



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

Appeal Number: PA/10639/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 3<sup>rd</sup> April 2019**

**Decision & Reasons Promulgated  
On 4<sup>th</sup> June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR S S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr. J. Dhanji (Counsel)

For the Respondent: Mr. A. McVeety, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge O. R. Williams promulgated on 18<sup>th</sup> December 2018, following a hearing at Manchester on 23<sup>rd</sup> November 2018. In the decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of Afghanistan, and was born on [~] 1982. He appealed against the decision of the Respondent refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The Appellant's claim is that in 2016 a Taliban judge visited his house in Afghanistan and asked him to pay money for the expenses of an Islamic school, which the Appellant undertook to do, only to then subsequently realise that the money was being misused for different purposes. The Appellant himself held a senior position in the Etisalat Telecom company, and this being so, he was in September 2017, also asked by the Taliban to monitor the telephone numbers of Afghan and foreign officials, which he refused to do. In November 2017, the Appellant then attended his graduation at the University of London, and then returned back to Afghanistan. In December 2017 he attended an ACCA event in Kabul, and became the first Afghan national to become a member of the ACCA, with a Masters Degree in Chartered Accountancy from the UK, and the event was even broadcast and shown on Afghan national TV channels.
4. On 14<sup>th</sup> December 2017, he was in receipt of a letter from the Taliban threatening him, whereupon he went to the Kabul police, but did not get any help, and even complained to the local MP to no avail.
5. Between January and February 2018, the Appellant left Afghanistan for the second time, travelling to Dubai, and then returning back to Afghanistan in March 2018. After he had arrived in March 2018, he received a telephone call from the Taliban asking him, if he had received a threatening letter from them, and proceeding to threaten him further, requiring him to obey the Taliban demands.
6. Later that month he was attacked by three Taliban members who attempted to abduct him. This attempted kidnapping failed because members of the public came running towards the Taliban, whereupon they ran away.
7. In March 2018 he also, towards the end of the month, received a second threatening letter telling him that he would be killed with his family, because he was thought to be a British spy who had trained spies at the American University in Afghanistan. At the end of March 2018 he contacted the police but they again refused to help him. On the last day of March he received a further text message from the Taliban warning him to accept the demands.
8. He was attacked by Taliban members in April 2018 and physically assaulted. He made a written complaint to the police in April. In mid-April, he finally left Afghanistan arriving at Heathrow Airport, to claim asylum.

## **The Judge's Decision**

9. The judge's decision essentially consists of three major findings of fact against the Appellant. First, it was said that notwithstanding his being encountered by the Taliban for the first time in April 2016, whereby he was issued with multiple demands, he did not experience any further problems from them until April 2018. This was despite being frequently contacted by them. Given that this is the case, the Appellant's account was not consistent with what the country guidance case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118**, had established.
10. This case makes it clear (as set out in Dr Giustozzi's expert report at A/B, B37) that:-

"if the Taliban need somebody's services, they can only use him if they can convince or coerce them cooperate. But if they failed to convince or coerce that individual, they would first formally warned him and then insert him in their blacklist, which includes people who could be targeted by the Taliban's assassination teams" (see paragraph 20 of the judge's decision).

The judge went on to say that "It is reasonably likely that the Taliban would not have, "delayed acting for 2 years" if the Appellant's account was as described.

11. Second, it was said that the Appellant's account was not credible because he had twice left his country, once in November 2017 and then in March 2018, only to return back to Afghanistan, and without changing his telephone number so as to avoid having to receive any threatening telephone calls, leaving his claim to be lacking in credibility.
12. Third, in relation to the medical evidence, he had argued that he was suffering from depression, but there was no evidence that the psychologist had pinpointed any more serious a mental disability, such as would make his return back to Afghanistan a violation of his human rights (paragraph 22).
13. For all these three reasons, the appeal was dismissed.

## **Grounds of Application**

14. The Grounds of Application state that the judge failed to consider the relevant parts of the country guidance case and the expert evidence; did not apply these points to the consideration of the Taliban that letters which were accepted as having been received by the Appellant; and did not consider the expert report in its entirety.
15. On 5<sup>th</sup> February 2019 permission to appeal was granted.

## Submissions

16. At the hearing before me on 3<sup>rd</sup> April 2019, Mr Dhanji, appearing on behalf of the Appellant, began by drawing attention to the fact that the Appellant had been teaching at the American University in Kabul, and had been a Senior Manager at Etisalat in Afghanistan, and was their Head of Finance, and had been earning as much as \$6,500 per month (see paragraph 30 of the decision). His ACCA accountancy qualification, together with his Masters Degree was from the UK. He had appeared in broadcasts in TV and social media in Afghanistan. He had even attended in November 2017 upon his graduation ceremony in the UK. However, the judge's findings, that the Appellant's claim that he was now at risk of ill-treatment, on the basis that what he had described was not consistent with the country guidance case, was flawed. Mr Dhanji gave me the following reasons for this.

