



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11285/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 April 2018

Decision & Reasons Promulgated
On 03 May 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

JN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Braganza, Counsel instructed by Camden Community Law Centre

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This decision remakes the appeal of the appellant brought on protection grounds. The remaking is required following the decision of the Vice President of the Tribunal dated 10 August 2017 setting aside an earlier decision of Upper Tribunal Judge Renton, the decision of the Vice President being confirmed in a further decision of Upper Tribunal Judge O'Connor dated 26 January 2018.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to,

amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

3. The appellant is a national of Afghanistan born in 1997.
4. The appellant maintains that he comes from the village of Kala-Akhund, near Jalalabad in Nangarhar province in Afghanistan. In 2010 there was a land dispute between the appellant's father and paternal cousins. As a result of this dispute the family home was attacked. The appellant, his mother and siblings were in the main part of the house but his father and brother were outside. The appellant heard gunshots and a grenade was thrown into the house. The appellant, his mother and his younger siblings fled from the house. The appellant understood from his mother that they were to make for an uncle in Peshawar. However, the appellant became separated from his mother and siblings and, after a number of days of walking, found himself on the border with Iran.
5. The appellant was then able to use a mobile phone that he had with him and which he was then able to charge to contact his uncle in Peshawar. He was informed that the attack on the house had been part of the land dispute and been carried out by his cousins. His uncle told him that his mother and siblings had made the journey to Peshawar and that he would send someone to assist the appellant to leave Afghanistan. The next day an agent came and collected the appellant, bringing him to the UK in a journey that lasted for approximately five months, travelling through various countries including France and Belgium.
6. The appellant claimed asylum in the UK on 15 June 2011. His claim was refused on 9 November 2011 but as a result of his age he was granted discretionary leave to remain until 1 July 2014. A further application to extend his leave on the basis of a protection claim was refused on 1 December 2014. The First-tier Tribunal refused his appeal in a decision dated 4 February 2016, that decision initially being upheld by the Upper Tribunal but, as set out above, being set aside by the Upper Tribunal in decisions dated 10 October 2017 and 26 January 2018.
7. It is well understood that the burden of proof lies upon the appellant and that the standard of proof is that of whether there are substantial grounds for believing that the appellant will face a real risk of harm on return such that he requires international protection.
8. There are further principles that I must take into account here when assessing the evidence. Firstly, the appellant was aged approximately 14 at the time of the events he describes in Afghanistan and during the period of his initial asylum claim in the UK which led to the grant of discretionary leave to remain in 2011. He was still a minor when he applied for further leave to remain, becoming an adult in 2015.
9. Further, the appellant has provided two psychology reports from Ms Ann Malkin, the first dated 18 December 2015 the second dated 1 September 2017. Those reports find that the appellant has severe PTSD with moderate mixed anxiety and depressive disorder.

