



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

**Appeal Number: PA/02612/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 1 March 2018**

**Decision & Reasons Promulgated  
On 20 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**RAHMATULLAH NOOR**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Medley-Daley, Consultant with Duncan Lewis & Co

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant has appealed against a decision of First-tier Tribunal Judge Pickup dated 29 December 2017, in which he dismissed his asylum and humanitarian protection appeal.

**Summary of asylum claim**

2. The appellant is a citizen of Afghanistan, who speaks Pashto. He claims that his father was killed by the Taliban for reasons relation to his employment at a company known as MWG, which had a contract

with Americans. The appellant believes that he is also at risk because he too worked for MWG and received threatening letters from the Taliban. The First-tier Tribunal disbelieved the entirety of the appellant's account.

### **Issues before the Upper Tribunal**

3. In granting permission to appeal, Upper Tribunal Judge Rimington considered that there was an arguable procedural error before the First-tier Tribunal owing to the appellant's claimed difficulties in understanding the interpreter, but also indicated that all grounds of appeal are arguable.
4. At the hearing before me, Mr Medley-Daley clarified that he only relied upon two matters raised in the grounds of appeal, and these are to be found at paragraphs 7(a), (c) and (h):
  - (i) the interpreter difficulties were not addressed by the First-tier Tribunal and this led to procedural unfairness;
  - (ii) the First-tier Tribunal did not adequately reason its conclusion that the appellant could internally relocate to Kabul, given the extent of the evidence including expert evidence, on this point.
5. When addressing me on (i) Mr Medley-Daley acknowledged that regrettably there was no evidence whatsoever to support the claims regarding the interpreter or how the First-tier Tribunal dealt with the issue. In those circumstances, I was invited to hear oral evidence from the appellant, in order to fill that gap, and to provide some evidence as to his concerns regarding the interpreter. There was no witness statement filed either by the appellant or the solicitor appearing on his behalf at the First-tier Tribunal hearing back in December 2017. It was way too late to seek to elicit evidence at the hearing and inappropriate to do so without a witness statement or any advance notice. I therefore rejected the application to hear oral evidence from the appellant.
6. Mr Medley-Daley then applied for an adjournment to enable the solicitors to prepare a witness statement. I declined to grant an adjournment given the lateness of the request. As I observed at the hearing it should have been well-known to the appellant's experienced solicitors, who have represented him throughout, that a party alleging misconduct by a judge needs to prove it and should do so when memories are fresh. There has been a failure to act promptly in this case, without any real explanation. Particular care must be taken in making allegations as to events at a hearing. At no stage have the appellant's solicitors sought to place any reliance on their own contemporaneous note, preferring instead to rely upon vague assertions. The circumstances are such that it would not be in the interest of justice for the matter to be adjourned, in order to

provide evidence that could and should have been provided much earlier – see HA (Conduct of Hearing: Evidence Required) Somalia [2009] UKAIT 00018 and Azia (proof of misconduct by judge) [2012] UKUT 00096 (IAC).

7. Mr Medley-Daley then relied upon the second ground of appeal and submitted that the reasons provided as to why the appellant could internally relocate are woefully inadequate.
8. Mr Harrison relied upon the rule 24 response. This emphasises that the First-tier Tribunal expressly noted that the appellant was content to continue and there was no request by his representative for the matter to be considered further or for an adjournment. There was no reference whatsoever to the quality of the interpreter during submissions. In the circumstances, Mr Harrison invited me to dismiss the appeal.
9. After hearing from both parties, I reserved my decision, which I now provide with reasons.

### **Error of law discussion**

10. Mr Medley-Daley made it clear that he only relied upon two grounds of appeal that I have summarised above. I address each ground in turn below. For the avoidance of doubt, the remainder of the grounds merely disagree with the factual findings and seek to reargue the appellant's case. Mr Medley-Daley was entirely correct to place no reliance on paragraphs 7(b) and (d)-(g) of the grounds.

#### *(i) Interpreter difficulties / procedural unfairness*

11. The grounds of appeal assert, without any reference to supporting evidence that the appellant had “*significant issues*” with the interpreter, who made “*various interpreting errors*”, which the First-tier Tribunal wrongly misconstrued as the appellant being obstructive and/or evasive. There is no clear particularisation of what the alleged errors/significant issues were and how the author of the grounds or the appellant came to identify those errors.
12. It is also asserted in the grounds that the interpreter originated from Pakistan, and not Afghanistan, when the appellant had specifically requested an Afghan dialect of Pashto at an earlier case management hearing. Again, as Mr Medley-Daley accepted, there was no evidence to support the assertion in the grounds that the interpreter originated from Pakistan.
13. The grounds also assert, again without reference to any evidence, that the First-tier Tribunal ignored the appellant's complaint regarding the interpreter and failed to consider that the poor quality of the interpreting was such that an alternative solution should have been found. Contrary to the grounds the judge was aware of the

appellant's claim that he had difficulties with the interpreter and he expressly recorded this at [45]. I note that this is inconsistent with the indication at [8] that no issues were raised at the hearing. However, the decision should be read as a whole. The typed record of proceedings states this after "Q 19": "*ISSUE RE INTERPRETATION - I understand the interpreter, but dialect is a bit different. Content to continue.*" The judge clearly did not ignore the appellant's complaint. He considered it and dealt with it. He noted that the appellant did not raise any concerns until Q 19. He then clarified with the appellant that although the appellant believed the dialect was a "*bit different*", he was content to continue. It is significant that the appellant's solicitor, Mr L Singh, made no attempt to persuade the judge against accepting the appellant's willingness to continue. Indeed, the record of proceedings makes it clear that Mr Singh relied upon the appellant's oral evidence and made no submission whatsoever regarding interpreter difficulties. There has been no attempt to explain why the assertions made in the grounds of appeal were not made at an earlier stage either during or after the hearing but before the decision containing adverse credibility findings.

14. Having said that, the responsibility for deciding whether or not the proceedings should continue with the existing interpreter falls not on the legal representative but the judge. It is sufficiently clear from the decision and the judge's record of proceedings that he directed himself to the appellant's complaint, noted that he was content to proceed and made the decision that the proceedings could fairly continue. The appellant and his solicitors have simply provided no evidence to support the submission that the judge erred or acted unfairly in this regard.
15. I am not satisfied that the appellant has established that there were interpreter concerns that caused him difficulties in providing evidence before the First-tier Tribunal. The appellant has also not established that the judge acted improperly or that there was any procedural unfairness.

(ii) *Internal relocation*

16. Mr Medley-Daley invited me to find that the First-tier Tribunal's findings on internal relocation at [73] are clearly insufficient. He contrasted this with detailed findings reached regarding the reasons for finding the appellant not to be credible.
17. The First-tier Tribunal was entitled to find that Kabul would be sufficiently safe and it would not be unduly harsh to expect the appellant to relocate there for the reasons provided at [72] and [73]. The First-tier Tribunal clearly took into account the expert evidence and updated country background evidence but was entitled to find that there was no reason to depart from the country guidance.

18. As to the reasonableness of internal relocation, the First-tier Tribunal was entitled to find that as a fit, healthy young man with past employment links to Kabul, the appellant could internally relocate without undue harshness notwithstanding the security situation, as highlighted by the country background evidence available to it at the time.

## **Decision**

19. The decision of the First-tier Tribunal did not involve the making of an error of law and I do not set it aside.

Signed:

Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
17 April 2018