17. First, if one looks at the country guidance case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118**, here the Upper Tribunal makes it clear (at paragraphs 71 and 77), the modus operandi of the Taliban. In particular, what is said (at paragraph 73) is as follows, namely, that:-

“The Taliban introduced a new system from around 2006, which has been quite mature from 2010, for the identification, warning, trying and sentencing of persons before a sentence is carried out. Those who are targeted are limited to those who have already been sentenced by a Taliban court. Once a sentence has been imposed it remains forever until carried out. It is only those who have been warned and sentenced who can legitimately be targeted by the Taliban.”

In this case, submitted Mr Dhanji, the Appellant had actually been forewarned before he was targeted. He had two letters and a text before he was attacked.

18. Second, the judge had referred to paragraph 77 of **AS**, but had failed to quote the relevant parts in full. Then in the full, what paragraph 77 said was that:-

“The sentence takes the shape of a third letter or verbal communication [and in this case the Appellant received a text], passed on to the collaborator or somebody close to him. A sentence implies that the individual has been added to the blacklist. Not all of those who received warnings would be added to the blacklist, as it allowed people an opportunity to change or repent, or to make deals with the Taliban instead. A person could not be targeted simply because they were a relative of a person who is a target or a threat to the Taliban. Dr Giustozzi assumed that the details included on the blacklist would be a person's name, father's name and place of birth as that is the usual way to identify people in Afghanistan.”

19. This particular quotation, submitted Mr Dhanji, had not been recited by Judge Williams. The failure of the judge to direct himself and to consider the entirety of this paragraph in **AS**, rendered his decision unsustainable (at paragraph 20 of the decision), when the judge concluded that the

Appellant "... would not have been kept alive" by the Taliban. It was not as simple as that. The Appellant was not being kept alive. He was forewarned and was being given the opportunity to repent and to amend his ways. This much is allowed for in the country guidance case of **AS** if paragraph 77 is read in its entirety. The sentence to which the Appellant was subjected was dated 26<sup>th</sup> March 2018 and what came before it was harassment and coercion by the Taliban.

20. Third, it is true and the judge had referred to the two letters (see the Appellant's bundle at pages 79 to 83) that the Appellant had been sent by the Taliban. The judge did not, however, consider the two letters in the proper fashion. The second of the two letters, which was dated 26<sup>th</sup> March 2018, gave the Appellant an opportunity to comply with the demands, because it is clear that, "... otherwise [he] would be assassinated ...". Given that this was so, this was remarkably similar to what paragraph 77 of **AS** had actually stated, in that the Appellant was being given an opportunity to "... to change or intent, or to make deals with the Taliban". In this respect, paragraph 78 of **AS** was also relevant, but the judge did not explain adequately its true implications, because that paragraph allowed the Appellant to avail himself of what was said in **AS (Afghanistan)**.

21. What paragraph 78 of **AS (Afghanistan)** stated was that:-

"Dr Giustozzi's evidence on whether a person could be removed from the blacklist was that this was possible only in one of two ways. First, by death and secondly, by contribution to the Taliban's cause in such a way that the individual would be offered an amnesty. In his written report, he said that sentences issued from 1996 onwards remained valid and would be implemented by the Taliban whenever possible and that events a significant time in the past would not affect that. However, the likelihood of a particular target being picked from the blacklist depends on the Taliban's operational environment and in oral evidence, he stated that a person who had done something a long time ago and had a lower profile would be a lower priority for the Taliban as they would be likely to pose a lesser risk of damage to them."

This also, submitted Mr Dhanji, explained why the Appellant was not immediately attacked. He posed a lesser risk of damage to them.

22. Finally, insofar as the medical evidence was concerned, the entirety of the expert report was not considered. The judge wrongly concluded that the Taliban's delay "... in implementing their threats ... does not sit well with the expert report" (paragraph 20), but more importantly, the GP's report that the judge refers to, is only partially considered, because reference is made to, "... poor sleep and stress/tension, has nightmares ...". What also needs recognising (see the Appellant's bundle at page 41) is the GP's reference to "headaches likely tension, would like psychotherapy - refer if not improving symptoms and mood low, see again to discuss anti-depressants" (letter dated 25<sup>th</sup> April 2018). The judge did have before him notes from the psychological therapist (see Appellant's bundle at pages 42 to 43). It would have been clear from those notes that the Appellant was

actually suffering from PTSD. This was linked to the Appellant's personal experiences in Afghanistan. The judge has not assessed this evidence. He has not evaluated the reference to PTSD evidence. He has in fact dismissed it and taken a narrow view of the expert report, taking the view that the expert had not had "... sight of the Appellant and Respondent's bundles in order for the opinion to be fully considered and carry weight".

