellant said in interview that the whole family, including the appellant's father, had moved to Kabul, whereas that was not the case; he had only been asked in interview about himself. This is relevant because, contrary to the FTTJ's finding, the appellant had no opportunity in interview to explain that his father had remained living and working in Ghazni while his family had moved to Kabul. It was therefore an error for the FTTJ to conclude at [15] that the appellant had failed to indicate as much "from the off, when questioned in this regard at interview": he was not so questioned in interview. It follows that it was wrong to make an adverse credibility finding on this basis: the appellant's father's travel between Ghazni and Kabul was only identified by the respondent as a potential credibility issue in her reasons for refusal, hence the appellant's failure to address it earlier. This error is compounded by the FTTJ's failure to give any reason for dismissing as incredible the appellant's evidence that his father had lived and worked in secure accommodation in Ghazni, by way of explanation for the failure of the Taliban to enforce their threats to his father over some years. There is no inconsistency as between the appellant's evidence in interview and his evidence in his appeal statement as regards the ability of his father to working in Ghazni and travel to and from Kabul without harm from the Taliban until March 2015. At [16] the FTTJ refers to the lack of a "credible reason provided to explain why after many years of threats the Taliban would suddenly move to kill the appellant's father.". This conclusion is reached on the basis of a flawed assessment of the appellant's evidence about the ability of his father to travel between Ghazni and Kabul without coming to harm at the hands of the Taliban until March 2015: it fails to address the appellant's case that his father had been able to avoid coming to harm at the hands of the Taliban as a result of living and working in secure accommodation in Ghazni.

11. The FTTJ also refers to the appellant's ability to freely attend school and university in Kabul suggesting this undermines his claim but it is not the appellant's case that he was at risk of harm prior to March 2015 when his father was killed.
12. The FTTJ finds as self-serving the letter purportedly sent by the Taliban to the elders in Mangor village regarding their interest in the appellant's father. Inter alia the FTTJ finds it implausible "that such a letter would have been sent to the elders in Mangor, when the appellant and family had long left that area and relocated to Kabul". This finding is based on a misunderstanding of the appellant's evidence which is that his father had remained living in Ghazni, while he and his family had relocated to Kabul.
13. I am unable to accept that the respondent should have carried out verification checks to confirm the position of the appellant's father. I was directed to those documents in the appellant's bundle which should, it was said, have been verified by the respondent. However, some of these documents were over 15 years old. Indeed in one case the document was issued in 1991 (the Biodata document). I do not accept verification would be a simple process given the passage of time since they were issued.
14. Whilst the appellant criticises the FTTJ's use of the word "self-serving" in describing some of the evidence, I am unable to find that this, alone, amounts to an error of law: the FTTJ has given her reasoning for her findings as is required by [R \(on the application of SS\) v Secretary of State for the Home Department \("self-serving" statements\) \[2017\] UKUT 00164 \(IAC\)](#): she found the appellant not to be a credible witness and considered this tainted the reliability of the documents he adduced regarding his father's death and the Taliban's adverse interest in him.

15. I do have a concern about the standard of proof which has been applied by the FTTJ because it is not clear to me what that is. She refers at [12] to having “directed [herself] as to the requisite burden and standard of proof and [to] have given the evidence the most anxious scrutiny”. However, she does not state in that paragraph what that standard is or where the onus lies in proving the appellant’s case.
16. I do not accept the FTTJ can be criticised for her assessment of the evidence as regards the appellant’s employment in Afghanistan. There is reference at [8] to the existence of documentary evidence appended to the appellant’s argument; there is no requirement on the FTTJ to mention every piece of evidence in her assessment provided that assessment is sustainable on the evidence concerned.
17. However, reading the decision as a whole, I am satisfied that the FTTJ’s findings on the credibility of the appellant are flawed, for the above reasons. In particular, the FTTJ has drawn an inappropriate inference from the appellant’s perceived failure to give certain evidence in interview and her assessment of his evidence is therefore partially, if not wholly, flawed. This error also calls into question the sustainability of the FTTJ’s assessment of the weight to be given to the documentary evidence, given that her assessment of the latter evidence is tainted by her adverse credibility findings.
18. I am satisfied that the assessment of credibility, which is at the core of the appeal, is tainted by error of law material to the outcome, particularly risk on return.
19. The representatives were in agreement that, if one or more errors of law were found, the matter should be remitted to the First-tier Tribunal. I agree: the appeal must be decided afresh with a proper and detailed assessment of the appellant’s credibility based on the evidence and background material.

### **Decision**

20. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from Judge Swaniker.
21. Given the appellant’s claimed background in Afghanistan, an anonymity direction is appropriate in these proceedings. I make a direction accordingly.

Signed **A M Black**  
Deputy Upper Tribunal A M Black

Date 8 May 2017