



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

Appeal Number: PA/11240/2019

**THE IMMIGRATION ACTS**

**Decided without a hearing  
under rule 34 (P)**

**Decision & Reasons Promulgated  
On 29 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**H M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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 his family. This direction applies both to the appellant and to the respondent.

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 07 November 2019 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge G. Richardson (“the judge”) dismissed the appeal in a decision promulgated on 26 February 2020.
3. Upper Tribunal Judge Martin granted permission to appeal to the Upper Tribunal in an order sent on 06 May 2020.
4. In the light of the need to take precautions against the spread of Covid-19 the Upper Tribunal reviewed the file and sent directions to the parties on 20 May 2020. I expressed the preliminary view that the question of whether the First-tier Tribunal decision involved the making of an error of law could be determined on the papers. I gave the following indication relating to the merits of the appeal.

“In particular, the parties may wish to note my preliminary indication of the merits of the appeal (without prejudice to further submissions). There is some force in the appellant’s argument that the First-tier Tribunal Judge erred in his approach to assessing the credibility of the appellant’s account. The judge based his credibility findings largely on his own view of the plausibility of the appellant’s and his brother’s actions but without considering whether it was plausible in the context of the background evidence relating to Afghanistan and the accepted fact that the appellant’s brother works as a journalist for the BBC. It is not inherently implausible that a young Pashtun man from a rural area might feel able to obtain information about Taliban activity when, on his own evidence, many members of the local Taliban were from his village i.e. he was likely to know them. Nor is it inherently implausible that in a country that has seen many years of conflict, a young man might have some knowledge of the weaponry used by local armed groups. It is arguably irrational to reject his brother’s account on the basis that it was implausible to place the appellant at risk by asking him to obtain information when journalists often obtain information of that kind at some risk to their sources. It seems that the judge rejected the plausibility of the appellant’s account first and then used those findings to reject the documentary evidence. This is likely to be a *Mibanga* error. The correct approach should have been to consider all the evidence in the round before coming to a conclusion about the overall credibility of the appellant’s account.

In addition to the grounds of appeal, I note that there is another obvious point that cannot be ignored. The appellant is from Nangarhar province. Even if the First-tier Tribunal judge did not err in his assessment of the credibility of the appellant’s account, he failed to consider whether there might be a general risk considering the background evidence relating to the heightened security situation in his home area, and if there was a risk, whether it would be reasonable for the appellant to relocate to Kabul.”

5. The appellant is represented by Sohaib Fatimi Solicitors. I have received no response to the directions by or on behalf of the appellant. The respondent filed written submissions on 08 June 2020 conceding that there was a material error of law in the First-tier Tribunal decision in the following terms.

“2. The respondent has taken into account the grant of permission and UTJ Canavan’s preliminary view in the directions and does not oppose the appellant’s application for permission to appeal. It is accepted that the FTTJ has fallen into error by considering the plausibility of the appellant’s account and then dismissing the documents, namely a *Mibanga* error. It is also accepted that the FTTJ has not considered risk on return to the appellant’s home area and relocation to Kabul.

3. Given that the errors of law are accepted, it is contended that an oral hearing for the error of law decision will not be necessary. It is asserted that given the extent of the error, all credibility findings will need to be remade and therefore the appropriate forum for the remaking should be in the FTT.

6. In light of the respondent's concession I am satisfied that I can determine the question of whether there is an error of law in the First-tier Tribunal decision even though the appellant's representative has failed to respond to the directions. The appellant gains all he sought from this application. For the reasons given above, the First-tier Tribunal decision involved the making of an error on a point of law because the judge failed to consider the evidence in the round and failed to consider other relevant considerations. The decision is set aside. Given that those errors go to the credibility of the appellant's account, it will be necessary for the case to be heard afresh. Although the normal course of action would be for the Upper Tribunal to remake the decision, in such circumstances, a wholesale fact finding exercise will need to be carried out. On this occasion it is appropriate to remit the case for a fresh hearing in the First-tier Tribunal.

## DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The case is remitted to the First-tier Tribunal for a fresh hearing

Signed M. Canavan                      Date 17 July 2020  
Upper Tribunal Judge Canavan

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## **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email**