



IAC-PE-SW-V1

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

Appeal Number: AA/05285/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 3rd September 2015**

**Decision & Reasons Promulgated
On 16th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR HAROON FAIZI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown of Counsel

For the Respondent: Miss Johnstone

DECISION AND REASONS

Introduction

1. The Appellant born on 13th December 1982 is a citizen of Afghanistan. The Appellant who was present was represented by Mr Brown of Counsel. The Respondent was represented by Miss Johnstone, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for asylum and that application had been refused by the Respondent on 16th June 2014. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Birrell sitting at Manchester on 30th October 2014. The judge had dismissed his appeal on all grounds. The Appellant had appealed that decision by application dated 25th November 2014. Permission to appeal had been granted by First-tier Tribunal Judge Cheales on 10th December 2014 on the grounds that an arguable error of law had been made in that the judge had not considered the effect of the Appellant's additional profile when looking at risk on return from the Taliban.
3. Directions were issued for the Upper Tribunal firstly to decide whether or not an error of law had been made by the First-tier Tribunal. The matter comes before me in accordance with those directions.

Submissions on behalf of the Appellant

4. Mr Brown submitted in line with the Grounds of Appeal that he had prepared accompanying the application. It was submitted that the judge had erred in assessing the risk to the Appellant as merely being a low level collaborator in that the judge had failed to also take into account in the assessment the finding that the Appellant had acted as an informant against the Taliban.

Submissions on behalf of the Respondent

5. Miss Johnstone submitted that the findings at paragraph 44 that the Appellant was a low level collaborator were views that she was entitled to reach and there was no error of law.
6. At the conclusion of the hearing I reserved my decision to consider the submissions raised.

Decision and Reasons

7. The judge in this case had provided a detailed decision in which she had set out the facts of the case and submissions raised. She had also set out at paragraph 29 the case of **H and B v the United Kingdom** ECTHR which related to low level collaborators. She had also at paragraphs 30 and 31 considered a report dated September 2011 and the Operational Guidance Note dated June 2013.
8. In terms of the Appellant's account the judge had gone through that in some detail at paragraphs 33 to 48 of the decision. It is also noteworthy that the Appellant's brother had separately made a claim for asylum based on very similar background and personal matters that related to this Appellant. The judge had noted that the Appellant's brother's claim for asylum had been dismissed on appeal, that decision had not been appealed and the brother had been removed. However the judge properly found it was necessary for her separately to consider this Appellant's case

for reasons provided at paragraph 38 of the decision. That was both a fair and legally correct approach for the judge to have taken.

9. She found that the Appellant's account was essentially credible. In summary she accepted that the Appellant worked as an interpreter at the British Embassy in Kabul. She further accepted that the Appellant and his family were instrumental in the arrests and imprisonment of neighbours who were involved in a rocket attack by the Taliban. She accepted that as a result of the Appellant and his family providing that information the Appellant had received two letters from the Taliban dated 29th August 2008 and 2nd April 2011 indicating the Taliban were aware the Appellant had reported those individuals to the authorities. She did not accept that there had been a number threatening phone calls between those letters and regarded that part of the claim as an embellishment (paragraph 43). In summary therefore the judge found the Appellant had had no direct or indirect contact from the Taliban between the dates of the two letters namely 2008 and 2011 although he continued to work at the British Embassy and did not change his home address. She further noted that he continued to work at the embassy and live at the same address in Kabul following the threatening letter of April 2011 until he left Afghanistan in July 2011. It was also a finding made that members of the Appellant's family who remained in Afghanistan have had no problems from the Taliban.
10. It is perhaps a little regrettable that there is no recent country guidance case regarding interpreters or other such groups or even any policy or guidance note particularly in the light of the involvement of British Forces in Afghanistan and their relatively recent removal and the changing circumstances within Afghanistan. Reliance on a case from Europe such as **H and B** that is somewhat dated and an Operational Guidance Note of June 2013 is not necessarily the best assistance for the judge.
11. The position of interpreters in Afghanistan has been in the public domain of late. However the reports appear to relate to interpreters who were acting for and embedded with the British Forces. The Appellant is in a different position. The Appellant acted as an interpreter at the British Embassy in Kabul. One imagines that there are a number of Afghani nationals acting as interpreters in a variety of embassies in Kabul. It would be a reasonable presumption to suggest that there have been Afghanis acting as interpreters within embassies in the capital for many years and no doubt the same applies in embassies throughout the world and is part of the international diplomatic picture.
12. It may be the case that the Taliban would be less favourably disposed to an interpreter working at the British or American Embassy as opposed to an interpreter working at the embassy of another Muslim country. The judge had noted in the case law and background material provided that such interpreters could be regarded as low level collaborators but the material does not seem to focus on the diplomatic world. The case of **H and B** referred in large part to the Landinfo report. That report made reference to the Taliban for bidding any kind of collaboration with the government and particularly with foreign troops including of an economic nature.

