



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

Appeal Number: AA/08704/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> July 2015**

**Decision and Reasons**

**Promulgated**

**On 24<sup>th</sup> July 2015**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR H A**

**ANONYMITY DIRECTION MADE**

Respondent

**Representation:**

For the Appellant: Miss A Holmes (Senior Home Office Presenting Officer)

For the Respondents: Ms A Smith (instructed by Bindmans LLP)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State with regard to a decision of the First-tier Tribunal (Judge Metzger) dated 4<sup>th</sup> February 2015 by which it allowed the Respondent's appeal against the Secretary of State's decision to refuse him asylum and remove him to Afghanistan.
2. Although this is the Secretary of State's appeal to the Upper Tribunal, I will in this determination, for the sake of continuity and clarity, refer to Mr H A as the Appellant and to the Secretary of State as the Respondent.

3. The First-tier Tribunal allowed the appeal on asylum grounds. The grounds seeking permission to appeal assert that the Judge failed to cite or apply the country guidance case of AK (article 15 (C)) Afghanistan CG [2012] UKUT 163 (IAC). The grounds assert that the judge was bound to find on the particular facts that return of this Appellant, either to Kabul or his home area, is reasonable and that the Judge departed significantly from the position set out in AK, without adequate reference to recent objective evidence and such amounts to a material error of law.
4. Secondly it is submitted that the Judge also erred in failing to give adequate weight to the previous determination and did not follow the guidance in Devaseelan [2003] Imm AR 1.
5. It is also asserted that the judge failed to give any adequate reasons for his findings that it would not be reasonable for the Appellant to relocate to Kabul or that there is an insufficiency of protection for him in Afghanistan.
6. The first ground in relation to the Judge's alleged departure from AK is misconceived. AK was about humanitarian protection and Article 15C. The First-tier Tribunal allowed the appeal on asylum grounds, not humanitarian protection; indeed the two are mutually exclusive.
7. The Appellant's solicitors submitted a Rule 24 notice defending the First-tier Tribunal's decision in particular in relation to its treatment of Devaseelan [2003] Imm AR 1, arguing that the Judge did give reasons why, in the light of further evidence, he came to a different conclusion from the original Tribunal and that on that basis the Appellant would be at risk as a refugee. It also asserted that the Judge had given adequate reasons for his finding that internal relocation was unreasonable in the circumstances and that even if the Judge had erred in failing to refer to the country guidance case, on the facts as he found the error was immaterial.
8. The Decision and Reasons, is quite brief. It sets out the Appellant's evidence in paragraphs 3 to 15. At paragraph 3 the Judge summarises the Appellant's claim as being that his father was a senior member of the Taliban who disappeared in 2004 after the collapse of the Taliban. He has an older brother who is also in the United Kingdom and a younger sister in Iran. His older brother left Afghanistan in around 2006.
9. The Appellant's mother had told him that because his father had been a commander in the Taliban the authorities searched their home in 2007. His father having disappeared, he believed him to be dead. The Taliban harassed the Appellant's family trying to discover the whereabouts of his father and that was the reason his brother left the country.
10. His brother claimed asylum on arrival in the UK in 2006 but his claim was refused. He was eventually granted Indefinite Leave to Remain under the legacy scheme in November 2010.

11. The Appellant, along with his mother and sister left Afghanistan in 2006 for Iran but were returned to Afghanistan by the Iranian authorities after only one month.
12. When the Appellant was aged 13 or 14 the Taliban started to request him to join them and also asked about the whereabouts of his father and Taliban weapons and ammunition that had gone missing at the same time as his father. The Taliban did not come across the Appellant because he was out when they visited. They also searched the house on one occasion.
13. Shortly before the Appellant left Afghanistan in 2011, the Taliban came to the house asking for him. His mother told them that he was not there, although in fact he was hiding. The Taliban became angry and threatened to bomb and demolish the family home. Four days after that happened the Appellant travelled to Iran with his mother, sister and a maternal uncle with the assistance of an agent. The uncle had previously lived in Iran for 10 years and his mother and sister remained with him there. However he arranged for the Appellant travel on to the UK as he feared he would be sent back to Afghanistan.
14. The Appellant's fear is that if he is returned to Afghanistan he will have no one to return to, he will be caught by the Taliban and forced to become a suicide bomber. He has now been reunited with his brother in the United Kingdom. He has not seen his mother, sister or uncle since he left Iran.
15. At paragraph 10 the First-tier Tribunal Judge dealt with what the Appellant had to say about the previous appeal hearing. The original Judge said there was differing evidence between the Appellant and his brother. The Appellant said this was a result of his youth at the time and also that he was very young when his brother was in Afghanistan and they had been separated for a long time. He also said that although his brother had travelled from Manchester to London to attend that hearing they had not previously met in person in the UK as the claimant was in foster care in London while his brother lived in Manchester.
16. The Judge, at paragraph 11, noted that the previous Judge dismissed the appeal "at least in substantial part, on the basis he did not accept that they were brothers and that there were material inconsistencies in their accounts". The judge indicates that he had before him DNA evidence confirming their relationship.
17. The Appellant also said he was no longer in contact with his family.
18. The judge then set out the evidence of the Appellant's brother and in relation to the previous appeal he said that he had been confused by the questions and could not understand why the Judge did not accept they were brothers.
19. At paragraph 19 the Judge refers to various letters of support from witnesses who knew the Appellant (in relation to the Article 8 claim) and

