



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

Appeal Number: AA/01159/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 October 2015**

**Decision and Reasons Promulgated  
On 8 October 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**Mr ZABI NIAZI  
(anonymity direction not made)**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr A Saleem, Solicitor

For the respondent: Mr E Tufan, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Afghanistan born on 1 January 1990, appeals to the Upper Tribunal against the decision of the First-tier Tribunal Judge Sweet dated 23 June 2015 to refuse his appeal against the decision of the respondent dated 23 January 2015 to refuse to grant the appellant asylum and humanitarian protection in the United Kingdom.

2. At the hearing, the representatives of the parties presented submissions on whether the determination of Immigration Judge Sweet involved the making of a material error on a point of law.
3. On behalf of the appellant, Mr Saleem adopted his grounds of appeal. He submitted that the Judge did not take into account all the evidence in the appeal in reaching his decision. The determination does not refer, to much of the evidence which was in the bundle of documents, before the previous Judge.
4. The Judge failed to take into account the following documentary evidence. Pages 1-8 of the profile of Basir Salangi, the Governor of Parwan Province and Haji Almas MP a businessman of the same province who the appellant claims to fear in Afghanistan. The remaining pages 15 to 17 where the insecurity throughout the country and the Taliban increase in power is documented. Pages 47-72 of the UNHCR guidelines on pages 71-72 about businessmen and their family members form a specific social group. Page 32 where it is stated officials and commanders whose forces have a history of abuse, typically go unpunished. Pages 74-75 where there was a recommendation against sending particularly vulnerable people back to Pakistan. Part B pages 76 to 230 which was submitted pre-decision and is included in the Home Office bundle of documents.
5. Pages 77 to 95 which has passport copies of the family members. In pages 98 to 112, he failed to take into account the vehicle lease agreement between the appellant's father and East Logistics Company. At pages 113-2187, he did not take into account the medical records of Zubair which supports the consistency of the account that the appellant received medical treatment in Pakistan, India because of torture. Pages 118-230 of the medical records of the appellant's mother who was ill and who the appellant had to visit in Afghanistan. At page 192, it specifically refers to the brothers kidnapping leading to depression. Page 202 refers to the kidnapping of his brother. Page 62 in the statement of the appellant's father and documents relating to the paternal uncle's death at page 66-77. Also the threatening telephone calls from the kidnappers of his uncle. The newspaper article at page 78-82 in regards to the appellant's brother's kidnapping.
6. Had the Judge taken all this into account, he would have reached a different conclusion. The appellant's maternal cousin worked for the coalition forces and therefore his family members were targeted as a result.
7. The evidence of the appellant's brother who was due to receive medical treatment in the United Kingdom in 2010 but his visa was not issued even though his appeal was allowed.
8. Mr Saleem further submitted that the Judge did not made findings on a fundamental limb of the appellant's claim in accordance with **AF warlords**. He submitted that the appellant's father is a wealthy

businessman and whether he sent his son a small amount of money or a large amount of money, is not material to the decision.

9. In the 16 November 2010 decision by the First-tier Judge, (the appellant's father's visa appeal determination) this issue were dealt with and it was found by the Judge that the appellant's father will return to Pakistan because he is wealthy. He also found that the appellant's brother was kidnapped and there was sufficient objective evidence provided in the bundles of documents. The Judge did not refer to any of this evidence.
10. On behalf of the respondent, Tufan submitted as follows. There is no material error of law in the determination. The case of **AF** is not raised in the grounds of appeal and MPs cannot be characterised as warlords even if linked to them. The Judge cited the evidence and found it not to be credible and gave sufficient reasons for his findings. Even if the appellant's father is wealthy that does not mean he would be at risk because not all wealthy people are at risk in Afghanistan. In the 2010 determination for a the appellant's father's visitor visa application, the Judge found that there were sufficient funds for the appellant's father's holiday and that he would go back. It made no definitive findings about the level of his father's wealth. If the appellant's father is wealthy no reason has been given for why the appellant was living in squalor when there were plenty of funds for the appellant's for him to live in comfort on his journey to the United Kingdom. The FIR which was produced in Pakistan has nothing to do with Afghanistan. The appellant lived in Pakistan for three years. The Judge properly considered the issue of internal relocation. The case of **Devasleen** does not apply to the determination by the Judge in his 2010 determination which was in any event was an appeal against a refusal of a visitor's visa for the appellant's father.
11. Mr Saleem replied that **AF warlords** relates to people in power as much as it does to warlords. This should have been taken into account which it was not. In the case of **ZN** which was after the case of **AF**, this was reinforced. The appellant's father had links with the United States Company and therefore a western government. Extremely wealthy people are considered to be a social group as found in the case of **AK**. The appellant lived in Pakistan for three years and as a result of his problems in that country, he came to the United Kingdom. There have been inadequate and sufficient reasons given to dismiss the appellant's appeal. The determination of 2010 in respect of the appellant's father's appeal for a visitor's Visa application, should be considered, even if it is not binding.