There was reference to western aid agencies. The Operational Guidance Note of June 2013 referred to Afghans working for international organisations, companies and NGOs. Specifically there was a reference to the United Nations. Accordingly whilst interpreters working within the diplomatic community within embassies does not appear to have specifically been the focus of those reports the judge was nevertheless correct and entitled to regard his work within the British Embassy as meaning the Taliban would regard him as a low level collaborator. In that respect the case law and background material that was before the judge indicated that those regarded as such within Kabul would be at low risk firstly because the Taliban appear to devote their limited aspects in the cities to high profile targets and secondly did not appear to have the motivation or the ability to pursue low level collaborators in Kabul particularly those who had given up such work.

13. The question is whether the judge made a material error of law in not raising the risk threshold of the Appellant sufficiently high to bring him within the terms of the Geneva Convention or the ECHR because of his accepted role on one occasion as an informant.
14. The judge was plainly aware of this aspect of the Appellant's case and indeed it had been instrumental in the findings that she had made between paragraphs 33 and 45. In terms of those findings however the judge had noted at paragraph 34 that it was not just himself but his family who were instrumental in the arrest and imprisonment of neighbours who were involved in a rocket attack by the Taliban (paragraph 34). The judge had further noted that the initial letter received by the Appellant from the Taliban in August 2008 indicated they were aware of his role as the informant. However she had noted that the Appellant had continued to work at the embassy and live at his home address in Kabul for a period of over three years from the date of that initial letter until he left Afghanistan. She further noted that he had family who remained in Afghanistan who had not been troubled by the Taliban despite the fact that it appeared the information given to the authorities was done not just by the Appellant but other members of his family. In this respect the Appellant's brother's claim was his involvement in such activity and that claim had been dismissed and indeed he appears to have been returned to Afghanistan. It is clear therefore that in assessing risk on return the judge had firmly in her mind the two aspects of the Appellant's case namely his work as an interpreter and secondly the role he and his family played in providing information against the Taliban. In respect of the first matter the judge was largely guided by the case law and country material and made a finding not inconsistent with that material that the Appellant would be potentially regarded as a low level collaborator. However in line with the material it was found that that did not present a reasonable likelihood of risk firstly because such individuals did not appear to be the focus of targeting and secondly because the Appellant had left that job. In terms of the second matter which is of course more personal to the Appellant's own circumstances the judge was entitled to look at the reasonably lengthy period of time the Appellant had remained in Afghanistan both at the same work and home address without incident. She was entitled to look at the situation of his family who had also been involved in the provision of information. She was entitled to conclude as she did at paragraphs 44 and 45 in respect of the two

separate matters that although the Appellant may have a profile it was not at such a level that demonstrated any reasonable risk on return perhaps best exemplified by the fact that despite a not inconsiderable time and opportunity nothing untoward had occurred to the Appellant or indeed his family.

15. That was a conclusion the judge was entitled to reach and was a reasonable conclusion based on the evidence and material before her and discloses no material error of law.

Notice of Decision

16. I do not find a material error of law was made by the judge in this case and I uphold the decision of the First-tier Tribunal.
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever