



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/06798/2017

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**On 20<sup>th</sup> February 2018**

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

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DEANS**

**Between**

**MR SHERAZ KHAN  
(Anonymity direction not made)**

Appellant

**and**

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

Respondent

Representation:

For the Appellant: Mr A Knox, Katani & Co, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision by Judge of the First-tier Tribunal Mill dismissing an appeal on protection and human rights grounds.

2. The appellant is a national of Afghanistan but has lived for most of his life in Pakistan. He claims that he and his family, although having no official status, were treated on a *de facto* basis as refugees in Pakistan. He claims to fear the Khorti tribe in Afghanistan because of his father's involvement as a Jinga chief in arbitrating in a land dispute between the Khorti and the Mangal. It was this dispute which led the appellant's family to leave Afghanistan when the appellant was aged one. The appellant also claimed to fear the Taliban because he had been subject to western influences, as demonstrated, for example, by speaking English and obtaining a Master's degree in the UK.
3. The judge comprehensively disbelieved the appellant's claim to fear the Khorti tribe. In addition, the expert evidence did not support the claim that the appellant would be at risk from the Taliban because of matters such as his western education or his ability to speak English. The appellant's mother, wife and two nephews had been residing in Khost in Afghanistan without difficulty. The appellant could live in Khost or relocate to Kabul.
4. In his evidence at the hearing before the First-tier Tribunal the appellant gave evidence that it had been his intention after studying in the UK to return not to Afghanistan but to Pakistan. The judge did not consider this intention to be credible. At paragraph 23 the judge wrote:

“The Appellant states that his family who had sought refuge in Pakistan, having fled from Afghanistan, were treated as *de facto* refugees but never had any lawful status nor any identification as refugees. When he has returned to Pakistan since leaving to enter the United Kingdom in 2008, he has returned with the benefit of a visit visa. His position is that it was never his intention to return to Afghanistan but instead to relocate back to Pakistan. This does not seem plausible. It is clear that he would have no automatic right to do so. The default position would be that he would require to relocate back to his home country of Afghanistan. His explanations in this respect do not make sense and undermines his credibility.”
5. According to the application for permission to appeal, the grounds of which appeared to be incomplete, the judge erred in making this finding. The Secretary of State had not challenged the appellant's claim that his family were treated in Pakistan as *de facto* refugees. The Judge of the First-tier Tribunal did not make a finding on whether the family were treated as *de facto* refugees. The judge erred by concluding that the appellant's intention to return to Pakistan rather than Afghanistan as not plausible. As was pointed out in the grant of permission to appeal, a person may hold a subjective intention which is genuine even if it may not be possible to carry it out.

## Submissions

6. At the hearing before me Mr Knox, for the appellant, sought to lodge a written argument and a bundle of additional country information. Mr Matthews objected to the admission of the additional country information on the basis that the procedure for admitting new evidence had not been followed. I said I would defer making a decision on whether to admit the additional evidence until after I had made a decision on whether the Judge of the First-tier Tribunal had made an error of law.
7. Before me the focus was on paragraph 23 of the judge's decision. Mr Knox acknowledged there had been no need for the judge to make a finding on whether the appellant and his family had been treated in Pakistan as *de facto* refugees. It was not disputed that the appellant had lived in Pakistan since he was a child.
8. It was pointed out that the main difficulty with paragraph 23 was the judge's finding that the appellant's evidence regarding his intention to return to Pakistan rather than to Afghanistan "undermines his credibility". Mr Matthews submitted that if this finding was extracted from the decision it would make no difference to the outcome of the appeal. All the judge was saying at paragraph 23 was that the appellant's expressed intention to return to Pakistan when his student visa expired was not reliable.
9. Mr Knox submitted that the finding at paragraph 23 could not be separated from the rest of the judge's findings. The finding raised a question as to whether the judge accepted that the appellant's family had been living in Pakistan.

## Discussion

10. On this latter point it is clear from the decision as a whole that the judge accepted that the appellant and his family had been living in Pakistan. At paragraph 28 the judge found that the appellant had not lived in Afghanistan since he was a baby. At paragraph 26 the judge recorded that the appellant's family had returned to Afghanistan in November 2016. There is no question as to whether the judge accepted that the appellant's family were living in Pakistan for around twenty-five years.
11. The judge having accepted this, I would agree with Mr Knox that there was no need for the judge to make any finding on whether while the family were in Pakistan they were treated as *de facto* refugees. The appellant's evidence was that it had been his intention to return to Pakistan after completing his studies in the UK. As Mr Matthews implied, if the judge had said no more than that this

intention was not reliable, then it would seem unlikely that any arguable error of law would have arisen. The judge, however, went further and stated that the appellant's credibility was undermined.

12. It would not be appropriate for me to seek to rewrite part of the judge's decision. On the other hand, it must be asked whether sustainable findings in the remainder of the decision should be set aside because of some infelicitous wording towards the end of paragraph 23. It is permissible to seek to make sense of the judge's findings having regard to the decision as a whole, provided this does not result in unfairness.
13. With this in mind I have taken into consideration the other findings made by the judge, including those relating to the appellant's credibility. At paragraph 21 the judge questioned why the appellant's father would have been liable to repercussions for a decision taken by the tribal council in which he participated. Such a decision would normally be treated with respect. At paragraph 22 the judge pointed out that the appellant had not produced any documentary evidence in relation to his father's involvement in resolving the land dispute, despite the fact that the appellant maintained contact with others in Afghanistan. At paragraph 24 the judge referred to the appellant having previously made a human rights claim based on private and family life without referring to his fear of returning to Afghanistan, even though the Pakistani authorities had stated in March 2016 that historical Afghan refugees would require to return.
14. At paragraphs 25 and 26 the judge pointed out that although in his witness statement the appellant said he had police reports about his family in Khost having been attacked by members of the Khorti tribe, in his oral evidence he said that his family had had no difficulties with the Khorti tribe since returning to Afghanistan in November 2016. An untranslated police report was lodged but at the First-tier hearing the appellant's representative said this piece of evidence was no longer being relied upon. The judge nevertheless allowed the appellant to be cross-examined upon it but was so dissatisfied with the appellant's attempted explanations the judge found the report was fraudulent.
15. Finally the judge noted that although the expert report referred to a long-running land dispute between the Khorti and the Mangal there was no indication of any specific blood feud or of named individuals involved in such a feud. The judge pointed out that the appellant had been away from Afghanistan since he was a baby and the judge observed that, even if the appellant's father had been involved in a dispute, there was no reason why the appellant would receive any adverse attention after so many years had elapsed.

16. The judge gave more than adequate reasons for finding that the appellant's alleged fear of the Khorti tribe was not genuine. The judge's reference at paragraph 23 to the implausibility of the appellant intending to return to Pakistan was, in effect, only a very minor aspect of the discrepancies on which the judge's findings were based. As I observed above, if otherwise soundly based the decision should not be set aside because of some infelicitous phraseology on an issue which was in no sense crucial to or determinative of the outcome of the appeal. Reading the decision as a whole I do not consider that there has been any unfairness in the judge's approach to the evidence. Overall the judge made findings which were based upon the evidence and supported by adequate reasons. I am not satisfied there is any error of law in the judge's decision which should lead to it being set aside.

### **Conclusions**

17. The making of the decision of the First-tier tribunal did not involve the making of an error of law.
18. The decision of the First-tier Tribunal dismissing the appeal shall stand.

### **Anonymity**

The First-tier Tribunal did not make an anonymity direction. I have not been asked to make such a direction and I see no reason of substance for doing so.

Deputy Upper Tribunal Judge Deans  
8<sup>th</sup> March 2018