### **Decision as to whether there is an error of law in the determination**

12. I have given anxious scrutiny to the determination of Immigration Judge Sweet. He concluded that he did not find the appellant credible or his claim credible and dismissed his appeal. The appellant's quarrel with the determination is that there was a lack of adequate reasoning for rejecting the appellant's credibility and a lack of findings on relevant evidence placed before the Judge.

13. The Judge gave the following reasons in his determination in rejecting the appellant's credibility and his claim.
14. At paragraph 56, the Judge stated "I have not found the appellant's account to be credible. There is no evidence that he himself was at risk while living in Afghanistan/Pakistan. Furthermore if he was at such a risk, there was no satisfactory explanation as to why he sought asylum in France in August 2010 and yet did not await the outcome of his asylum application but instead return to Afghanistan. Furthermore his decision to return to Afghanistan in December 2010, albeit for a short time before going to Pakistan (where he resided for nearly another three years) is incredible in the context of his claimed fear from the Taliban. The appellant also has not satisfactorily explained why he stayed in Pakistan then for nearly 3 years, before returning to the United Kingdom via Germany and France, using a false Italian passport, and claiming asylum in the United Kingdom in November 2013. If he was truly at risk, surely he would have remained in France and awaited the outcome of his asylum claim."
15. Paragraph 57 "I do not place much weight of the discrepancies in the spelling of his brother's names in the medical reports, not in the various ages given by his mother to her doctors. It is significant that the FIR referred to above relate to Pakistan and not to Afghanistan. It is to Afghanistan where the appellant would be removed. There is sufficient evidence of his ability to be relocated in that country and obtain protection, as set out in the refusal letter. For all these reasons his asylum claim does not succeed in his claim under Articles 2 and 3 likewise."
16. Paragraph 59 "nor do I consider that any claim for humanitarian protection can succeed, because there is no real risk of the appellant suffering serious harm on return and there is sufficiency of protection (and the ability to relocate) in that country".
17. It is argued on behalf of the appellant that these are not adequate reasons because swathes of evidence provided was not taken into account by the Judge which I have set out above. Mr Saleem brought to my attention the bundle of documents which he claims is evidence which was not taken into account by the Judge in reaching his decision.
18. Mr Saleem's submissions are not entirely without merit. The Judge dismissed the appellant's claim in five paragraphs of reasoning. While I accept that the Judge did not set out all the evidence before him but that does not necessarily mean that he did not consider it before reaching his decision.
19. The main reasons given for not finding the appellant's claim credible and upon which much emphasis was placed was on the fact that the appellant after having claimed asylum in France, did not wait for the outcome but returned to Afghanistan in order to see his mother who he claims was not well.

