



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09350/2019 (R)**

THE IMMIGRATION ACTS

**Remote Hearing by Skype for Decision & Reasons Promulgated
Business
On 10th November 2020** **On 16th November 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**ND
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Fazli, instructed by Sohaib Fatimi Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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.

1. The hearing before me on 10th November 2020 took the form of a remote hearing using skype for business. Neither party objected. The appellant did not join the hearing. Mr Fazli confirmed the appellant is aware of the hearing and he is happy for the hearing to proceed in his absence. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

The Background

2. The appellant is a national of Afghanistan. He claims to have arrived in the UK on 13th November 2017. He claimed asylum on 28th November 2017. The claim was refused by the respondent for reasons set out in a decision dated 17 September 2019. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Aziz for reasons set out in a decision promulgated on 10th December 2019.
3. The matters relied upon by the appellant in support of his claim for international protection are summarised at paragraphs [3] to [5] of the decision of Judge Aziz. The appellant gave evidence at the hearing before the First-tier Tribunal and his evidence is summarised at paragraphs [10] to [38] of the decision. The evidence of the appellant's

brother, who had come to the United Kingdom and made a claim for asylum in 2008, is set out at paragraphs [39] to [43] of the decision. The findings and conclusions of Judge Aziz are set out at paragraph [53] to [79] of his decision.

4. Judge Aziz had noted that the appellant's account of events in 2008 was consistent with the matters previously relied upon by his brother, when his brother had made his claim for international protection in 2008. Judge Aziz also noted that both the appellant and his brother gave consistent evidence regarding events thereafter, and in particular, concerning the circumstances in which the appellant had been able to re-establish contact with his brother. Notwithstanding the conclusion that the appellant's account has been consistent, Judge Aziz stated at paragraph [58], that looking at the claim in the round, he did not find it to be credible. He did not find it credible that some 11 years after the appellant's father had passed away, the Taliban would still have any interest in the appellant, so much so that they would have sought to track the appellant down when the appellant was living in a different part of the country. Judge Aziz found, in the alternative, that if the Taliban had managed to track the appellant down after all those years, it does not make sense that the appellant was not taken by the Taliban straightaway, or punished for lying to them and escaping from them. Judge Aziz noted, at paragraph [60], that the appellant gave two different accounts as to what had happened when the Taliban came looking for him in Puli Khumri, in November 2015. In his asylum interview the appellant claimed that his mother had told the Taliban that the appellant would be of no use to them because he had poor eyesight. In his witness statement he had claimed his mother had pleaded with the Taliban to show compassion because she would be alone. At paragraph [60] Judge Aziz said:

“... Whatever version is put forward, against the backdrop of what has previously occurred, I do not find incredible that the Taliban would have behaved in the manner claimed.”

5. At paragraphs [61] and [62], Judge Aziz addressed the appellant's claim that he had been able to obtain 'three threatening letters' that had been sent by the Taliban along with a petition, to support his claim for international protection with the assistance of his friend who, the appellant claimed, had obtained the documents from the landlord of the house the appellant used to live in, in Puli Khumri. Judge Aziz also addressed the appellant's claim that he had re-established contact with his brother, whilst the appellant was in France at paragraphs [63] to [65] of the decision. At paragraphs [67] to [69], Judge Aziz said:

"67. Looking at all of the evidence in the round, I place greater probative weight on the adverse credibility findings. Taken together, I find that they materially undermine the core elements of the appellant's account which are specific to him and his fear of the Taliban (I accept that a previous Tribunal has made a finding that the appellant's brother has a genuine fear of the Taliban). I have taken into account all of the documentary evidence before arriving at my conclusions. In my global assessment of credibility and applying Tanveer Ahmed [2002] UKIAT 00439 I placed little weight on the documentary evidence relied upon (in particular, the letters from the Taliban). Equally, in light of the adverse credibility findings I place little weight upon the expert report.

68. I accept Mr Corden's submission that the appellant is an economic migrant and that he has been brought to this country with the assistance of his brother. I find that he has been in contact with his brother before he left Afghanistan. Whatever the position may have been at his brother's appeal hearing many years ago, they have since re-established contact (and not in the circumstances outlined by the appellant).

69. This is essentially a fabricated protection claim pieced together out of the factual matrix of his brother's successful 2008 protection claim. Whilst I do not seek to question the earlier Tribunal's findings in respect of the appellant's brother's 2008 protection claim, I find that the facts in relation to this appellant's specific fear of the Taliban have been manufactured and that he has used his brother's protection claim to create a fictitious story of how the Taliban are also interested in him. The protection claim is dismissed on all grounds."

