

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/14159/2016**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Determination Promulgated** |
| **On 12 June 2018** | **On 13 June 2018** |
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**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**Mr L K**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Saeed, Solicitor-Advocate (Aman Solicitors)

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DETERMINATION AND REASON**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Shimmin on 23 April 2018 against the determination of First-tier Tribunal Judge Widdup who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 29 March 2018.

2. The Appellant is a national of Afghanistan, born on [ ] 1976. He had claimed asylum on 6 June 2016, 10 days after entering the United Kingdom illegally, following a long overland journey. He asserted that he was at risk from the Taliban and from the Afghan government, for whom he had worked reporting on the Taliban. (His appeal to the First-tier Tribunal had been dismissed but a material error of law was found by the Upper Tribunal and the appeal was sent back to the First-tier Tribunal to be reheard.)

3. Judge Widdup found that the Appellant had failed to prove his claims and that neither he nor his witnesses were credible. His evidence lacked plausibility and his documents were not reliable. The Appellant was not at any real risk on return and his appeal was accordingly dismissed.

4. Permission to appeal was granted by Judge Shimmin because it was held arguable that the judge had acted unfairly and had erred by failing to put to the Appellant in cross-examination a point taken against the Appellant, had misunderstood or misstated why the Appellant had come to the United Kingdom and had failed to make clear or sufficient findings of fact.

*Submissions*

5. Mr Saeed for the Appellant relied on the grounds of onwards appeal and grant. In summary, he submitted that the judge should have asked the Appellant about why, for example, he was not calling his brother to give evidence, before making an adverse finding on the point. The judge had either misunderstood or misstated why the Appellant said he had come to the United Kingdom, again unfairly taking the point against him. Finally, the judge had completely failed to make any adequate findings of fact. The decision and reasons was unsafe and should be set aside and the appeal reheard.

6. Mr Wilding for the Respondent submitted that none of the submissions had any force. The judge had no role in cross-examination save to ensure that it was fairly conducted. It was the Appellant’s decision whether or not to call his brother, and for the tribunal to make its assessment of the evidence accordingly. No point had been taken against the Appellant unfairly by the judge. [73] of the determination had been misstated in the permission to appeal application: the judge had given the presence of the Appellant’s brother in the United Kingdom as only one of the reasons for coming to the United Kingdom. The only finding of fact which the judge had to make was whether the Appellant had proved his claim to the lower standard. The judge found for good and sufficient reasons that he had not. The onwards appeal should be dismissed.

7. Mr Saeed wished to add nothing by way or reply.

*No material error of law finding*

8. The tribunal accepts the submissions of Mr Wilding. In the tribunal’s view, the errors asserted to exist in the decision and reasons are illusory. Indeed, the tribunal considers that the permission to appeal application was misleading in its selective quotation from the determination, and that an application for permission to appeal should not have been made, let alone granted.

9. The determination was carefully prepared by a very experienced judge who made a meticulous and balanced assessment of the evidence in the round, with demonstrable anxious scrutiny. It was for the Appellant and those advising him to decide how the appeal was to be presented, the evidence to provide and which witnesses to call. The judge was perfectly entitled to draw an adverse inference from the failure to call a potentially material witness present in the United Kingdom, and correctly cited TK (Burundi) [2009] EWCA Civ 40: see [71] of the determination. The suggestion made on the Appellant’s behalf that the judge should have “cross-examined” the Appellant on the point is obviously wrong. The First-tier Tribunal appeal process is essentially adversarial and the judge must not descend into the arena. There was no unfairness of any kind by the judge.

10. The judge summarised the Appellant’s evidence about why he came to the United Kingdom accurately at [14] of the determination and made clear adverse findings on that issue at [73]. The judge was bound to consider section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 and reached sustainable and logical conclusions that the section considerations applied.

11. There was no obligation on the judge to make more extensive findings than he did. Indeed, given the poor quality of the evidence produced, it is doubtful that further findings could properly have been made. The judge found that none of the Appellant’s contested claims were proved to the lower standard. Nothing more was required as the judge found for secure reasons that the Appellant’s evidence was unreliable.

12. Mr Saeed’s submissions, like the onwards grounds, focussed on illusory weaknesses in the judge’s decision and reasons rather than on the merits of the underlying claim. In the end the submissions made on the Appellant’s behalf amounted to nothing more than disagreement with the judge’s decision, which had exposed a transparently weak and implausible case. The tribunal finds that there was no material error of law in the decision challenged.

**DECISION**

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

**Signed Dated** 12 June 2018

**Deputy Upper Tribunal Judge Manuell**