



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

Appeal Number: AA/07373/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 11 January 2016**

**Determination issued
On 15 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

NAJMUDIN MOHAMMADI

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: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Afghanistan who gives a date of birth as 21 March 1987. He has not asked for an anonymity order, and none is made.
2. The appellant claims to have left Afghanistan in December 2006, arriving in the UK on 7 May 2007. He sought asylum then but absconded before his claim could be fully considered. He made himself known again to the respondent through his solicitors in 2013. The respondent refused his claim for reasons explained in a letter dated 9 April 2015.

3. First-tier Tribunal Judge Debra Clapham dismissed the appellant's appeal for reasons explained in her determination promulgated on 9 October 2015.
4. The appellant sought permission to appeal to the Upper Tribunal, on grounds set out over 10 pages.
5. On 5 November 2015 First-tier Tribunal Judge Cox granted permission, observing:

"... the grounds are of considerable length and do not altogether escape the charge of being "a tedious litany of forensic criticism." Nevertheless, having ploughed through them, I am just persuaded that there is an arguable core ... namely that the judge may have failed adequately to engage with the material aspects of the evidence and have given inadequate reasons for material findings ..."
6. The grounds cannot escape the charge of being in large part restatement of the appellant's case in terms which amount to no more than disagreement with the judge's view of the evidence.
7. The appellant's essential claim was that while he was at school representatives of the Afghan authorities recruited him to report upon local members of the Taliban, who included his brother. The Taliban came to know of this, called at his house while he was out and killed his father. His uncle arranged for him immediately to flee the country.
8. I note in passing that the respondent (paragraphs 17-33 in particular of the decision) considered that even if credible this claim failed on grounds of sufficiency of protection and availability of internal relocation. Those issues appear to have been lost sight of in the First-tier Tribunal. The judge should have reached conclusions even in the alternative, as these are issues capable of deciding the case, and rendering the credibility debate sterile.
9. The appellant supported his claim with a statement purportedly from a Major Omar, a Director of Intelligence in the Afghanistan Army based in the Presidential Palace with responsibility for security of the President, his senior officials, and senior visiting foreign officials. The statement was initially obtained by the appellant's solicitor in Glasgow speaking through an interpreter in Glasgow to a private mobile telephone number. A statement prepared by the solicitor bears to have been read over in Pushtu to the witness in Afghanistan by an Afghanistan Army interpreter and signed there. Photocopy identity documents of Major Omar (an Afghan National Army card and a vehicle access permit) were also produced.
10. Mr Ruddy's submissions centred on criticising the various reasons given by the judge for rejecting the credibility of the evidence for the appellant, most importantly those going to the rejection of the evidence from Major Shah. It was said that the judge overlooked the appellant's explanations

of how this evidence became available to him; that inadequate explanations were given for rejecting it; and that to focus on further evidence which might have been forthcoming (death certificates) disregarded the evidence that was there. Cumulatively, Mr Ruddy submitted, there were such errors as to require another hearing.

11. Mr Matthews submitted that although the appellant made a few superficially attractive points of criticism, they were not borne out on looking at the case and at the determination as a whole. The appellant could give no good reason for leaving Greece, for his tour around Europe or for his disappearance from sight of the UK authorities from 2007 to 2013. It was for the judge whether the appellant's statement and oral evidence together were sufficiently detailed and persuasive for her to accept his case as established to the lower standard. The judge had been entitled to find it "bizarre" that the appellant would refuse to accept money for his activities for the authorities. Paragraph 107, where the judge found it "strange that he would agree to betray his brother, effectively" this was not to be interpreted as meaning that the judge thought he agreed to betray his brother directly, rather it was a comment that he agreed to act on the other side and so to betray his brother's general cause. In the same paragraph the judge found it incredible that the appellant was "not aware of the consequences ... if he were to have been found out by the Taliban." That was more than justifiable. The appellant was bound to know the nature of the Taliban and how they dealt with spies or traitors. The appellant criticised paragraph 109 where the judge says simply that there are inconsistencies and a lack of detail, but the judge had earlier set out the appellant's evidence about his communications with his uncle and with Major Omah, how they came to be in touch, how long he had the information, and so on (paragraphs 66-70 in particular, being re-examination). The judge was entitled to find that it was far from clear how contact among the appellant, his uncle and the Major had been established or carried on, that that the claimed mode of communication with Major Shah was frankly incredible and the evidence unreliable. A point of fairness was taken about the judge referring to the absence of death certificates for the appellant's brother and father but that was no more than a brief and factual statement at paragraph 113, plainly not a matter of great decisive importance. It was said that the respondent might have a duty to check details made available, through the Major's telephone number, but that did not apply where contact details given were private and personal. The matter might be different if an official means of communication by email or otherwise had been offered. It was incredible that a Director of Intelligence in the Afghan Army would have no official email address and would choose to communicate through a colleague's private g-mail address. The determination as a whole and in particular at 105 to 113 was a legally sound explanation of why the claim was rejected.
12. I reserved my determination.

13. This is a case to stand back from minute points of disagreement and to take an overall view.
14. It would be powerful and unusual support to corroborate an account by direct evidence from a Major in Afghan Intelligence who recruited an appellant as a source of information. However, all communications with this individual were by way of a personal mobile number and of a g-mail address of a third party, said to be his junior in rank. The judge found it incredible that such a person would have no official email address or would provide photocopies of his identification documents. The appellant gave a plainly unsatisfactory account of how these communications came to be set up and why there was such a long lapse of time. There were no details given which arguably imposed a duty of verification on the respondent. The appellant's representatives did their best with the materials provided, but this is a story which a judge was plainly entitled to reject. I do not consider that her reasons for doing so have been shown to be less than legally adequate. The proposition that Afghan intelligence services responsible for the security of the President do not have any official e-mail available to them and that they use g-mail addresses (which anyone can create) is plainly absurd. Whatever minor criticisms might be formulated of the decision, no significant doubt is cast on the overall conclusions.
15. The determination of the First-tier Tribunal shall stand.



Upper Tribunal Judge Macleman

14 January 2016