



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

Appeal no: **AA/08684/2014**

THE IMMIGRATION ACTS

At **Field House**
On **06.08.2015**

Decision signed: **08.08.2015**
sent out: 17.08.2015

Before:

Upper Tribunal Judges
John FREEMAN and Kate MARKUS QC

Between:

Wise ZADAH

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: *David Chirico* (counsel instructed by Luqmani Thompson & Partners)

For the respondent: Mr Steven Walker

DETERMINATION AND REASONS

1. This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Anthony Metzger), sitting at Taylor House on 27 January, to allow an asylum and human rights appeal by a citizen of Afghanistan, born 2 March 1996. The appellant had arrived in 2010, and in view of his age then, had been placed with a foster family and, though refused asylum, given exceptional leave to remain till a month before his 18th birthday. Before it ran out, he claimed asylum again; but again he was refused, on 13 October 2014.

NOTE: no anonymity direction made at first instance will continue, unless extended by us.

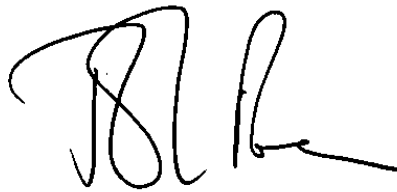
2. The Home Office were given permission to appeal in the Upper Tribunal on the basis of the general lack of reasons in the judge's decision. It has to be said that this was a somewhat slipshod production: there are two points, at paragraphs 1 and 20, where an obvious plea for help by the typist in her draft was left uncorrected to pass into the final decision. This however is not the main point with which we are concerned, which is whether the judge was entitled to reach the decision he did, for the reasons he gave.
3. The judge's credibility findings were extremely thin but his decision was not challenged on that ground, so we can move on to his conclusions on risk on return. These were very much based on a 'country expert' report by Dr Antonio Giustozzi, well known in cases such as this. The Home Office's best point on the judge's decision itself was his signal failure to take any account of the lapse of time since the events related by the appellant: he had by the date of the hearing been out of Afghanistan for over four years. Since his claim was based, not on anything he himself might have done or been thought to have done when he was only 14, but on the killing of his father, apparently by the Taleban, this was on the face of it a very serious point, which the judge was clearly wrong to disregard.
4. The answer to it comes not from anything the judge said himself, even in his summary of Dr Giustozzi's report, but from passages in it to which we were referred by Mr Chirico. The judge had alluded at paragraph 19 to Dr Giustozzi's opinion that the appellant would be unable to find accommodation in a district of Kabul where he would receive effective protection from the Taleban, if they were still interested in him. However, the main question in this case is why they should still be interested in the son of a man of whom they had disposed in a rather final, not to say brutal way in early 2010?
5. The answer is in Dr Giustozzi's report in his long paragraph 12, at pp 14 - 16 of the report.

"Now that the father has disappeared, the Taliban do not need anymore [*sic*] to target [the appellant] in order to intimidate him. However, in the Afghan cultural context, they will assume that [the appellant] now has a grudge against the Taliban and will seek revenge against them, because of what they did to his father. ... Avenging death is a matter of opportunity; cases are known of families who waited for tens of years before making an attempt to take revenge."
6. Though the judge does not cite this passage, he referred to Dr Giustozzi's opinion that the appellant would be considered a hostile element because of his father's past employment, and it is clear from the judge's uncritical acceptance of those parts of Dr Giustozzi's report he did cite that it would have formed part of his reasons for allowing the appeal. However opportunistic some of Dr Giustozzi's conclusions might have seemed on closer examination, he is a recognized 'country expert' in

these cases, on whose evidence the judge was entitled to rely. We do have some sympathy for Judge Metzger. First of all, he was faced with the usual problem in these cases of having expert evidence on one side only; then the appellant had the advantage of being represented by Mr Chirico,

7. We share Mr Walker's concern about the way this decision was reached; but, as he acknowledged himself, it is hard for us to say that this involved any *material* error of law on the part of the judge. So long as judges are placed in as much temptation as here to allow expert witnesses effectively to decide cases for them, there will inevitably be times when they do so; but that is not what the public pays for, or has a right to expect.
8. The solution, if there is one, is in the hands of the Home Office, to give judges the tools to do a better job. That could be done either by instructing 'country experts' themselves in suitable cases; or, as now happens in many personal injury cases, taking steps to agree an impartial joint report on behalf of both sides; or at least by providing presenting officers with training on the difficult art of challenging expert evidence.

Appeal dismissed

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)