



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

Appeal Number: UI-2024-001148  
Fist Tier Number: PA/55752/2022  
LP/02110/2023

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 June 2024**

**Decision & Reasons Promulgated  
On 27 June 2024**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY**

**Between**

**BK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Woodhouse, instructed by HS Immigration Consultants  
For the Respondent: Ms H Gilmore, Home Office Presenting Officer

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. Failure to comply with this order could amount to a contempt of court. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.**

**DECISION AND REASONS**

### Procedural matter

1. At the parties' request, this was a hybrid hearing. Both representatives attended by video link (Teams). There were no connectivity difficulties, and I am satisfied the hearing proceeded in a similar way had the representative attended in person.
2. The Appellant attended the hearing by video link but was not asked to make submissions or answer questions.

### Background

3. The Appellant appeals, with permission of First-tier Tribunal Judge Chowdhury, against the decision of First-tier Tribunal Judge Parkes (the Judge), issued on 8 November 2023.

### The cases for and against the Judge having erred in law

4. The grounds of appeal challenge the Judge's findings relating to the credibility of the Appellant's account. The grounds can be summarised as follows.
  - (a) The Judge erred by failing to consider the appellant's further submissions and instead drawing adverse inferences from his immigration history, particularly his voluntary return to Afghanistan after fleeing in 2013.
  - (b) The Judge erred by failing to consider that when the appellant returned to Afghanistan, the Taliban were not in power, and that when they returned to power, he fled the country.
  - (c) The Judge erred by inferring from his finding that the Appellant's *taskera* was unreliable that the Appellant lacked credibility overall, particularly as the Respondent accepted the Appellant's nationality.
  - (d) The Judge erred by failing to make findings about the Appellant's claim that his opposing viewpoints to the Taliban put him at risk of persecution, which would be inferred by the Taliban given the time the Appellant has spent in the UK.
5. The Respondent opposes the grounds and his position in the rule 24 response can be summarised as follows.
  - (a) The Judge did not err as he took a holistic approach, assessing the account in the round.
  - (b) The Judge did not use the *taskera* as a yardstick to assess the Appellant's overall credibility but used it as a factor that raised an issue of credibility.

- (c) The Judge was entitled to infer issues of credibility from the absence of evidence from the Appellant's cousin.
  - (d) The Judge was alert to the changes in Afghanistan in the past couple of years and it could not be fairly argued that he was not aware that the Appellant's return to and further departure from Afghanistan was during a time when the Taliban were not in power.
  - (e) The Judge was entitled to find that the Appellant had failed to show that it was reasonably likely that he would be of interest to the Taliban.
  - (f) The Judge adequately assessed the core of the Appellant's claim regarding whether he would be of interest to the Taliban by:
    - (i) Finding the Appellant had not shown that it was reasonably likely he had resisted the Taliban and that he would be seen as resisting their ideology, and
    - (ii) Finding the Appellant had not shown that it was reasonably likely he would be viewed as someone who had been Westernised during his absence from Afghanistan.
6. Mr Woodhouse relied on the grounds of appeal. His submissions focused on the following points.
- (a) The Appellant was able to live in relative safety in Kabul between 2015 and 2022 and therefore this was not evidence that the Appellant was not at risk of harm from the Taliban, contrary to the Judge's findings.
  - (b) The Appellant had provided photographic evidence of his injuries, but the Judge made no assessment of this documentary evidence, merely stating there was no medical evidence. Similarly, the Judge failed to make findings on the Taliban letter, which is another example of whether the Judge failed to make findings on material facts.
  - (c) There were contradictory findings in that the Judge found that the Appellant remained in Afghanistan for two years after the incident in 2013, but later says the Appellant left with the *taskera* issued in 2013.
  - (d) The Judge failed to make findings about how reasonably likely the Taliban would view the Appellant as an opponent, despite the Appellant stating he was opposed to the Taliban's strict interpretation of Islam.
  - (e) The Respondent implies that the Judge did not make relevant findings about material matters because the rule 24 response argues that findings can be read into the Judge's decision.

7. Ms Gilmore relied on the rule 24 response. Her further submissions raised the following points.
  - (a) The grounds of appeal fail to read the Judge's decision holistically and takes several points out of context. This distorts the Judge's findings.
  - (b) The grounds of appeal seek to reargue points which were already considered by the Judge merely because the Appellant disagrees with the Judge's assessment of the evidence.
  - (c) When read holistically and considering the principles to be considered when approaching an appeal, as summarised by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 and having regard to the Senior President of Tribunal's recent Practice Directions on *Reasons for Decisions*, this is not a case where the Upper Tribunal should interfere with the factual findings made by the Judge.
8. Mr Gilmore reminded me that the Appellant is arguing that the Judge failed to make findings of fact on material matters and therefore this is not a case falling within the guidance in *Volpi and Volpi* or the Practice Direction.
9. Both representatives agreed that if I were to find legal error in the Judge's decision, then the only course open would be to remit the appeal to be heard afresh by a different First-tier Tribunal Judge.

