



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/12472/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 14 August 2020**

**Decision & Reasons Promulgated  
On 18 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**ML  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Sohaib Fatimi Solicitors

For the Respondent: Alain Tan, Specialist Appeals Team

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan who claims to be at risk from the Taliban. He is appealing against a decision of Judge of the First-tier Tribunal Russell (“the judge”) promulgated on 4 February 2020 dismissing his protection and human rights claim.
2. The grounds of appeal are wide ranging and include the contention that the judge failed to adequately consider documentary evidence (ground 1)

and misapplied Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* [\[2002\] UKIAT 00702](#) (ground 3).

3. Permission to appeal was granted by the Upper Tribunal on 11 May 2020. At the same time as granting permission, the provisional view was given that the question of whether the First-tier Tribunal erred could be determined without a hearing.
4. On 9 July 2020 the respondent submitted a response under rule 24 of the Upper Tribunal Procedure Rules stating that it was accepted that the First-tier Tribunal materially erred as identified in grounds 1 and 3. The respondent stated:

“In considering the documents relied upon by the appellant the FTTJ failed to consider the Taliban threat letter and the letter from the police command Nangahar - both were relevant to the claim of being previously threatened by the Taliban and post-dated the Tribunal’s previous decision in 2017.... It is further accepted that the approach taken by the FTTJ did not reflect the correct approach under Devaseelan as set out in the grounds.”
5. In the light of the position of the respondent as set out in rule 24 response, I find that the decision of the First-tier Tribunal should be set aside on the basis that it involved the making of an error on a point of law. As the appeal will need to be considered afresh with no findings preserved, having regard to para. 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, I have decided that the appeal should be remitted to the First-tier Tribunal.

### **Notice of Decision**

- a. The appeal is allowed.
- b. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.

### **Direction Regarding Anonymity**

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.

Signed

Daniel Sheridan

Upper Tribunal Judge Sheridan

Dated: 14 August 2020

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is “sent” is that appearing on the covering letter or covering email**