



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13874/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 7th May 2019**

**Decision & Reasons Promulgated
On 22nd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

I M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Heidar, AA Immigration Lawyers

For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 25th November 1988 is a citizen of Afghanistan. He had made application for asylum on 2nd January 2018 and that application had been refused by the Respondent on 27th November 2018. The Appellant had appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Harris sitting at Hatton Cross on 17th January 2019. The judge had dismissed the appeal on all grounds.
2. Application for permission to appeal had been made to the First-tier Tribunal and that application had been granted on 1st April 2019. It was said that it was arguable that the judge's approach to the mistranslation of

documents was unfair and whilst there was less merit in the claim the judge had made a mistake of fact. Permission was not refused on the other grounds either. Directions were issued firstly for the Upper Tribunal to decide whether an error of law had been made or not and the matters comes before me in accordance with those directions.

Submissions on Behalf of the Appellant

3. It was submitted that the Appellant had provided documents in support of his case and that it had been accepted that his father was working for the American Forces but refused on the basis his father was not threatened by ISIS. Ms Heidar referred to the documents which had been presented to the judge and what was said to be the position regarding the mistranslation. It was submitted that the judge had made adverse credibility findings in respect of that mistranslation which had had an effect upon his assessment of credibility and therefore risk on return. It was submitted it was unfair to expect either the Appellant or the solicitor to know about the mistranslation matter and that an adjournment should have been requested by Counsel at the hearing.

Submissions on Behalf of the Appellant

4. It was submitted that the documents had been provided on behalf of the Appellant and no issue had been taken at the time of their submission as part of the bundle. It was said that the judge could only deal with the evidence available at the time and that the manner in which he had dealt with matters was not unfair. It was noted that no request had been made for the adjournment even though the Appellant was legally represented. It was submitted that the only issue in reality was whether there was a risk to the Appellant from ISIS in Kabul and nothing else.
5. At the close of the hearing I reserved my decision to consider the submissions and evidence. I now provide that decision with my reasons.

Decision and Reasons

6. The Appellant's claim had been summarised by the judge at paragraph 3. His claim was that he was at risk from ISIS in Afghanistan because his father had leased land he owned in Kabul to an American company and that in October 2017 ISIS had warned his father that if he did not end the lease they would kill him, the Appellant and the Appellant's two brothers. Shortly thereafter the Appellant's evidence was that his father had gone to Russia whilst his mother and other family members had gone to Pakistan.
7. The judge had examined both the oral and written evidence provided and had given reasons for his findings on fact and credibility at paragraphs 10 to 48. In respect of documents produced by the Appellant the judge had noted and followed the guidance at **Tanveer Ahmed** (paragraph 13).
8. At paragraph 15 the judge had noted the Appellant's evidence that the threat to his father from ISIS had been made by a mobile phone call on 22nd October 2017 and followed by two more mobile phone calls the next

day. The judge noted that the Appellant had initially produced to the Respondent a letter said to be from a Kabul police station commander confirming the said threat. That letter had two features within it, noted by the judge. Firstly, he said it did not identify the Appellant's father as the recipient of the warning but by inference and more importantly the letter had provided a different date (17th December 2017) as being the date of receipt of the threats. The judge may well have erred in stating that the letter did not name the Appellant's father as recipient although he correctly noted the inconsistency in the date. That error however was not material. Firstly, as the judge stated "setting aside that this letter does not actually identify it was the Appellant's father". Secondly, and more importantly the Appellant himself did not seek to rely upon that letter, as he had, within his appeal bundle produced a second letter from the police indicating that they had made a mistake in that first letter as to the date and correcting that date to read 22nd October 2017. It was that second letter therefore that was substantially relied upon.