#### My analysis of the Judge's decision

10. Before I consider the cases presented, I remind myself of what the Judge decided and how he reached his findings.
11. In paragraphs 2 to 6, the Judge recalls the legal framework he had to apply to the appeal. At paragraph 5, he reminds himself of the assessment of credibility. There is no challenge to the self-direction.
12. After setting out the background to the appeal and the hearing in paragraphs 7 to 11, the Judge commences his discussion and findings. In paragraphs 12 to 17, the Judge summarises the evidence given during the hearing, beginning his assessment of the documentary and oral evidence in paragraph 18.
13. At paragraph 18, the Judge draws findings from the Appellant's immigration history and concludes that the Appellant did not have a well-founded fear of persecution in Afghanistan before 2022. The Judge accepts that the Appellant had remained in Afghanistan for two years after the incident in 2013. The Judge also finds that the Appellant had provided no supporting evidence regarding the claims made about his father and no medical evidence about the Appellant's injuries.
14. At paragraph 19, the Judge rejects the reliability of the *taskera* because of inconsistencies with other parts of the Appellant's accounts, in particular a failure to explain how the *taskera* was obtained when the Appellant was

outside the country, referring back to the evidence recorded in paragraph 12.

15. At paragraphs 20 and 21, the Judge adds to his general findings of adverse credibility by finding that it was not reasonably likely that the cousin would have acted as a “mailbox” as claimed without providing further support.
16. At the end of paragraph 21, the Judge rejects the entirety of the Appellant’s case because he does not find them reliable. The Judge develops his reasons for this conclusion in paragraphs 22 and 23, in which he clearly is looking at the claims from 2013 through to the current time.
17. The Judge’s findings in paragraph 23 about the Appellant’s Articles 2 and 8 EHCR rights, wrap up the decision.

### My findings

18. I turn to the question of whether the Judge erred in law.
19. The Judge’s findings in paragraphs 22 and 23 adequately show that he was considering the Appellant’s account from 2013 through to the date of hearing. There was no need for the Judge to say more than he did about understanding the political changes that have occurred in Afghanistan as those changes are well known and in any event were clearly part of the evidence considered by the Judge, as they were evidenced in the hearing bundle. I conclude that the Appellant’s arguments are in reality asking for the Judge to do more than was necessary to explain his findings.
20. It is not accurate to say the Judge decided the Appellant’s accounts lack credibility merely because of his voluntary return to Afghanistan. My analysis of the decision shows the Judge made a number of assessments of the Appellant’s credibility and then looked at the claim in the round. In so doing, he did not focus unduly on one of those factors. I conclude that the Appellant’s arguments are in fact no more than disagreement with the credibility findings made and an attempt to be able to relitigate those matters.
21. It is not accurate to say that the Judge failed to assess the incident in 2013, which was fundamental to the Appellant’s continuing claim. As I have indicated, the Judge makes clear findings at paragraph 18 about the reliability of the Appellant’s account and finds it not to be credible. The Judge has given adequate reasons for rejecting the account. In this context, the challenges raised by the Appellant are not more than disagreement with legitimate judicial findings.
22. The allegation that the Judge failed to make findings on the photographs of the Appellant’s injuries is misplaced because without an independent opinion on how they were caused, the only finding the Judge could make would be that the Appellant had scars. The Judge does not dispute there is scarring but finds against the Appellant’s account of how he sustained them. It was not necessary, therefore, for the Judge to make findings

about the photographs. For clarity, despite Mr Woodhouse's suggestion to the contrary, the photographs cannot be regarded as being medical evidence.

23. By rejecting the Appellant's general credibility for sound reasons, it was open to the Judge to reject the Appellant's account about the incident in 2013 and to find it did not happen. It was open to the Judge to find the Taliban would have no reason to have adverse interest in the Appellant on return. It was not necessary for the Judge to make specific findings on the Appellant's statement that he holds views opposed to the Taliban's interpretation of Islam, given that he did not accept the Appellant to be a truthful witness. This is a further argument arising from disagreement because it does not accept the ambit of the Judge's adverse credibility findings.
24. The final issue raised by Mr Woodhouse is that the Judge made contradictory findings about whether the Appellant left Afghanistan in 2013 when the *taskera* was issued or whether he left in 2015. From reading the decision as a whole, this is not a contradiction. The Judge is in fact pointing out that the Appellant has presented a document that purported to be issued in 2013 although only obtained after he left the country. The Judge is referring back to the evidence recorded in paragraph 13 and the fact a *taskera* could not be issued when the Appellant was out of the country.

#### Overall conclusion

25. Having examined the arguments presented, and keeping in mind that there is no challenge to the Judge's self-direction to the legal framework, I do not find legal error in the decision. In reaching this decision I have had regard to the case law and Practice Direction referenced above.

#### Notice of Decision

The decision of First-tier Tribunal Judge Parkes does not contain legal error.

The decision is upheld.

**Judge John McCarthy**

**Deputy Judge of the Upper Tribunal**

**Date: 19 June 2024**