



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

Appeal Number: PA/05248/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> January 2018**

**Decision & Reasons Promulgated  
On 9<sup>th</sup> February 2018**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MR FAZAL HAQ ORYAKHEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

*For the Appellant: Ms F O Mustapha, a solicitor with Wai Leung Solicitors*

*For the Respondent: Mr S Kotas, a Senior Home Office Presenting Officer*

**DECISION AND REASONS**

1. The appellant, who was born on 1<sup>st</sup> January 1999, is a citizen of Afghanistan who arrived in the United Kingdom on 13<sup>th</sup> May 2015, in the back of a lorry. He claimed asylum on 27<sup>th</sup> May 2015, but his application for protection was refused by the respondent in a letter dated 18<sup>th</sup> May 2017, for reasons set out in that letter.
2. The appellant appealed the respondent's decision and his appeal was heard by First-tier Tribunal Judge Eban, sitting at Hatton Cross on 3<sup>rd</sup> July 2017.

3. The judge considered the oral evidence of the appellant, heard submissions from his representative and then she considered the background evidence, which she makes extensive reference to at paragraphs 10, 11, 12, 13, 14 and 15, in order that she could put the appellant's claim into context and also to better inform her assessment of whether the appellant would be at any risk on his return.
4. She found that the appellant was from Barkelay village in Laghman province and accepted the appellant's account that his brother was warned by AGEs not to drive his truck, that the appellant was present when his brother was warned and that his brother ignored the warning and was killed near Toor Ghar while driving a truck for a foreign company. She did not believe there to be any reasonable likelihood that the Taliban sent a threatening letter addressed to the appellant. She believed that his claim that they did send him such letter, was an embellishment to his evidence to show that he would be wanted on his return.
5. As recently as six months ago, the evidence showed that the Taliban/AGEs had not sought to take action against the appellant's family members because of his brother's activities as a truck driver. This is based on the appellant's evidence that he spoke to his maternal uncle some six months ago and there was no mention that they had encountered any problems at that time. This indicated to the judge that members of the appellant's family have no interest to the Taliban/AGEs as a result of the appellant's brother's activities. She found that the appellant was of low profile and although he may well have been present when his brother was warned not to drive lorries for foreigners, there was no reasonable likelihood that the Taliban/AGEs would have any continuing interest in the appellant either in his home area or in Kabul.
6. She reached that conclusion, because the AGEs have taken no interest in the appellant's relatives who remained in their home in Afghanistan after the appellant's brother was killed and because the background evidence indicates that truck drivers, when they are off duty, do not risk being targeted because of their job. While the appellant was present when his brother was warned, he himself was not a truck driver, and based on his evidence he was clearly a child at the time. The judge dismissed the appellant's asylum appeal finding that returning the appellant to Afghanistan, including Kabul, would not expose him to a real risk of serious harm. She dismissed his appeal on asylum grounds, she dismissed his appeal on humanitarian protection and dismissed the appellant's appeal under Article 3.
7. The appellant, dissatisfied with that decision, sought and was granted leave to appeal. The grounds are brief comprising two paragraphs. I set them out below:-
  - "5. The Judge of the First-tier Tribunal at paragraphs 25(3) and (4) did not accept the Appellant's claim about contact with his family and rejected his evidence of a threatening letter from the Taliban in which he was the subject matter. The Judge of the First-tier Tribunal found this to be an embellishment to his evidence. The Judge of the First-tier Tribunal

was in error to then make her finding at paragraph 25(4) having rejected the Appellant's evidence of contact with his family and threatening letter from the Taliban (at paragraph 24).

6. The Judge of the First-tier Tribunal at paragraph 27 found that the Appellant was not at risk from the Taliban because he was not a truck driver and was a minor at the time. She quoted background evidence in support of her finding. This is an error because the evidence was that the Taliban were aware that the Appellant and his brother travelled together in the truck and the first warning was to both of them. On the day of the ambush both were in the truck and they were working and were not 'off duty'. Both brothers were targeted. The Appellant managed to escape. The Taliban would not care to distinguish who was driving and who was not or whether the Appellant was a minor or not. Both were in the truck working in defiance of the Taliban's specific warning. The Judge of the First-tier Tribunal erred in failing to properly consider background evidence on risk to the Appellant thereby."
8. I heard submissions at some length from Ms Mustapha and from Mr Kotas on behalf of the Secretary of State. The judge recorded at paragraph 7 of her determination that when she heard oral evidence from the appellant he confirmed, "that when the lorry was stopped by the Taliban he was with his brother in the cab and they were both threatened". He said that the Taliban shot at them about three days later while they passed through a narrow valley. The appellant said that his brother was hit by a bullet and his brother told him to run ,which he did.
9. The judge, having considered the background evidence, quoted from paragraph 8.4.2 of the European Asylum Support Office published report in 2012 on intimidation and targeted violence against Afghans by insurgents (*see Paragraph 11*). Summarising the findings from a range of sources the report noted:

"...The EASO report also noted that construction workers and truck drivers may face a risk of being targeted whilst working but generally, when they were off duty, they were not at risk of being targeted because of their job, but where the risk may increase if they work for the IMF or an IMF contractor."

