



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
AA/13796/2010

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> May 2014**

**Determination  
Promulgated**

.....

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
HARRIES**

**Between**

**MR QUDRADULLAH SAHARI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms N Nnamani

For the Respondent: Mr P Della, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant and Proceedings**

1. The appellant was born on 13<sup>th</sup> March 1994 and is a national of Afghanistan. He appealed on 14<sup>th</sup> October 2013 before First-tier Tribunal Judge Elek (the Judge) against the decisions of the respondent to refuse

to vary his leave to remain in the United Kingdom and to remove him to Afghanistan. Permission to appeal against the Judge's decision to the Upper Tribunal was refused by First-tier Tribunal Judge Ford on 20<sup>th</sup> November 2013. He found that it was not arguable that the Judge erred by failing to give proper consideration to the appellant's profile when considering the reasonableness of the appellant's re-location to Kabul. He gave the following reasons which set out the relevant background:

The appellant's profile is that he is the son of a military officer whose mother was forced to marry a Taliban leader after the appellant's father disappeared. Judge Elek accepted that the appellant was at real risk of persecution in his home area and that the state could not afford him protection there. Judge Elek gave full and thorough consideration to the appellant's circumstances and background in the context of the current situation in Kabul and found that it was reasonable to expect the appellant to re-locate there. He considered the appellant's age and the fact he had a contact in Kabul who, the appellant had stated, knew his parents and was from his village and now works for a human rights organisation in Kabul. There is no identifiable material error of law in the approach to re-location.

It is not arguable that Judge Elek should have considered the respondent's duty to trace the appellant's family given his age, failure to co-operate and his evidence about his uncle and his mother. Judge Elek gave proper consideration to the recent case of EU & Ors 2013 EWCA Civ 32 in this regard.

The appellant argues that Judge Elek engaged in speculation that a letter on Ministry of Justice letter head was from the Ministry of Justice. The appellant himself speculates that the Ministry of Justice letterhead was in fact an indication that the document had been notarised. The appellant did not provide a proper certified translation of the document at the hearing and has still not done so. There is no arguable error of law.

2. The appellant successfully renewed his application for permission to appeal in the Upper Tribunal. On 11<sup>th</sup> December 2013 Upper Tribunal Judge Eshun granted permission in the following terms:

The grounds focus on the judge's finding at para 26 in respect of a letter purporting to be on the headed paper of the Ministry of Justice in Kabul, which the appellant said he received in September 2011. As the letter was not officially translated into English by the appellant's solicitors, the Judge took the unprecedented step of allowing the appellant to read the letter in Pushto with an oral translation by the court interpreter. The grounds argue that the judge speculated that the letter was in fact from the Ministry of Justice. I agree with FtTJ Ford who earlier refused permission that the appellant/grounds also speculated that the letterhead was in fact an indication that the document had been notarised. The resolution of this conflict goes to the issue of whether the appellant is able to safely relocate to Kabul.

In order to resolve this issue I direct that the appellant's solicitors commission an English translation of the said letter and submit it to the UT and a copy to the respondent 7 days before the hearing.

It is arguable that in refusing the earlier application, FtJ Ford introduced a new issue, namely the appellant's failure to co-operate with the respondent in tracing his family.

3. The matter accordingly came before me to determine whether the making of the decision in the First-tier tribunal involved the making of an error on a point of law.

### Background Information

4. The core finding of the Judge in issue is contained at paragraph 33 of her determination where she states that after a careful consideration of the background information and the profile of the appellant that it would not be unreasonable for him to be returned to Kabul. At paragraph 29 of the determination the Judge stated that: "most significantly it is apparent from the correspondence presented to the court that the appellant does have contacts in Kabul which he has already put to good use". At paragraph 30 of the determination the Judge stated that she had already found that the appellant had been able to access support as evidenced in his own statement regarding his friend Hamid and Hamid's father, as well as the letter produced to the court from the Ministry of justice.
5. The paragraph of the determination dealing with the letter is at number 26 as follows:

26. .... He (*the appellant*)....stated that he has a close friend Hamid who lives in London and Hamid's father knows his uncle Lagber and in around August 2011 he spoke to Hamid and told him that he has a problem whenever he tried to contact his uncle. Hamid told him he would ask his father to try to contact the appellant's uncle and find out about his family. Hamid's father went to the uncle's house to ask for information, who told him that he could not help the appellant because he was afraid of the Taliban. Hamid's father then went to see Mr Gholam Sarvar who works for a human rights organisation in Afghanistan; "Gholam is from my village and knew my father and mother. Gholam has written a letter confirming that my mother was forced to marry the Taliban commander and that the Taliban took my mother and siblings to a private place." He received the letter in September 2011 and he believed he had included it in his appeal bundle. It was not included with a translation. However the letter was identified and the appellant read it out in Pashtu and the interpreter told the court what is said in English. Of particular note was the heading on what was clearly headed paper. The court was told that the heading was the Ministry of Justice. I accept that the letter came from the Ministry of Justice in Kabul. What is apparent from this letter is that the appellant clearly has contacts and friends in Afghanistan, which is consistent with his evidence that his family was well-regarded in their community. He has a friend who contacted his own father, who approached a friend, who wrote for him a letter on the headed paper of the Ministry of Justice in Kabul.