9. The judge had noted the second letter referred in the attached certified English translation to the Appellant's father receiving from ISIS a "warning letter". The judge noted the inconsistency with the Appellant's evidence that such threat came by way of a telephone call. He further noted that in the certified English translation of the Appellant's father's witness statement and the witness statement of the uncle both refer to a "warning letter". The judge was then presented with an intervention by the court interpreter who said he knew Dari and that his reading of the father's original Dari witness statement only mentioned the word "threat".
10. It seems clear that as the judge indicated at paragraph 21, the intervention by the court interpreter was unbidden. The judge properly had not asked him to translate or offer an opinion. There is no criticism of the interpreter. The Appellant's Counsel in submissions argued that the judge should regard the words in the witness statement as a mistranslation. The judge did not do so for reasons given, which do not disclose an error of law. In summary the judge had noted:
 - (a) The court interpreter had been employed to interpret in the Pushtu language rather than Dari with accordingly his knowledge of or understanding of Dari being simply unknown.
 - (b) Nothing was said concerning the translation of the uncle's witness statement or the police letter.
 - (c) All English translations had been certified and had been done by the same translator and linguistic examples found by the judge at paragraph 24 indicated in his view that the translator understood meaning and nuance of word and phrases.
 - (d) The Appellant and his representatives relied upon those documents and translations and there had been no attempt to made corrections.
11. It may well be the case, as submitted, that neither the Appellant nor his solicitors understood Dari and therefore would not be in a position to note

the alleged mistranslation and rectify the same. However, the judge had noted at paragraph 23 “the discrepancies are obviously present on the face of the translations”. The judge can only decide the case on the evidence presented to him and correctly noted those documents with translations form part of the Appellant’s case. He also gave, as indicated above, proper reasons why he did not rely upon that which was said by the court interpreter in respect of one of the three documents. There was no error of law in his approach nor in rejecting the submission made by Mr Khan, which on the evidence available was merely speculative.

12. It was submitted by Ms Heidar that the judge should or could have adjourned for the matter to be considered. The Appellant had been represented throughout by solicitors and was represented by Counsel at the hearing. No application for an adjournment was made by the Appellant’s Counsel or indeed the Presenting Officer and it was no error for the judge not to have adjourned in the circumstances of this case.

13. It is clear from paragraph 27 that the judge took the inconsistency into account:

“I would not expect such inconsistencies to be present in reliable evidence. As it concerns a central part of the Appellant’s claim I find it raises serious doubts about the general reliability of the police letters and the statements of the Appellant’s father and uncle. I am not satisfied I can treat them as reliable evidence that asserts the Appellant’s case and I find the inconsistency present damages the credibility of the Appellant”.

14. However, the judge thereafter looked at other evidential matters. He fairly said at paragraph 33 that he was not persuaded by all of the Respondent’s challenges to the Appellant’s credibility but did have some significant concerns. The judge thereafter, particularly at paragraphs 34 to 44 gave clear reasons for making adverse credibility findings upon the Appellant’s account that was unconnected to the letters referred to above. Those were not insignificant findings of adverse credibility. The judge had concluded at paragraph 44 by finding that those significant concerns of credibility together with the documentary evidence did not satisfy him that the Appellant had demonstrated a real likelihood of being at risk from ISIS in Afghanistan. That was essentially the sole basis of the Appellant’s claim to fear a return to Afghanistan.


15. The judge could only make a decision upon the evidence presented to him. In respect of the intervention by the court interpreter that may have cast a doubt upon a phrase within one of the three documents. The judge dealt with that matter properly and gave adequate reasons why he did not accede to the submission made by the Appellant’s Counsel. He was thereafter entitled to find the inconsistency an adverse factors. It is also clear however that he had fully considered the totality of the evidence and had found several other evidential features that significantly and adversely affected the Appellant’s credibility leading him to the conclusion that he reached.

Notice of Decision

There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

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 their 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 
Deputy Upper Tribunal Judge Lever

Date 21/5/17

**TO THE RESPONDENT
FEE AWARD**

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

Signed 
Deputy Upper Tribunal Judge Lever

Date 22/5/17