



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

Appeal Number: AA/07015/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
On 8 April 2015**

**Determination issued
On 13 April 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

FARHAD AHMADZAI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D Ruddy, of Jain, Neil & Ruddy, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Balloch, dismissing on all available grounds his appeal against refusal of further leave to remain.
2. Pages and paragraphs 1-4 of the grounds are directed against the adverse credibility findings, which are mainly relevant to the Refugee Convention outcome. Paragraph 5 argues that the appellant should have been found to be in an enhanced risk category so as to qualify for humanitarian

protection. Paragraph 6 alleges error in the finding about contact with family members in Afghanistan, although to no clear effect. Paragraph 7 is directed against the Article 8 conclusions. Paragraph 8 is winding up.

3. The respondent's response to the grant of permission submits that although the grounds are lengthy, thorough and detailed they amount to no more than a quarrel with findings of fact which disclose no legal error.
4. Ground 1 says that the judge erred in relating background information about Taliban actions to the appellant's case, and did not sufficiently take into account his explanations. Ground 2 complains of lack of fair notice of the judge founding partly on the late production of 3 letters allegedly from the Taliban. Mr Ruddy acknowledged that the appellant did not offer any further evidence to explain late production, and that grounds 1 and 2 would not by themselves be enough to set the determination aside.
5. The principal submission for the appellant arose from grounds 3 and 4. The judge based her decision above all on the timing of production of the letters, H19-24 of the Home Office bundle. The first and second letters threaten the appellant's uncle with death if he does not hand over his nephew. The third bears to have been attached to his uncle's body when he was killed for sending the appellant away, and for failing to produce him for jihad. Mr Ruddy said that on unravelling the determination it gave no good reason to find the letters not to be genuine, other than timing, as to which the determination was misconceived, and that although the determination said that consideration was given to the content of the letters, there was no such consideration. The judge accepted that the respondent's point (refusal letter paragraph 24) about a letter pre-dating the death it referred to arose only from a typographical error in a solicitors' letter. The respondent said in the same paragraph that the appellant did not provide evidence to confirm his uncle's death, but the Taliban letter was such evidence. The judge failed to appreciate that she had disposed of the respondent's reasons for disregarding the letters. These errors justified a rehearing.
6. Ground 5 argues that the judge made findings sufficient for the appellant to fall into an enhanced risk category and to qualify for humanitarian protection in terms of paragraphs 86(i), 208 and 209 of *AK* [2012] UKUT 00163, on account of his father's work for the government and his own interest to the Taliban. Mr Ruddy said that paragraph 45 of the determination finds the appellant's account not inherently implausible and should have led at paragraph 58 to success in that branch of the case.
7. Mr Ruddy said there had been evidence of the appellant's difficulties in contacting his family in Afghanistan, and there were other factors in his favour regarding Article 8. However, he did not stress grounds 6 and 7.
8. Mrs O'Brien said that the appellant knew from the refusal letter that the letters were not accepted as genuine and was not taken by surprise. The key to the adverse credibility finding was the timing of emergence of

evidence but that is a sound reason in various ways. It took an inexplicably long time for the threat to emerge. The background evidence showed that age is no protective factor from the Taliban. It was strange for the threat to emerge long after the appellant left the country. It was all too convenient that the evidence came to light when needed for proceedings in the UK. An examination of the contents of the letters was not shown to make any difference. The refusal letter and the determination might not be best framed as to whether there was any evidence of the uncle's death, but the underlying point was that some other evidence such as a death certificate might have been expected. The judge had been entitled to conclude that the letters did not chime with the evidence of Taliban activities and with the passage of time. Paragraph 45 opens by saying that the appellant's account is not reasonably likely to be wholly true, goes on to find one aspect not inherently implausible and another less likely, and ends by saying that it lacks any real credibility due to the timescale. The appellant also pointed to certain points the judge took in his favour regarding the letters and discrepancies in his evidence about his family but sought to give them much more significance than the judge did, or than was justified. Reading paragraph 45 and the determination fairly and as a whole that appellant's overall credibility is not accepted but rejected. There was therefore no foundation for a grant of humanitarian protection. The challenge to Article 8 was no more than disagreement. That part of the case had some sympathetic features but no real substance.

9. I reserved my determination.
10. The grounds search for error in a rather intricate and detailed way. In my opinion, they do not resolve into anything more than insistence upon the appellant's case and they do not disclose that the determination is anything less than an adequately reasoned explanation to the appellant of why his case has not succeeded. Broadly, I prefer the submissions for the respondent.
11. Judge Balloch was entitled to find that the appellant failed to establish his case to the necessary standard. Judges are entitled to find some aspects of evidence more likely than others, in whatever varying degrees, as long as they apply the ultimate standard overall. I find no ambiguity in paragraph 45, read as a whole, but any possible doubt is removed by reading it in the wider context of the whole determination.
12. Various aspects of timing are the main reasons for rejecting credibility, but there is no error in that. There is reference, albeit brief, to the content of the letters at paragraph 54.
13. On the overall adverse credibility finding, there was no case for humanitarian protection. (I am not persuaded that even on a more favourable reading the appellant fell within any particular protection category, but that need not be taken any further.)

14. The determination of the First-tier Tribunal shall stand.
15. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

8 April 2015
Upper Tribunal Judge Macleman