The appeal before me

6. The appellant claims Judge Aziz accepted the appellant's account is consistent with the core of the account relied upon by the appellant's brother in 2008. That is, the appellant's father was a member of the Taliban who had died at the beginning of 2008 fighting for the Taliban

against foreign forces. Following his death, Taliban members had attended at the family home and demanded the appellant's brother go with them to undertake fighter training. The appellant's mother had asked for time to consult their paternal uncle, and the appellant's brother had then been able to flee Afghanistan.

7. The appellant advances three grounds of appeal. First, there is an inadequate consideration of the documents that were relied upon by the appellant. Second, Judge Aziz failed to adequately consider the expert report of Dr Giustozzi that was relied upon by the appellant. Third, Judge Aziz failed to apply the principles set out in Devaseelan and AA (Somalia) v SSHD [2207] EWCA Civ 1040, and the approach that is to be taken when determining the appeal of a person who has relied on the determination of a family member that is relevant to the case under consideration.
8. Permission to appeal was granted by Upper Tribunal Judge Pickup on 17th March 2020.

Ground 1: inadequate consideration of the documentary evidence

9. As to the first ground of appeal, Mr Fazli submits the appellant had relied upon three letters that he claims have been received from the Taliban, that are to be found, with translations, at pages 50 to 55 of the appellant's bundle, and a 'Petition' that is to be found at pages 56 and 57 of the bundle. He submits the documents are very briefly referred to at paragraph [28] of the decision, but Judge Aziz failed to consider that evidence and does not adequately engage with it. He submits that Judge Aziz fails to make any reference to the content of the letters which allege that the appellant reported the Taliban to the government, and, as a result, members of the Taliban were martyred.
10. There is no merit to the first ground. At paragraphs [29] to [36] of his decision Judge Aziz sets out in some detail the appellant's account as to how he has come to be in possession of the documents. The appellant's

evidence was that he had not been aware of the three letters sent by the Taliban when he was in Afghanistan. He claimed in cross examination that he had telephoned a friend, who I shall refer to as [KH], and asked him to get the documents after he received the refusal letter from the respondent in 2019. [KH] had obtained the documents from the landlord of the house they lived in, in Puli Khumri. At paragraph [35] of his decision, Judge Aziz recorded the evidence of the appellant:

“35. He confirmed that he had lost contact with his family after he left Afghanistan in 2016. He was asked how he therefore became aware of the existence of these documents ‘after’ he left Afghanistan if he had lost contact with his family in Afghanistan. The witness replied that he actually told his friend to go back to his home to see if he could find ‘any’ documentation to assist him with his case. The Home Office had said that he had not produced any evidence to assist him in support of his case and he was asking his friend to see if there was any documentary evidence that could be obtained to help him with this case. The documents that had been found had been retained by the landlord of the property.”

11. At paragraphs [61] and [62] of his decision Judge Aziz said:

“61. Appellant’s former landlord retaining documentary evidence from 2016: According to the appellant, he did have his family’s contact details after he fled Afghanistan in January 2016. However, he was never able to speak to his family members as the telephone number was always blocked. After he arrived here in November 2017 (nearly 18 months later), he asked his good friend [KH] to go to the family home to enquire about their whereabouts. The information that he received was that they had left the property. When his protection claim was dismissed by the respondent in September 2019, he again asked [KH] to go round to the property to see if there was any evidence that he could find to assist him with his claim.

62. Firstly, it is somewhat strange that having been aware that his family had left their former home in 2016 or 2017, that he should even make a suggestion that his friend should to (*sic*) return to his former rental residence in late 2019 to see if any documentary evidence could still be found. Secondly, I agree with Mr Corden’s submission that there is no good reason at all why the landlord of the property would still, in November 2019, seek to keep in his possession correspondence from the Taliban from a former tenant that had left the property in 2016.”

12. At paragraph [67] of his decision, Judge Aziz confirms that he has taken into account all of the documentary evidence before arriving at his conclusions and that he could only place little weight on the documentary evidence relied upon (in particular, the letters from the Taliban). In

Tanveer Ahmed v SSHD [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual claimant to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. There were plainly concerns regarding the way in which the appellant had come to know about the documents being relied upon and the circumstances in which they had been obtained and sent to the appellant. In my judgement, it is plain that Judge Aziz considered the documents relied upon in line with the guidance in Tanveer Ahmed and it was open to Judge Aziz, looking at all of the evidence in the round, to conclude that he could only place little weight on the documentary evidence relied upon by the appellant for the reasons set out in the decision.