also to an expert report by Claudio Franco dated January 2014 which included evidence about the inability the authorities to protect the Appellant in Afghanistan, the potential difficulties he would have being internally relocated if it was concluded that he could not return to his own village and also that if he were returned his own village he would be at a risk from the Taliban.

20. At paragraph 20 - 22 the Judge set out the law in relation to the burden and standard of proof and then his findings commence at paragraph 23. He notes in paragraph 23 and 24 that he is to be guided by Devaseelan in relation to the determination of the previous Judge, Judge Greasley and he notes that there were adverse credibility findings against the Appellant from paragraph 37 to 47 of that judgment. At paragraph 25 the Judge states:-

"However, those credibility findings focused principally upon the apparent discrepancies between the evidence given by the Appellant and that of his brother, described by the previous Judge as his "claimed" brother. At paragraph 37 of the previous determination, the Immigration Judge found there were material inconsistencies between their accounts to such a degree that the claim for international protection is a "wholly fabricated account."

21. The Judge then identified at paragraph 26 that Judge Greasley had focussed on the discrepancies about whether the Taliban had entered the family home and whether the Appellant would have returned from Iran to Afghanistan to reoccupy that home. He had not accepted the Appellant's father had disappeared or that his mother had continued to reside in Iran. He also points to a number of factual findings focussed upon his failure to accept the Appellant and his brother were in fact brothers.

22. At paragraph 27 the Judge related that Judge Greasley had found, even allowing for the Appellant's young age, that he had provided a fabricated account and he says:-

"It is clear focussed very substantially upon the found discrepancies between the Appellant and his brother and did not accept that they were in fact brothers."

23. At paragraph 29 the Judge, having once more reminded himself about the Devaseelan guidelines, notes that since the previous appeal the Appellant had the benefit of an expert report and also DNA evidence. He said:-

"Applying the necessary flexibility recognised in Djebbar in consideration of the Devaseelan guidelines, I find that armed with the significant and fundamental further evidence, the Appellant can now establish that he and Mr S are brothers. I find that this central element, which was absent when the matter came for previous hearing, has considerable significance in assessing the Appellant's credibility generally in relation to the background of his claim, which is not a case dependent upon the Appellant maintaining that he was the victim of torture by the Taliban or his own political opinions, but is limited to essentially to the disappearance and subsequent claimed death of his father, and the movements of other members of his family."

24. In paragraph 30 the Judge then says:-

"Applying the lower standard and take into account the expert and DNA evidence relied upon by the Appellant, I find that the Appellant has established to the relevant standard that the background of his claim, which I do not find is an exaggerated claim, has been established and I accept the Appellant's evidence that his father has disappeared and has probably died and that his family were forced to leave for Iran, before being returned to Afghanistan and then returning to Iran where I find the Appellant's surviving family remain."

25. I find that the First-tier Tribunal's findings on credibility are inadequately reasoned. The Judge appears to base his entire credibility findings upon the fact that the Appellant and Mr S are in fact brothers. It is apparent from what the Judge himself said [25] and [26] that the previous Judge had a number of reasons for finding the account to be a fabrication which included a greater number of discrepancies. This Judge did not deal with those at all. He gives no reason to find the Appellant had established his claim save for the fact he and Mr S are brothers. More reasons are required to justify a positive credibility finding than that the Appellant and Mr S are brothers, particularly as Mr S's own asylum claim was unsuccessful. He gives no reason for finding that it is not an exaggerated claim and no reason for accepting the Appellant's evidence that his father disappeared, probably died or that the family were forced to leave for Iran before returning to Afghanistan and then once again going to Iran.
26. As credibility is clearly at the heart of this case, the wholly inadequate findings render the decision unsustainable as a whole and I find that I must set it aside.
27. The Secretary of State's appeal to the Upper Tribunal is allowed to the extent that the decision is set aside and remitted for rehearing before the First-tier Tribunal. None of the findings are preserved.
28. The First-tier Tribunal having made an anonymity direction I see no reason not to continue it.

Signed

Date 23rd July 2015

Upper Tribunal Judge Martin

### **Direction regarding anonymity**

**Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to**

**comply with this direction could lead to contempt of Court proceedings.**

Signed

Date 23rd July 2015

Upper Tribunal Judge Martin