



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

Appeal Number: AA/11858/2011

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 April 2014**

**Determination**

**Promulgated**

**On 23 April 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MASTER EVAN ABDULKARIM HAMAGHARIB**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Burrett, Counsel

For the Respondent: Mr. S Whitwell, HOPO

**DECISION ON ERROR OF LAW**

1. The Secretary of State appeals with leave against the decision of First-tier Tribunal Judge Herbert OBE allowing the appeal of the appellant on asylum grounds and under Articles 2 and 3 of the ECHR.

2. The appellant is a citizen of Afghanistan, born on 20 August 1995. His appeal was heard on 24 November 2011 by DIJ Peart and IJ Youngerwood and dismissed in a determination promulgated in December 2011. Mr. M Sowerby of Counsel lodged an appeal against the panel's decision. Counsel argued in his third ground that the panel's finding at paragraph 15 that the threats to the appellant involved *imputed political opinion* contradicted their finding at paragraph 18 that *the telephone calls and, possibly letters were not more than an attempt to obtain more money from the appellant's unfortunate family*. That contradiction was accepted by both representatives at the hearing before DUTJ Mailer on 6 July 2012 as constituting an error of law (paragraph 21). For other reasons as well, DUTJ Mailer decided that the panel's decision should be set aside and remade on all issues.
3. At paragraph 44 of his determination, FtTJ Herbert agreed with the panel's findings at paragraph 15. In view of the finding by DUTJ Mailer that paragraph 15 contradicted paragraph 18, it was incumbent FtTJ Herbert to give reasons as to why he concurred with the panel's findings at paragraph 15. I find that he did not do that.
4. I do not accept Counsel's submission that the judge's acceptance that the appellant's brother was kidnapped and likely killed in the circumstances described supports the judge's finding at paragraph 44. Even though DUTJ Mailer sent the appellant's appeal back to be heard afresh on all issues, the panel's findings in respect of the appellant's evidence that his brother was kidnapped and killed and the threats made to the family thereafter have not challenged by the respondent and therefore stand. Accordingly, the judge was not making a new finding at paragraph 55. He was in my opinion supporting the unchallenged findings of fact made by the panel. What the judge needed to do was to make a clear finding as to whether those circumstances involved an imputed political opinion or an attempt to extort money from the appellant's family and to give reasons for his finding. I repeat my earlier finding that the judge did not do that.
5. For this reason the judge's decision cannot stand. I set it aside in order for it to be remade by a First-tier Judge other than First-tier Judges Peart, Youngerwood and Herbert.

## **DIRECTION**

**Appeal is remitted to Taylor House for rehearing**

**Time estimate - one and a half hours**

**Kurdish interpreter required**

Signed  
Upper Tribunal Judge Eshun

Date