



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

**Appeal Number: PA/00690/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 March 2018**

**Decision & Reasons Promulgated  
On 22<sup>nd</sup> March 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**[M A]**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant:

Ms A. Nizami of counsel, instructed by J D Spicer Zeb  
Solicitors

For the Respondent:

Mr. N. Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

## **BACKGROUND TO THE APPEAL**

1. The Appellant, who was born on [ ] 1998, is a national of Afghanistan. It is his case that his brother was in the Afghan police force and that the Taliban sent him two letters warning him to leave the police force. It is also his case that when his brother did not do so, the Appellant was abducted by the Taliban and ill-treated on two occasions but that he was able to escape from them on the second occasion after they were attacked by American or Afghan special forces. His father then arranged for him to flee from Afghanistan.
2. The Applicant arrived in the United Kingdom on 3 May 2013 and applied for asylum. It was accepted that at this time he was only fifteen years old. His application was refused on 25 February 2015 but he was granted leave to remain, as an unaccompanied asylum seeking child, until 1 September 2015. At that time the Nationality, Immigration and Asylum Act 2002 did not provide him with a right of appeal against the decision to refuse him asylum. He was not entitled to appeal against this decision. He made a second asylum application on 18 August 2015 but his application was refused on 13 January 2016. This time he was entitled to a right of appeal, which he exercised. First-tier Tribunal Judge Freer dismissed his appeal in a decision, promulgated on 4 January 2018.
3. The Appellant appealed against this decision and Designated First-tier Tribunal Judge Macdonald granted him permission to appeal on 24 January 2018.

## **ERROR OF LAW HEARING**

4. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below. The Home Office Presenting Officer accepted that the grounds of appeal taken in their totality indicated that First-tier Tribunal Judge Freer had erred in law.

## **ERROR OF LAW DECISION**

5. It is my view that the decision reached by First-tier Tribunal Judge Freer is fundamentally undermined by a number of characteristics of his general approach to the Appellant's appeal.

6. Firstly, he failed to consider the evidence given by the Appellant in the context of any objective evidence about the present situation in Afghanistan. This included, but was not limited to, the fact that the Taliban did target and threaten members of the security forces in an effort to persuade them to resign, as confirmed at page 328 of the Appellant's Objective Bundle of Documents which referred to category K of the UNHCR's potential risk profiles.
7. First-tier Tribunal Judge Freer also failed to give any, or any adequate, reasons for a number of his findings. One of these related to the question of the Appellant's nationality. At paragraph 24 of his decision he stated that "while [he] had a lingering doubt about nationality, [the] Appellant knew enough to persuade the respondent that he was Afghan and not a citizen of Pakistan". He then went on to assert that "it is easy to pass for either as he is a Pashtun who was living in the border area". In addition, he found at paragraph 40 of his decision that "it is likely that [the Appellant and his family] can be reunited and all travel safely to Pakistan together and so there is no basis for a protection claim".
8. First-tier Tribunal Judge Freer did not provide any substantive reason for concluding that the Appellant was a citizen of Pakistan or challenge the very detailed findings as to nationality made by the Respondent. The Appellant had given full and cogent answers to all questions posed about Afghanistan during his asylum interview when he was only fifteen years old and First-tier Tribunal Judge Freer did not provide any reasons to go behind these answers and this knowledge. Neither did he explain the basis upon which he and his family would be entitled to protection in Pakistan.
9. In paragraph 6 of his decision, First-tier Tribunal Judge Freer purports to remind himself of the approach recommended in *Karanakaran v Secretary of State for the Home Department* [2000] Imm AR 282 but in the substance of his decision, he fails to adopt the approach adopted by the Court of Appeal in that case. In particular, in paragraph 21 he found that there was no cogent proof of trouble beyond what the Appellant told the doctor, which means it is reported hearsay. Given the evidential difficulties which the UN Committee on Refugees recognise that asylum seekers face and the express advice in *Karanakaran* it was necessary for the First-tier Tribunal Judge to give at least some weight to the medical evidence relied upon by the Appellant unless he gave cogent reasons for not doing so.

10. In paragraph 27 of his decision First-tier Tribunal Judge Freer also stated that “if the trafficking theory is correct, it is not supportive of an asylum claim without more”. The only reference to trafficking was contained in paragraph 82 of Dr. Arnold’s report, where he said that “it would be speculative to say, without more information, whether the agents were people smugglers or traffickers in human beings, but [the Appellant’s] behaviour is, in my opinion, likely to have been similar to that of trafficked persons in respect of that control”. This was a remark which was obiter to his overall medical opinion and went no further than suggesting that whether the Appellant had been trafficked or smuggled the “agents” would have “controlled” him. There was no evidence that the Appellant had actually been smuggled and First-tier Tribunal Judge Freer gave no reasons for believing that the Appellant had been “trafficked” to the United Kingdom, as opposed to being “smuggled” here. In addition, neither the Appellant nor the Respondent had suggested that he had been trafficked or provided any evidence that he had been. In addition, First-tier Tribunal Judge Freer gave no reasons for stating in paragraph 20 that “the possibility of the Appellant being a victim of trafficking is more than hinted at”.
11. The lack of reasoning also infects the Judge’s reasoning in relation to the on-going contact that the Appellant may still have with his parents and other family members in Afghanistan. There was no evidence to suggest that the Appellant was still in touch with them. First-tier Tribunal Judge Freer asserted that an independent local official or NGO could have been used to trace his family but had pointed to no evidence to indicate that this was the case and no detail of which such organisations were being referred to. In contrast, there was evidence from the Red Cross, the international agency charged with family tracing, that due to the security situation in Afghanistan such tracing was not presently possible.
12. The Judge also failed to provide any cogent reasoning for asserting that if parents paid for their child to be taken to Europe they would be able to keep in contact with them. There were also a number of findings which were unsupported by any evidence, such as the assumption that the Appellant’s PTSD would diminish over time or that the Taliban would not have tortured him in the manner described. In addition, drawing an adverse inference from the fact that the Appellant initially fled to Pakistan was not consistent with the location of the Appellant’s home province.

13. There is also no indication that, having accepted that the Appellant was a vulnerable witness, the Judge took any steps to ensure that his vulnerability did not prevent him from having a fair hearing.
14. As a consequence, I find that First-tier Tribunal Judge Freer did err in law in his decision.

## **DECISION**

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge, other than First-tier Tribunal Judges Freer, Carroll, Clarke, and Coll for a *de novo* hearing.

# Nadine Finch

Signed

Date 14 March 2018

Upper Tribunal Judge Finch