She also quoted the UNHCR which provided the following information in its eligibility guidelines for Afghanistan including humanitarian workers:-

"AGEs are reported to target civilians who are employees of international or Afghanistan humanitarian organisations... and truck drivers....".
10. At paragraph 12 of her determination, she also quoted from the February 2015 Country Information and Guidance Report. This said:-

"2.2.33 The same [EASO] report added: 'Truck drivers may face the risk of being targeted when they are on the road. When they are off duty, no evidence is present that suggests they would be targeted by insurgents because of their job. However, circumstances could increase the risk of being tracked down while off duty, for example truck drivers who work for IMF'."

It is clear, therefore that before making her findings the judge very clearly did consider the background evidence.

11. In paragraph 5 of the determination, the judge briefly summarises the basis of the appellant's claim and explains that some three or four days after receiving a warning, four or five members of the Taliban attacked the lorry that the appellant's brother was driving near Toor Ghar. The appellant's brother was shot in the chest. The appellant managed to jump out and hid in a woodland area for two nights before returning home. The judge makes it perfectly clear therefore that she was aware that the appellant was travelling with his brother when his brother was shot.
12. However the risk to lorry drivers appears, according to the background evidence, to be a risk they face only when they are driving, not when they are off duty, unless there are circumstances which could increase the risk of them being tracked down while off duty, for example truck drivers who work for IMF. I am satisfied that the judge did not misunderstand elements of the appellant's claim. The appellant did indicate in his evidence that both he and his brother were warned by the Taliban of working and that they were both threatened. The judge has however carefully examined the background evidence and found there to be no risk to the appellant were he to return, because the risk is only to drivers at a time when they are working. The appellant was working as his brother's assistant or "mate", but of course on his return he would not be working as a lorry driver's assistant.
13. So far as the first challenge to the determination is concerned, I do not agree that this is an error of law. The judge was entitled on the evidence before her to find that there was no reasonable likelihood that the Taliban sent a threatening letter addressed to the appellant. She was entitled to find that this was an embellishment to his evidence to show that he would be wanted on his return. He had never mentioned this prior to the hearing. The judge made that finding having carefully examined the background evidence. The appellant gave evidence that he had spoken to his maternal uncle some six months previously and at that time there was no mention that they had encountered any problems. As a result, the judge was entitled to find that no members of the appellant's brother's family were of interest to the Taliban/AGEs as a result of the appellant's brother's activities.
14. The judge found, at paragraph 24 of her determination, that the appellant's account of his contact with his family since arrival in the United Kingdom differed from what he had said only a few months earlier in his asylum interview. Then, he said he had no contact with his family. The questions put to the appellant about contact with his family during his asylum interview were clear, as were his replies. However, the appellant told the judge that threats in the form of a letter had been sent to him by the Taliban who were seeking him out and that he learned of this a few months before his Asylum Interview Record. The appellant's evidence was that he did not mention this letter from the Taliban before telling the judge about it, because he did not realise its significance. The judge believed

that even though the appellant had no schooling at all, he would still have realised the importance to his case of him being actively sought by the Taliban and this is not something he would have forgotten to draw attention to those advising him when they were preparing his case, from whom he feared, and why. If the appellant had in fact been in contact with his family as the judge believed, then the appellant would have indicated to the judge that the Taliban had taken a continuing interest in him or his family members, if in fact they had done so. The fact that the appellant did not make that claim to the judge indicated to the judge that members of the appellant's brother's family were of no interest to the Taliban or the AGEs as a result of the appellant's brother having driven a lorry. That too was a finding which the judge was entitled to make on the evidence before her. I agree with Mr Kotas who submitted that the appellant's grounds of appeal amount to nothing more than a simple disagreement with the judge's decision. They fail to identify any error of law.

### **Notice of Decision**

15. The making of the determination by First-tier Tribunal Judge Eban did not involve the making of an error of law. I uphold her determination. This appeal is dismissed.

### **Lifting of the Anonymity Direction**

Judge Eban quite properly made an order regarding anonymity under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Both representatives agreed that given the appellant has now passed the age of maturity it was no longer necessary to protect his identity. **The anonymity direction shall no longer apply.**

***Richard Chalkley***  
**Upper Tribunal Judge Chalkley**

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

***Richard Chalkley***  
**Upper Tribunal Judge Chalkley**

**Date: 9 February 2018**