20. This is a sustainable finding because if the appellant was truly at risk in Afghanistan, he would not have left a safe country, France, where he had claimed asylum and instead return to Afghanistan, however ill his mother was. The appellant must have realised that his decision to leave the country to seek asylum in France would inevitably lead to him being separated from his family. This is a cogent reason for the Judge to find that the appellant was not credible and also his claim that he fears returning to Afghanistan is not credible.
21. The other reason given by the Judge for not finding the appellant credible, was that the appellant lived in Pakistan for nearly 3 years after he returned from France, even though he claimed he was in fear of the Taliban. The Judge took into account that the appellant returned to the United Kingdom from Pakistan using a false Italian passport. The Judge found that if the appellant was genuinely at risk in Afghanistan and Pakistan, he would not have been able to live there for three years without incident. This is also a cogent reason given by the Judge for why he did not find the appellant credible or his claim credible.
22. The Judge found that it was not credible that the appellant would live in squalor if his father was a very rich man, as claimed by the appellant and yet he was given very little money for his journey to the United Kingdom. The evidence was that the appellant's father sent him €300-€400 over a period of four months which is clearly not sufficient for the appellant to live on. Although it was argued on behalf of the appellant that whether the appellant was given a small amount of money or a large amount of money it was not relevant. I disagree because I find that this is highly relevant to the appellant's claim that his father is a very rich man in Afghanistan which puts his children at risk. The appellant in his statement said that it was enough for his needs but this still does not explain why a rich man with a huge contract with the United States of America, earning a substantial amount of money would allow his son to live in squalor when he could have lived comfortably. This is a credible finding.
23. The Judge took into account that the 2010 determination in respect of the appellant's father's appeal for a visitor's visa. Mr Saleem accepted that the decision was not binding but said that it should be taken into account. The appellant's father's appeal was against the refusal of his visitor's visa application. The Judge did not place reliance on the 2010 determination of the appellant's father because the issues were different. The Judge in 2010 found that the appellant's father had sufficient funds for his visit and return to Afghanistan. This finding does not, in itself say, that the appellant's father is a very rich man. Similarly, the 2010 determination did not consider and evaluate the evidence as to whether the appellant's brother was kidnapped because it had no bearing on the criteria to be satisfied in the visa application. It was accepted, very sensibly, by Mr Saleem that this is not a binding determination on the Judge who heard the appellant's appeal.

24. The question I now have to ask myself is whether these reasons given by the Judge were sufficient to dismiss the appellant's claim. The Judge was entitled to find that the appellant would not have returned to Afghanistan if he was genuinely in fear. The Judge was also entitled to find that the appellant returned to Afghanistan even before he knew the outcome of his asylum claim in France. Mr Saleem argued at the hearing that it was an emotional decision because his mother was not well and that in any event he spent a very short time in Afghanistan before going to Pakistan. This makes it even more incredible that the appellant would return to Afghanistan, only for a few hours and put himself in danger when he was in a safe country awaiting the outcome of his asylum appeal. This also does not explain the appellant's objective in visiting his mother for only a few hours only to go on to Pakistan, when he could not have seen his mother in any event.
25. The Judge was also entitled to find that the appellant lived in Pakistan for three years which is not credible given his claim that he is in fear of the Taliban. The Judge found that the appellant then left Pakistan three years later and entered to the United Kingdom with a forged Italian passport and claimed asylum in this country. The Judge was entitled to find that this is not the profile of a genuine asylum seeker.
26. I have considered all the documents Mr Saleem very kindly availed me of at the hearing which were also before the Judge. I have looked at the pages that I have referred to and I find all this evidence still does not take away from the reasoning of the Judge for why he did not find the appellant credible. I find that no other Tribunal Judge would reach a different conclusion, on the evidence.
27. Ultimately, I find that the Judge was entitled to reach the credibility conclusions that he did about the appellant and his claim. Even if he did not refer to all the evidence in his determination, it is clear from the determination, his reasons for not finding the appellant or his claim credible is in impeachable. There is no reason to suspect that he did not consider all the evidence in this appeal.
28. I find that no error of law has been established in the First-tier Tribunal Judge's Sweet's determination. I accordingly uphold that determination.

## **Decision**

I **uphold** the decision

I **dismiss** the appellant's appeal

Dated this 5<sup>th</sup> day of October 2015

Signed by,

Mrs S Chana

A Deputy Judge of the Upper Tribunal