Ground 2: inadequate consideration of the report of Dr Giustozzi

13. At paragraph [57] of his decision, Judge Aziz noted the reliance placed upon the report of Dr Giustozzi, by the appellant. He noted that the report is favourable to the appellant, but the weight to be attached to the report would depend upon the judge's overall findings as to the appellant's credibility. Mr Fazli referred me to the expert report that is to be found at pages 58 to 99 of the appellant's bundle. In preparing his report, Dr Giustozzi had sight of the determination of Immigration Judge Holt promulgated on 4th March 2009 and documents relevant to the claim for international protection made by the appellant. At paragraph [5] of his report Dr Giustozzi considered the appellant's account that the Taliban tracked him and his mother down in Puli Khumri and forced him to collaborate in their underground operations within the city, by storing their equipment and by allowing them to spend time in the house. He considered that to be common practice among the Taliban, and therefore plausible. Mr Fazli also referred me to paragraph [13] of the report in which Dr Giustozzi expresses the opinion that it is plausible that the Taliban might have been able to track the appellant down across

different provinces. I was also referred to the opinions expressed by Dr Giustozzi at paragraphs [20], [29], [46] and [49] of his report, each of which I have carefully considered. Mr Fazli submits Judge Aziz did not have any proper regard to the expert report when assessing the credibility of the appellant and the risk upon return.

14. The report must however be read in context, and at paragraph [4] of his report, Dr Giustozzi, confirms that with some exceptions, the Taliban as such, do not normally practice forced recruitment. He confirms that interrogation of prisoners by ISAF and his own interviews with village elders have failed to produce any evidence of forced recruitment by the Taliban as an organisation. He identifies the only known cases of the Taliban forcing children to act against the will of their families. At paragraph [5], Dr Giustozzi states that the appellant's case might fall under the exceptions set out in paragraphs 4(e) or 4(f) of his report. They are:

“e. Relatives of Taliban are targeted for recruitment and even if coercion is not normally used in these cases, the Taliban offer financial incentives to recruits and employ psychological pressure; ‘your father was a hero of jihad and you have to join too’, ‘your family always participated in jihad and you have too’ etc. many young men have been brought up in the myth of their fathers or relatives as heroes of the 1980s jihad and are often vulnerable to this type of arguments.

f. The Taliban also reportedly used recruitment threats against members of family suspected of being linked to the government, in order to drive them away from a specific area without having to kill them, or in order to intimidate them into submission.”

15. Although the appellant's claim may, and Dr Giustozzi puts it no higher than that, have been capable of falling under the two categories identified by Dr Giustozzi as exceptions, it was in the end for Judge Aziz to determine whether the appellant's account of the events that led to his departure from Afghanistan was accepted or rejected. The plausibility of the account was not determinative but was one of a package of points that lead Judge Aziz to the conclusion that the appellant's account was not reasonably likely to be true. In reaching his decision Judge Aziz noted at paragraph [59] of his decision that even if

the Taliban had managed to finally track down the appellant after several years, as the appellant claimed, it is surprising that they did not take him away or punish him for lying to them and escaping from them. Judge Aziz noted at paragraph [60] of his decision the inconsistencies in the appellant's account of what had happened when the Taliban came looking for him in Puli Khumri in November 2015. Concerns regarding the documents relied upon by the appellant in support of his claim and, the appellant's account as to how he had re-established contact with his brother are set out at paragraphs [61] to [65] of the decision. In reaching his decision as to the credibility of the appellant, in my judgement Judge Aziz drew together the various strands of the appellant's claim in his analysis. As he properly noted, there was a degree of consistency in the appellant's account, but weighing that against concerns he had expressed, he concluded that the central account presented by the appellant was not reasonably likely to be true. The appellant could not therefore gain any further assistance from the report of Dr Giustozzi. As Judge Aziz said, the report was favourable to the appellant, but the weight to be attached to it, depended upon the findings and conclusions reached as to the credibility of the appellant. As Judge Aziz said at paragraph [67], in light of the adverse credibility findings made by him, he could only place little weight upon the expert's report. That was neither unreasonable nor irrational. I reject the second ground of appeal. The limited reference to the report of Dr Giustozzi does not establish a material error of law in the decision of the First-tier Tribunal.

Ground 3: The previous decision of Immigration Judge Holt and the failure to apply the principle in Devaseelan and to consider the case of AA (Somalia) v SSHD [2007] EWCA Civ 1040

16. Mr Fazli submits Judge Aziz found, at [54], that the appellant had given an account that in material respects is entirely consistent with the account of events in 2008 that had previously given by the appellant's brother and accepted by Immigration Judge Holt in the decision promulgated by the AIT on 4th March 2009. Mr Fazli submits Judge Aziz

should have treated the previous decision of Judge Holt as his starting point and ought to have assessed other aspects of the appellant's evidence, separately to those aspects that had already been accepted previously.

