



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

Appeal Number: AA/08470/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> April 2015**

**Determination Promulgated  
On 15<sup>th</sup> April 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SAMI ULLAH ROHI**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance either in person or by a legal representative  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Neither the appellant nor his legal representatives appeared. The notices of hearing had been sent to the last notified address and have not, so far as I am aware, been returned undelivered. No explanation for their non appearance was provided and there has been no request for an adjournment so far as I am aware. I decided to proceed with the hearing.
2. The appellant's appeal against removal on asylum, humanitarian protection and human rights grounds was dismissed by the First-tier Tribunal in a

determination promulgated following a hearing on 22<sup>nd</sup> December 2014. Permission to appeal was granted on 12<sup>th</sup> February 2015.

3. The grounds seeking permission raise the following issues:
  - i. That the judge erred in not placing significant weight on letters the appellant asserted had come from the Taliban;
  - ii. The judge had required corroboration of evidence put forward by the appellant
  - iii. The judge had failed to address risk factors with regard both to risk in his home area and relocation referred to in submissions drawing from the background material; in particular the existence of tattoos with English words and his manner and speech rendering him at risk of being perceived as westernised and anti-Islamic.

#### Background

4. The applicant sought asylum on arrival in the UK on 2<sup>nd</sup> April 2008. His application was refused but, because he was a minor with an accepted date of birth of 5<sup>th</sup> December 1994 he was granted discretionary leave to enter until 9<sup>th</sup> July 2012. He submitted an appeal against that decision but withdrew the appeal on 17<sup>th</sup> August 2009, some 4 days before the date of the hearing. In July 2011 the appellant left the UK. He returned to the UK on 3<sup>rd</sup> August 2011. The applicant sought to vary his leave on asylum and human rights grounds, such application being refused for reasons set out in a letter dated 22<sup>nd</sup> September 2014. An appealable decision to refuse to vary leave and to remove the appellant pursuant to s47 Immigration Asylum and Nationality Act 2006 was made and served on 8<sup>th</sup> October 2014. It was that decision which was the subject of the appeal before the First-tier Tribunal. The appellant appealed on asylum and human rights grounds.
5. The appellant's legal representative before the First-tier Tribunal accepted that the First-tier Tribunal judge's decision on the human rights application would stand or fall in line with the decision on asylum grounds. There does not appear to have been any submissions as regards humanitarian protection and there was no ground seeking permission to appeal on that ground.

#### Discussion

6. The First-tier Tribunal judge set out in detail in paragraphs 2 to 24 the appellant's claim and the respondent's view of that claim; in paragraphs 27 he sets out the documentation he had before him and in paragraphs 30 to 53 the judge set out the oral evidence he heard and the submissions. His findings and reason are set out in paragraph 58 to 70.
7. Of particular relevance to this appeal are the findings of the judge in the following paragraphs:
  60. I do of course approach my consideration of the credibility of the Appellant and his claim by assessing the evidence in the round. The Appellant has now produced documents, which he claims to be communication of threat from the

Taliban. However those were only brought forward some two years after they were stated to have been available to the Appellant. In addition there is no independent evidence available to this Tribunal, in the form of any expert report or additional personal evidence from any witness, by which there is any support to contend that the claimed letters from the Taliban are in fact copies of genuine original documents. In such circumstances it is not possible for this Tribunal to consider that such documents are genuine in terms of the original documents which have been copied. There is no verification which has been undertaken. This Tribunal finds it inappropriate to give any significant weight to these documents which are said to have been dated in mid-2011 but I note they were only translated in May 2013. I do not find that the brother of a friend of the Appellant would have held on to such documents, surely appreciating their apparent significance, if they could have been genuinely available to the Appellant in 2011.

.....

63. The Appellant is not able to bring forward evidence with respect to the disappearance of his late father or indeed the apparent disappearance of his elder brother.....there is no direct evidence before this Tribunal to confirm that the Appellant was being pursued, or might be pursued, because of his family's previous associations with any particular organisations or groups in Afghanistan. There is a distinct lack of realistic evidence and the burden rests with the Appellant.

....

66. I take account of the case law referred to above. The circumstances are that the appellant will have been away from Afghanistan for a number of years. His return would be to Kabul. He has reasonable health, is a Muslim and he is youthful. I am satisfied that the Appellant could return to Kabul. He has been able to gain some education in this country and that should benefit him in the future in his home country.

8. The appellant does not dispute the findings of the First-tier Tribunal judge as regards his travel to the UK; that the appellant's credibility is damaged by his decision to leave the UK to Pakistan for a period of a few months in 2011; that there was a distinct lack of evidence with respect to the disappearance of his father or elder brother; that the failure of the respondent to undertake tracing of his family and the lack of tracing results from the Red Cross and the trip to Pakistan not leading to the appellant finding his family did not result in any enhanced risk. The judge set out the evidence before him in great detail. It is plain that he has assessed the appellant's evidence in the round in reaching these specific findings and that he did not make individual findings in isolation of the evidence as a whole. He deals with the Taliban letters in detail in the determination ([60]). Although he could perhaps have phrased his findings more felicitously it is plain that he was not seeking corroboration of the letters but was firstly stating that there was no corroboration; secondly that there was no expert evidence before him as to the possibility that the letters were of genuine origin (given that they appeared to be copies) and thirdly that he did not find it credible that they would not have been sent to him earlier given their claimed importance and relevance. These were matters he was entitled to consider and take into

account; the findings as regards the Taliban letters were findings open to him on the evidence before him.

9. In so far as the lack of evidence of the father and brother is concerned, the judge has referred earlier to Hekmatayr being out of Afghanistan at the time when the applicant claimed there were problems. In [63] the judge is merely stating as a fact that there was no other evidence than that given by the appellant. The evidence was considered as a whole by the judge in reaching his findings.
10. In so far as the tattoos and his manner and speech are concerned, the judge did not specifically refer to these when making his findings. The submission by Mr Harding to the First-tier Tribunal was carefully recorded in the determination and there is no challenge to that record. The finding of the judge was that he was not at risk in his home area but in any event the judge considered return to Kabul. It is inconceivable that, having carefully recorded the submission, the judge did not take into account the submission as regards "westernisation". Other than this assertion as to potential risks of westernisation, the judge was not directed to any background material that supported that submission. There was no evidence before the judge as to difficulties or problems faced by other returnees who had previously been in the UK for some time. The existence of a tattoo (whether with English words or not) cannot be considered, without more, to be an indication of being un-Islamic and thus at risk. The background material referred to in the schedule of essential reading makes no reference to those who are westernised or having tattoos of western origin being at risk. Although the grounds seeking permission to appeal refer to a claimed lack of consideration by the judge of the perceived risk factors as set out in the skeleton, the findings of the judge as to the appellant's claim were such that there was no need or requirement for him to proceed in a formulaic fashion through the various risk factors. The findings of the judge as regards the applicant's account were open to him on the evidence before him and the failure to mention each and every submission and each and every piece of background material does not render this determination unsafe.
11. I am satisfied there is no error of law and dismiss the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

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.



Date 9<sup>th</sup> April 2015

Upper Tribunal Judge Coker