Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11190/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th June 2017	**On 15th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR SK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Blundell instructed by Malik & Malik Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 23rd September 2016 refusing his application for asylum or humanitarian protection in the UK. First-tier Tribunal Judge Andonian dismissed the Appellant's appeal and the Appellant now appeals to this Tribunal with permission granted by Upper Tribunal Judge Kopieczek on 20th April 2017.

2. The background to this appeal is that the Appellant entered the UK in January 2010 and claimed asylum upon arrival, however in March 2010 his asylum claim was treated as withdrawn as he absconded. He lodged further submissions six years later in April 2016. The Appellant's claim is that he fears the Taliban and the Afghani authorities. He claims that his father was friends with commanders in the Afghan Army and one of his brothers worked in a kitchen for the International Security Forces in Afghanistan (ISAF) and that his other brother was involved with the Taliban and sent films he made for the Taliban to Al Jazeera. He claims that his father and brother have disappeared and that his brother who was involved with Taliban was killed along with his wife and children in 2008. The Appellant claims he is at risk because the Taliban want him to join them to avenge his brother. He also claims to fear the Afghan authorities because of his connections with his brother who was a member of the Taliban.

3. The Respondent issued a detailed reasons for refusal letter. In advance of the hearing the Appellant submitted a witness statement, a skeleton argument and evidence.

4. There are four main Grounds of Appeal advanced on behalf of the Appellant. The first ground contends that the First-tier Tribunal Judge misdirected himself in law in requiring corroboration in relation to aspects of the Appellant's claim. It is contended that the judge noted throughout the determination that there is a lack of documentary evidence to support aspects of the Appellant's appeal which indicates that the judge appears to have required corroboration relating to the Appellant's account. The second ground contends that the judge erred in failing to express the reasons for his conclusions with sufficient clarity to enable the Appellant to understand why he had lost. It is contended that the decision is characterised by a failure to distinguish between points advanced by the Respondent and conclusions drawn by the Tribunal. The third ground contends that there is a failure to consider relevant matters in assessing the documentary evidence. It is contended in particular that the judge failed to take account of the skeleton argument, the background evidence, the Appellant's witness statement or the oral evidence. The fourth ground contends that the judge overlooked or failed to take account of the evidence relevant to internal relocation and state protection.

5. In granting permission to appeal Upper Tribunal Judge Kopieczek considered that it is arguable that there is a lack of clarity in the decision of the First-tier Tribunal judge in terms of what his findings were as distinct from what the Respondent's conclusions were in the reasons for refusal letter. In his view the First-tier Tribunal Judge's seeming rolling assessment of credibility from the beginning of his decision interspersed with what appear to be the Respondent's conclusions, render his decision arguably flawed for lack of clarity. He also considered that the other grounds were arguable.

Error of Law

6. At the hearing before me Mr Blundell helpfully went through the decision of the First-tier Tribunal paragraph by paragraph side by side with the reasons for refusal letter. I accept his submissions that the judge's decision mirrors almost exactly the reasons for refusal letter from paragraphs 2 to 68. Apart from the final three sentences at the end of paragraph 8, paragraphs 2 to 22 of the judge's decision are identical to the reasons for refusal letter except that in a number of places the pronouns are changed. For example at paragraph 9 of the decision the third sentence reads "The Appellant's documents have not been viewed in isolation by me..." whereas at paragraph 31 of the reasons for refusal letter the Respondent says "Your documents have not been viewed in isolation...". The following sentence in the decision states "I note that the Appellant has sent the documents both in his native language and translated into English" whereas paragraph 32 of the reasons for refusal letter states "It has been noted that you have sent the documents both in your native language and translated into English". These two sentences reflect the type of changes made in parts of the decision, otherwise the decision reflects almost word for word the reasons for refusal letter.

7. Mr Blundell properly accepted that it is of course open to a judge to take the summary of the asylum claim and the reasons for refusal letter. He also acknowledged the decision in the case of **Gheisari v Secretary of State for the Home Department [2004] EWCA Civ 1854**. Mr Tufan relied on that decision in particular paragraphs 14 and 16.

8. In the case of **Gheisari** Lord Justice Sedley set out the background to the case including extracts from the Appellant's witness statement, the refusal letter and the decision of the Tribunal. In particular it was noted that the Adjudicator there said "I was, like the Respondent, unable to accept his account of what happened when he came to have been arrested and I do not find that part of his story credible" [5]. The Adjudicator also went on to say that he had been "unable to accept the appellant's evidence as to what he claims was the persecution he was subjected to in Iran prior to his departure. His evidence lacks the ring of truth".

9. Lord Justice Sedley concluded at paragraph 14:

> "What in the end in my view and it is a view I have come to after much hesitation saves the adjudicator's decision from a deficiency of reasons, which is Mr O'Donnell's ground of attack upon it, is the single passage that I have quoted, ending: 'His evidence lacks the ring of truth.' This, I am prepared on consideration to accept, goes beyond simply echoing the Secretary of State's incredulity. It expresses, however laconically, the Adjudicator's own evaluation of the veracity of the account that he has been given. That was his task. Although for much of this appeal I was of the view that he had failed to perform it, I am prepared in the end to accept, slender though it is, that it represents his independent judgment on the critical matter upon which the issue of risk to the appellant hinged, namely whether he had indeed been arrested, ill-treated and liberated as he claimed.

> The adjudicator had recorded the father's tragic history but in the absence of any weight placed on it by the appellant's own advocate, he was not obliged to bring it explicitly back into account when explaining his rejection of the appellant's story."

