



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

PA/08976/2017

Appeal Number

THE IMMIGRATION ACTS

Heard at Field House  
On 25<sup>th</sup> April 2018

Decision and Reasons Promulgated  
On 14<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

F Y  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton (counsel, instructed by Duncan Lewis & co, Solicitors)  
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant claimed to have entered the UK in January 2017 and to have claimed asylum in February 2017. That application was refused and the Appellant's appeal heard by First-tier Tribunal Judge Beach at Taylor House on the 5<sup>th</sup> of December 2017 and dismissed for the reasons given in the decision promulgated on the 15<sup>th</sup> of January 2018.
2. The Judge found that the Appellant could be returned to Afghanistan without placing the UK in breach of its international obligations. The Judge did not accept that the Appellant had been forcibly recruited by the Taliban. The Judge found that the account was vague, with inconsistencies and not consistent with background evidence. The judge also found the

Appellant's account of his escape was not credible and that he would not be of interest to the authorities if returned.

3. There are 4 grounds of appeal. The first was in relation to paragraph 25 where the Judge had noted that the Appellant had not made further written representations after his asylum interview, the grounds noting that there was no requirement for him to do so. The second ground argues that in paragraph 26 the Judge was wrong to find against the Appellant on matters that were not put to him, thirdly the Judge had not considered all aspects of the background evidence and in paragraph 29 had not understood that the Appellant's escape was from a camp and not somewhere enclosed. Permission was granted by First-tier Tribunal Judge Hollingworth on the 24<sup>th</sup> of February 2018. The Home Office rule 24 response was dated the 5<sup>th</sup> of April 2018.
4. At the hearing both parties were represented, the submissions are set out in the Record of Proceedings and are referred to where relevant below. At the start of the hearing I raised with the Appellant's representative that the Judge's comments in paragraph 25 were in the form of an observation and were not a finding. The focus of Mr Eaton's submissions was on the nature of the account that the Appellant had given when interviewed and in his witness statement and the Judge's findings in respect of that.
5. In short Mr Eaton submitted that the Appellant's account was consistent with objective evidence given his account of the sympathy of his local tribal elders to the Taliban. References were given for the detail in the Appellant's account relating to his clothing, journey, food, training, weaponry details and the names of others in the camp with him along with the escape. If the Judge had issues he could have asked questions himself. It was submitted that the reasons given for rejecting the Appellant's claimed abduction were not sustainable.
6. For the Home Office it was submitted that there was no error and in the alternative it was not material, there were sustainable alternative findings. Although it was accepted that the Appellant had given details and it was clear why there was a challenge to the finding of vagueness there were discrepancies. It was the Appellant's claim to make out. There was only the Appellant's evidence of the authorities' interest in him and his answer at question 138 in the evidence was vague. It would have to be found that being coerced to train would mean that the authorities would have an interest in him and would come looking for him in Kabul and the evidence does not support that or that the Taliban would seek him there either. The findings in paragraph 32 and 33 could be ring fenced.
7. In reply it was submitted that the Appellant was not speculating in his evidence about the interest that would be shown in him.
8. The observations by the Judge in paragraph 25 that despite the criticisms of the interview the Appellant had not made further representations were simply that, an observation, and not a finding. The fact that the Appellant had taken the opportunity to make representations although his solicitors could have done so could undermine his claims but that appears to have been taken no further and the point made has no relevance.
9. The examples given by Mr Eaton in submissions relating to the details that the Appellant gave in interview and his witness statement suggest that more information had been forthcoming than might have been thought given the Judge criticisms. That however is part of the decision. The Judge considered the Appellant's claims in the alternative and found against him in respect of the Appellant being of interest to the Taliban or the government in Afghanistan.

10. So far as those findings are concerned the Judge's position was different. This involved taking the Appellant's account of recruitment, treatment and escape. Given that it was the Appellant's case that the elders in his home village were Taliban sympathisers it is difficult to see why he would have been informed on for having gone for training and the Judge observed that it could not have been known that the Appellant was at the camp. In paragraph 31 the Judge also referred to differences in the Appellant's evidence and the failure to mention the claimed visit to his uncle's house when interviewed or in his witness statement.
11. Equally the Judge was entitled to find that the Appellant would not be of interest to the Taliban on return to Afghanistan. The reasoning in paragraph 32 including the deaths of those who knew him and the time that the Appellant had spent away from Afghanistan were factors the Judge was entitled to consider. It was open to the Judge to find that the Appellant could safely return to Kabul where his brother lived having found that the Appellant was not of interest to either the government or the Taliban. Accordingly the findings on the alternative basis taking the Appellant's claims about his recruitment, training and escape as the starting point the Judge was entitled to find that he was not at risk and the decision is sustainable.

## **CONCLUSIONS**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 which is continued.

### **Fee Award**

The decision of the First-tier Tribunal dismissed the Appellant's appeal and so could make no fee award, in dismissing the Appellant's appeal to the Upper Tribunal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 8<sup>th</sup> May 2018