



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

Appeal Number: AA/00649/2012

**THE IMMIGRATION ACTS**

**Heard at : Sheldon Court  
On : 30<sup>th</sup> July 2013**

**Determination Sent**

**Before**

**Upper Tribunal Judge McKee**

**Between**

**L M A  
(Anonymity Direction Continued)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr Jag Singh of the Specialist Appeals Team

**DETERMINATION AND REASONS**

1. On 21<sup>st</sup> December 2011 a decision was taken to remove the appellant as an illegal entrant, consequent upon the refusal of his asylum claim. An appeal against that decision was lodged with the First-tier Tribunal, and on 27<sup>th</sup> February 2012 it came before Judge Wilbert Harris. The appeal was dismissed, but the Cambridge

Immigration Legal Centre, to whom the appellant now turned for help, identified such glaring errors in the judge's determination that Judge Plumtre readily granted permission to appeal to the Upper Tribunal. Unfortunately, it was not until 22<sup>nd</sup> January 2013 that the Upper Tribunal issued a 'Decision and Directions' setting aside the first-instance determination. It should have been possible for Upper Tribunal Judge Taylor to proceed on the same day (actually the hearing was on 24<sup>th</sup> September 2012) and re-make the decision on the appeal, but a Pushtu interpreter was not available, and so the hearing had to be adjourned.

2. It seems to me that Judge Harris failed completely to carry out the judicial task required of him. He set out almost in their entirety the contents of the 'Reasons for Refusal' Letter (except for a passage which seems to have been 'cut and pasted' from elsewhere, and which refers to the appellant entering the UK with a visit visa, when in fact he entered clandestinely). Only two paragraphs out of the 56 in the determination contain any findings by the judge, and those findings are completely vitiated by misapprehension of the appellant's account and by the absence of any reasons. The judge supposes that the appellant has been detained and tortured by the police, which is no part of his account, and also thinks that the police have issued a warrant for his arrest and have been going to various places in search of him, which again is no part of the appellant's account. Judge Harris even reverses the standard of proof, when he says that "*there are substantial grounds for believing that, if the Appellant is returned to Afghanistan, he would not face a real risk ...*"
3. The 'second stage' of the Upper Tribunal process, i.e. the re-making of the decision on the appeal, has been delayed by subsequent listings which were then adjourned. In response to a notice of hearing for 8<sup>th</sup> July 2013, posted to the appellant and to the Cambridge Immigration Legal Centre on 21<sup>st</sup> May, the representatives sent a letter on 1<sup>st</sup> July, saying that they were without instructions. Their client had not replied to letters which they had sent to him by Special Delivery, and they had been unable to contact him. They accordingly wished to come off the record.
4. Notice of today's hearing was sent to the appellant by first class post on 2<sup>nd</sup> July, to the same address in Peterborough as has been used for correspondence since the present appeal was lodged at the beginning of 2012. The notice has not been returned undelivered, but there was no attendance by or on behalf of the appellant today. In accordance with rule 38 of the Upper Tribunal Procedure Rules 2008, I was satisfied that it was in the interests of justice to proceed in the absence of a party.
5. I heard submissions from Mr Singh, who pointed out that, at paragraphs 28-29 of the Reasons for Refusal Letter, cogent reasons were given for not believing the core of the appellant's claim. The appellant bases his fear of return on an incident which took place some ten or twelve days before he left Afghanistan in 2008. Some Taliban fighters called at the family home in Logar, seeking help for a wounded comrade, but the appellant's father refused to let them in. Then the police arrived, and there was a shoot-out. The appellant left the house by the back door, and went to stay at his uncle's house, which was in walking distance. His uncle assisted him to leave the country, because the Taliban were accusing him of helping the police, while the police suspected him of helping the Taliban.

6. This story is rejected by the author of the refusal letter. There was no reason for the Taliban to blame the appellant, when it was his father who had refused to help them. The Taliban could not have supposed that the appellant summoned the police, who had arrived shortly afterwards, as there was no land line in the house, and mobile telephones do not work in that mountainous district. If the Taliban had really wanted to get the appellant, they could have got him during the ten or twelve days when he was residing at his uncle's house nearby, or when he went home to say goodbye to his family. No harm had befallen the appellant's family since he left, which was inconsistent with Taliban practice when someone betrays them. Nor had the police taken any adverse interest in the appellant's family. I might add that ten or twelve days would be too short a time to organise from scratch and fund a journey to the other side of the world.
  
7. The above reasons are good enough for the appellant's asylum claim to be rejected on credibility grounds. But as Mr Singh adds, even if the appellant were at risk from the local Taliban in his home area, he would not be hunted down elsewhere in the country, and could reasonably be expected to relocate to, for example, Kabul. He is a fit young man of 29 who has shown enough contrivance to keep body and soul together on a year-long journey from Afghanistan to England. He could certainly do likewise in a country where he knows the language and the customs.

### **DECISION**

The appeal is dismissed.

The direction for anonymity made by the First-tier Tribunal is continued.

Richard McKee  
Judge of the Upper Tribunal

30<sup>th</sup> July 2013