17. In AA (Somalia) v SSHD [2007] EWCA Civ 1040, Lord Justice Carnwath, with whom Lord Justice Ward agreed, held that the guidelines in the case of Devaseelan v SSHD [2003] Imm. A.R. 1, on the weight to be attached in immigration appeals to an earlier finding of fact, also applies to cases where the earlier decision involved different parties but where there was a material overlap of evidence. Here, at paragraph [54] of his decision Judge Aziz confirmed that when one reads through the appellant's brother's 2008 witness statement, it is consistent with some core parts of the appellant's claim. He noted, in particular, that the appellant's father was a member of the Taliban who died fighting for the group in 2008, and the subsequent events leading to the departure of the appellant's brother from Afghanistan.

18. The core of the claim advanced by the appellant's brother is set out at paragraph [11] of the decision of Immigration Judge Holt. It was that their father, who had been a member of the Taliban, had died at the beginning of 2008 fighting for the Taliban against foreign forces. The appellant's brother had claimed that about 15 days after their father's funeral, 4 to 5 Taliban members had attended their home and demanded that the appellant's brother go with them to undertake fighter training with the Taliban. Their mother had asked for time to consult their paternal uncle and the following day, their mother had raised money with the help of their uncle, for the appellant's brother to flee Afghanistan. Immigration Judge Holt accepted as accurate, the evidence of the appellant's brother that he has a personal connection to the Taliban in that his father was a 'martyred' fighter. Judge Holt also accepted as accurate the account that the Taliban singled out the appellant's brother personally for recruitment within about two weeks of their father's death by visiting their mother to ask for him to join them.

19. Although those findings were plainly the starting point, it was the events that occurred following the departure of the appellant's brother that were relied upon by the appellant to support his claim that he would be at risk upon return to Afghanistan. They were matters that all post-date the decision of Immigration Judge Holt and had not been considered previously. Judge Aziz does not in fact depart from the findings previously made. At paragraph [58] of his decision, Judge Aziz stated that even if it were the case that the appellant's father was a member of the Taliban and that it was his late father's desire that his two sons also joined the organisation, he did not find it credible that the Taliban would still have any interest in the appellant many years after the death of his father. At paragraph [60] of his decision, Judge Aziz referred to the inconsistencies in the appellant's account of what had happened when the Taliban came looking for him in Puli Khumri in November 2015. At paragraphs [61] to [65] Judge Aziz addressed the documents relied upon by the appellant that are dated September and October 2016, and the evidence of the appellant and his brother as to how they re-established contact.

20. It is in my judgement quite clear that the judge's analysis did not disregard the previous findings made by Judge Holt. On the contrary, at paragraph [67], Judge Aziz makes it clear that he was concerned about the core elements of the appellant's account which are specific to him, and his fear of the Taliban. Judge Aziz noted and indeed accepted, that a previous Tribunal has made a finding that the appellant's brother has a genuine fear of the Taliban. At paragraph [69], Judge Aziz confirms that he does not seek to question the earlier Tribunal's findings in respect of the appellant's brother's 2008 protection claim. Judge Aziz was not bound to accept the appellant's account of events post-dating 2008, just because a Tribunal had previously accepted the account of events in 2008 advanced by the appellant's brother. At its highest, as Mr Fazli accepts, the findings made by Judge Holt previously, simply support the appellant's claim that there is an established motive for the Taliban to have had an interest in this family. The Taliban may well have had an interest in the appellant's brother in 2008 but that is not to say that the

Taliban would inevitably have had an interest in the appellant many years later.

21. In my judgement, Judge Aziz carefully considered the evidence in the round and it was open to him to find that the claim made by the appellant is essentially a fabricated protection claim pieced together out of the factual matrix of the successful 2008 protection claim made by the appellant's brother, and that the appellant's specific fear of the Taliban has been manufactured using his brother's protection claim to create a fictitious story of how the Taliban are also interested in him. In my judgement there is no merit to the third ground of appeal.
22. The assessment of the risk upon return and credibility is always a highly fact sensitive task. The ingredients of the story, and the story as a whole, have to be considered by reference to the evidence available to the Tribunal. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. Judge Aziz was required to consider the evidence as a whole and in my judgment, he plainly did so, giving adequate reasons for his decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. The decision was one that was open to the judge on the evidence before him and the findings made.
23. It follows that I dismiss the appeal.

Decision:

24. The appeal is dismissed and the decision of First-tier Tribunal Judge Aziz promulgated on 10th December 2019, stands.

Signed **V. Mandalia**

Date: 12th November 2020

Upper Tribunal Judge Mandalia