Lord Justice Thomas agreed with the reasoning of Lord Justice Sedley saying:

> "...When deciding whether a person is giving a truthful account, a fact-finder must obviously proceed logically and carefully and set out that process in his reasons. It is important that this is not seen as a mechanistic process; it is one that requires careful thought on each occasion and careful formulation of reasons. In a case of this kind, the issue of whether someone is telling the truth or not is at the heart of the decision. It is regrettable that the process of reasoning of this Adjudicator was not properly addressed. I agree with my Lord, Sedley LJ, that if the principal ground on which it is contended that an account is untrue is the inherent improbability of that account, it is necessary for the fact-finder to address two separate questions and make his reasoning clear in respect of each. The question of whether an account which the fact-finder finds is inherently improbable is untrue is a separate question to the question as to the inherent improbability, as accounts that are inherently improbable can nonetheless in certain cases be true. It is therefore important that that the separate question as to the truth of an account found to be inherently improbable is addressed and dealt with in the reasons."[16]

He too found that the reasoning in that case was "just sufficient" [17].

10. It was not disputed by Mr Tufan that the only opinions given by the First-tier Tribunal in this case were the last few sentences in paragraph 8 and the contents of paragraphs 23 to 26.

11. At paragraph 8 the judge considered letters submitted by the Appellant said to have come from the Taliban and concluded;

> "These letters were conflicting; some said he must be punished and others said he must join the Taliban to avenge his brother. They made no sense. Furthermore, no credible reason was given for such laminated documents or why they should be undated."

12. At paragraph 23 the judge said;

> "I do not believe that the Appellant has given a credible and consistent account with regard to his fear of the Taliban and in regard to the lack of support and protection he would receive from the authorities on account of his broth (sic)"

It is clear that this sentence and therefore paragraph is unfinished and makes an assertion that the judge did not believe the Appellant without any further reasoning.

13. At paragraphs 24 and 25 the judge appears to deal with the Appellant's witness statement and with his assertion therein in relation to the asylum interview. The judge points out that, for the first time at the appeal, the Appellant tried to find fault in the interview record when he had plenty of opportunity to do so before the hearing. The judge says at paragraph 25 that he does not believe the timing of the Appellant's criticism of the interview record to be credible. He goes on to say that he does not believe that the Appellant was targeted by the Taliban or that he would be at risk upon return and that no risk arises in Kabul.

14. Mr Tufan emphasised the fact that the Section 8 issue raised in the reasons for refusal letter which related to the Appellant having absconded for six years was a weighty factor on which the judge made findings. However, as noted in relation to the other apparent findings made by the judge, he considered Section 8 at paragraph 22, where he simply rehearsed the Secretary of State's reasoning in relation to section 8 without acknowledgement and failed to make his own evaluation of Section 8.

15. Mr Tufan submitted the judge could not be criticised for adopting some or all of the Secretary of State's reasoning as he was basically considering the same evidence. Whilst the judge was considering some of the same documentary evidence as that considered by the Secretary of State, he failed to make his own evaluation in relation to that or failed to acknowledge that he was simply adopting with the Secretary of State's evaluation.

16. In my view the judge does not clearly acknowledge that paragraphs 2 to 22 are (with the exception of a few sentences at the end of paragraph 8 and the changes to some pronouns) taken from the reasons for refusal letter. Instead of acknowledging the opinions of the Secretary of State and saying that he agreed with them the judge appears to adopt the reasoning of the Secretary of State as his own throughout the decision.

17. This differs from the approach of the Adjudicator in **Gheisari** who, as acknowledged by Sedley LJ at paragraph 14, went beyond "simply echoing the Secretary of State's incredulity" and carried out his task by expressing his "own evaluation of the veracity of the account he had been given".

18. In the appeal before me the judge largely echoed the Secretary of State's assessment. His own evaluation is limited to one aspect of the Appellant's witness statement at paragraphs 24 and 25 and one assessment at paragraph 8 in relation to some of the documents provided. The Appellant submitted an eleven page witness statement dated 10th November 2016 and, apart from the Appellant's assertion that errors arose as a result of interpretation issues in the asylum interview, which he dealt with at paragraphs 24 and 25, the judge failed to engage with any of the other

evidence put forward by the Appellant. The judge failed to say whether or not the Appellant gave oral evidence and failed to make any assessment of his oral evidence. The judge failed to engage with the background evidence, in particular the newspaper articles submitted by the Appellant, which he claims relates to the death of his brother and his brother's family in September 2008.

19. In this case, unlike the case of **Gheisari**, the judge adopted the reasons of the Secretary of State without fully acknowledging that those were the Secretary of State's reasons. Moreover, the judge failed to engage and make his own evaluation in relation to the evidence before him. Moreover, in my view, the findings made by the judge at paragraphs 8, 23, 24 and 25 have been infected by the adoption of the reasons for refusal letter without acknowledgement.

20. In conclusion, in reading the judge's decision as a whole, it is clear that a very substantial part of the judge's decision is adopted from the reasons for refusal letter without acknowledgement thus the conclusions in the reasons for refusal letter are presented as those of the judge. This is not sufficient to show that the judge has independently evaluated the evidence and the appeal. The few sentences at the end of paragraph 8 along with paragraphs 23 to 25 are not sufficient. Those conclusions have been infected by the failures in the remainder of the judge's decision in relation to his assessment of the evidence in the context of the adoption of the reasons for refusal letter. In my view, these errors render the decision flawed for lack of clarity.

21. In these circumstances I set aside the decision of the First-tier Tribunal. As there are few independent findings of fact I do not preserve any of the findings in the judge's decision.

22. In the circumstances and in light of the substantial findings of fact to be made, I consider it appropriate to remit the decision to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law. I set that decision aside and remit the appeal to the First-tier Tribunal for hearing afresh.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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: 14 June 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is payable, therefore there can be no fee order.

Signed Date: 14 June 2017

Deputy Upper Tribunal Judge Grimes