23. For his part, Mr McVeety submitted that the reference to the country guidance case of **AS (Afghanistan)** would all be very well, except for the fact that this is a case where the Appellant had already been attacked before the threatening letters were sent to him by the Taliban. The chronology which the judge sets out (at paragraph 11) draws attention to how, "On 21 March 2018, the Appellant was attacked by three Taliban members [who] attempted to abduct him" (see paragraph 11xii). It was only after that when a second threatening letter was sent on 26<sup>th</sup> March 2018 (see paragraph 11xiii). This threatened the Appellant with the killing of the Appellant alongside his family, on ground that he was a British spy. Therefore, the Appellant's account of how he had been targeted was simply not in compliance with the country guidance case of **AS (Afghanistan)**.
24. Moreover, the Appellant claimed that when there was an attempt to abduct him on 21<sup>st</sup> March 2018, he escaped the kidnapping "when members of the public came running towards them the Taliban left him on the street and escaped" (paragraph 11xii). This flies in the face of the country guidance case, which recognises that the Taliban is not afraid of members of the public and do not heed them when they set out to kidnap people. As for the medical evidence, the fact remained that the general practitioner saw no depression. There was only a one-off reference to the Appellant going to the GP and complaining about headaches.
25. In reply, Mr Dhanji submitted that the fact remained that there were two threatening letters followed by a text message. The Appellant was attacked between the two. However, this is not inconsistent with the country guidance case of **AS (Afghanistan)**. It was accepted that if the account given by the Appellant was not actually inconsistent with the relevant paragraph cited in **AS (Afghanistan)**, then what one was left with were the two additional reasons (given at paragraphs 21 and 22) by the judge for refusing the appeal, and upon close examination, it was clear that these reasons did not hold up.

### **Error of Law**

26. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. My reasons are as follows.
27. First, the judge has taken the view that, even though the Appellant came to the attention of the Taliban in April 2016, following which he refused

multiple demands by them, he was not attacked until April 2018. The point here is, as demonstrated by the country guidance case of **AS (Afghanistan)**, that once targeted, a person is given an opportunity to relent and mend their ways. However, once targeted, the person in question remains upon the blacklist so that even those who have been issued with sentences from 1996 onwards, remained at risk (see paragraph 78 of **AS**).

28. It would have been otherwise, if the Appellant had not been attacked after being warned and having had a sentence against him. He was attacked after a threatening letter, and an attempt to abduct him. Importantly, he was attacked after two letters, and a further text message, in April 2018 when four Taliban members assaulted the Appellant. There is nothing in Dr Giustozzi's expert report that suggests that delaying acting for two years actually suggests that a person is not at risk. The Appellant received two letters (pages 79 to 83 of the Appellant's bundle), and was given an opportunity to comply with the demands of the Taliban, "otherwise [he] would be assassinated ...".
29. This is exactly what **AS (Afghanistan)** makes clear at paragraph 77, in stating that a person would be given time to repent or to make deals with the Taliban. In the same way, Dr Giustozzi recognises that sentences issued in 1996 "remained valid and would be implemented by the Taliban whenever possible". In fact, "a person who had done something a long time ago and had a lower profile would be a lower priority for the Taliban as they would be likely to pose a lesser risk of damage to them" (see paragraph 78 of **AS (Afghanistan)**).
30. Accordingly, if one considers the general import of how the Taliban proceeds, with a view to gradually moulding people to help assist them, it is clear that the Appellant's account was not improbable. One has, after all, to exercise "anxious scrutiny" in protection claims of this kind. I accordingly find, that the reasons given at paragraph 20 by the judge mischaracterises the import of **AS (Afghanistan)**, and fails to give credit to the Appellant's account as it is put, as one which is not automatically to be disbelieved, simply because it does not tally with what the Tribunal said in **AS (Afghanistan)**.
31. Second, that leaves the remaining reasons given by the judge. Of these, the first one (at paragraph 21) deals with the Appellant having left Afghanistan in November 2017 to come to the UK for his graduation ceremony, and then having left Afghanistan in March 2018, to go to Dubai. What the judge states here is that, "it is reasonably likely that the Appellant would have taken active steps to change his telephone number to prevent threatening telephone calls". However, this does not necessarily follow. Another person in the Appellant's position may well have done so. The fact that the Appellant did not himself do so, does not mean to say that the Appellant is for that reason alone lacking in credibility. The Appellant may well have taken the view that changing his

telephone number, did not prevent the Taliban sending him letters of threats, or reaching out at him in other ways.

32. Of the second reason given (paragraph 22), namely, the medical evidence, I accept that there is a reference to the Appellant suffering from PTSD, which the judge has not taken into account. However, there was documentation (see B59 to B60) which the judge has not considered, and he has not considered the documentation (at B41) such as the GP's notes in its entirety, because only reference to depression and sleeping is made. There is no reference to PTSD. What is indeed said is that there is "no mention of any active depression/anxiety" (paragraph 22). The Appellant had, after all, asked for a referral to a psychotherapist, and the judge's view was that this is a step he would take if the Appellant was not seen to be improving (see letter of 25<sup>th</sup> April 2018).

### **Notice of Decision**

33. The decision of the First-tier Tribunal involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I set aside the decision. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Williams pursuant to Practice Statement 7.2(b) of the Practice Directions.
34. An anonymity direction is made.

### **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 his 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

Deputy Upper Tribunal Judge Juss

30<sup>th</sup> May 2019