### My Consideration of the Issues and Submissions

6. The appellant's ground of appeal is that the Judge has picked on one small aspect of the case, namely the heading of the letter with the words "Ministry of Justice" and has speculated to build a whole edifice of assertions concluding, in error, that the appellant has contacts in Kabul to provide protection for him. It is asserted that it is speculation and not fact that there is such protection.
7. In accordance with the direction of Upper Tribunal Judge Eshun the letter in question has now been translated. The translation shows a heading on the letter of "Islamic Republic of Afghanistan Ministry of Justice". It is from Mr Gholam Sarwar and the content is as set out in paragraph 26 above; Mr Sarwar signs the letter as: "Head (representative) of the Machalghoo village".
8. The respondent indicated opposition to the appeal under Rules 24 on the grounds that the Judge is submitted to have appropriately directed herself; she drew conclusions from the letter which were open to her to make. It is further submitted that, with respect the Upper Tribunal, it is for the appellant to provide evidence to support his case, including translated documents, and not for the Tribunal to direct such evidence to be obtained. The tracing issue is submitted to have been considered and dealt with at length by the Court of Appeal in EU & Ors [2013] EWCA Civ 32.
9. Ms Nnamani submitted to me for the respondent that in relation to the tracing issue that Judge has been dismissive and she submitted that the issue of age remains relevant to the issue of risk on return. I find no error disclosed by the Judge's approach to either issue. At paragraph 16 of her determination the Judge took on board the observations of the Upper Tribunal about that the provisions applying to the assessment of the evidence of a child and she was mindful of these in assessing the evidence. The Judge took account of the lower age assessment for the appellant.
10. I find no error on the part of the Judge in finding, at paragraphs 24 and 25 of the determination, that any failure of the respondent's duty to trace was irrelevant in the light of the appellant's now undisputed age of over 17 years and therefore an adult in accordance with the case of EU & Ors [2013] EWCA Civ 32. I consider that the case of EU was directly relevant to the issue before the Judge and she has considered and appropriately applied the case law.
11. Ms Nnamani submitted to me for the appellant that the speculation of the judge arising from the letter includes the findings that the letter came from the Ministry of Justice and that it came from Kabul from a person working for the Ministry of Justice. The letter is submitted not to show those features and not to be capable of showing that there is protection for the appellant in Kabul.

12. I do not accept the submission that the Judge's findings flowing from her consideration of the letter and its content are unsustainable. The letter does not explicitly come from Kabul but the appellant's evidence in his statement dated 5<sup>th</sup> March 2013, at paragraph 8, is that the author of the letter, Mr Gholam Sarvar, works for a human rights organisation in Kabul. In these circumstances I find that the Judge did not reach conclusions which were not reasonably open to her. The letter is not the sole basis on which the Judge determines that the appellant can safely be returned to Kabul. I am satisfied that taking the determination as a whole the Judge undertook an appropriate, relevant and sufficient assessment of the appellant's situation on return to Kabul. At paragraphs 27 and 28 she considered his particular situation in the context of background country information.
13. Aside from the letter, the Judge took account in paragraph 34 of her determination that the appellant spent the first 15 years of his life in Kabul, he speaks the language of Afghanistan and understands the culture; he is from a well-educated family and returns with additional skills and education acquired in the United Kingdom. The Judge concluded that the appellant would be able to find his own ethnic group in Kabul; she found that the appellant had confidence and assurance and was not a target for the Taliban in Kabul. These findings are not without reference to the letter but are not exclusively based upon the letter, as opposed to country information also taken into account by the Judge.
14. Looking at the totality of the Judge's determination I am satisfied that she has reached sustainable conclusions which are properly supported with reasons. I find that she has not reached findings which were not reasonably open to her on the evidence before her.

### Decision

15. I find that the making of the decision in the First-tier Tribunal did not involve the making of a material error on a point of law and it follows that the Judge's decision stands and this appeal to the Upper Tribunal is dismissed.

### 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. In the absence of any application I find nothing to show such an order to be necessary.

Signed

J Harries

Deputy Upper Tribunal Judge  
Dated 20<sup>th</sup> June 2014