10. It is my conclusion as a result of all of the above matters that the appellant should be treated as a vulnerable witness. I have borne in mind the discussion of the Court of Appeal in the case of **AM (Afghanistan) [2017] EWCA Civ 1123** given my identification of the appellant as a vulnerable witness.
11. I also consider the appellant's claim against the background material provided. In particular, he provided two reports from Dr Antonio Giustozzi dated 4 April 2015 and 2 April 2018. Dr Giustozzi is a well-respected expert witness on Afghanistan who has been accepted as such in all of the Afghan Country Guidance cases before the Tribunal in recent years. I found that I was entitled to place weight on his views as a result.
12. In particular, Dr Giustozzi identifies the proliferation of land disputes accompanied by violence in Afghanistan at paragraphs 14 to 19 of his 2015 report at pages 88 to 94 of the appellant's bundle. The report identifies the impunity with which such violence takes place given the inability and lack of agency of the authorities to prevent such matters taking place. Dr Giustozzi also identifies that such feuds can often last for generations, that the authorities can be bribed and that corruption allows such feuds to prosper.
13. Of particular note in the 2015 report is the indication at paragraphs 23 and 24 on pages 96 and 97 of the bundle that Dr Giustozzi used his detailed and extensive contacts in Afghanistan to conduct a visit to the appellant's home village in order to find out whether the land dispute that the appellant describes existed. The report states as follows:
 23. Enquiries were made by researcher SM with regard to JN's claims. SM has extensive experience as a journalist and stringer and currently as a researcher in my projects. He has wide access to all parts of Afghanistan in the past years and has interviewed hundreds of elders, insurgents and other actors so far.
 24. SM sought to confirm the content of JN's statements with MAR, son of HI, born in the Kali Khumb Area of Khushkhumbet of Behsud district of Nangarhar province in 1967. In 2005 he was appointed as Malik (village elder) for Kali Khumb. The elders confirmed the existence of a land dispute between the two families, of violent scuffles between Mr N and his cousins. They also confirm the disappearance of Mr N from the village.
 25. In sum, JN is at risk from his cousins. The risk would be greatest in Nangarhar, but would also extend to other parts of the country, depending also on the ability of the cousins to invest time and resources in tracking him down around Afghanistan."
14. The respondent does not dispute that this part of Dr Giustozzi's report is reliable but maintains that it is not sufficient on its own to show a real risk to the appellant if he returns either to his home area or to Kabul. The enquiries made by Dr Giustozzi's agent do not identify definitively that the appellant's father and brother were killed.
15. It is my view, however, that given the background evidence of the commonplace occurrence of such land disputes and of the violence associated with them, that violence often being serious even where it does not give rise to killings, that the

confirmation of this land dispute concerning the appellant and relatives is sufficient to show a risk to him in his own home area of serious mistreatment such that he cannot be expected to return there.

16. It was also my view that the information in Dr Giustozzi's report could be taken as somewhat higher than submitted by the respondent. Dr Giustozzi knew that the account was that the applicant's father and brother had been killed and that his mother and siblings had fled to Peshawar. He is manifestly aware of his duty to the court. Had information been obtained by his agent that suggested that the father and brother were not dead or the mother and siblings were in the village, it would have been included in the report. It was not. The information obtained about the home area does not undermine the applicant's account and supports it, in my judgment to a significant degree.
17. Before reaching a conclusion on the evidence in Dr Giustozzi's report and whether the applicant was at risk from a land dispute in his home area, I also considered the other credibility points relied on for the respondent. The respondent maintains that it is not credible that the appellant could become separated in the manner in which he describes from his mother and siblings, would have looked for them before travelling as far as the Iranian border and that it was not credible that the appellant would happen to have a mobile phone with him that he was able to use when he arrived on the border with Iran in order to be able to contact his uncle who could assist him in coming to the UK.
18. It was not my view that these points relied on by the respondent, albeit put clearly and cogently by Mr Clarke at the hearing before me, were sufficient to undermine the credibility of the appellant's account. Firstly, as above, he is a vulnerable witness, aged only 13 or 14 when the events he describes took place and when he described them in his initial asylum claim. Additionally, he is an uneducated person. In that context, I did not find his inability to remember exactly how long it took him to get to the Iranian undermined his credibility.
19. Further, his account of using his mobile phone was set out in his first witness statement from 25 July 2011 in which his evidence was not that he happened to find the phone when he reached the border but that he was able to charge it up at that time. I found nothing implausible or incredible about that being the case.
20. Further, the appellant has been consistent across four witness statements and in his oral evidence before me as to the chaos that occurred when the family home was attacked, that he and his mother and siblings ran into the wooded area surrounding their village when the attack took place and that it was in that terrain that they became separated. The appellant has also been additionally consistent as to this occurring because his mother was attempting to take care of his younger siblings whereas he was able to move faster and became separated from them.
21. I also found that the appellant's claim showed the requisite degree of credibility where, as above, he provided four different statements across an extended period of years and different appeal hearings including that before me and was notably

consistent given his age when the original events took place and the amount of time that has passed since then.

22. The appellant's evidence also is supported by the psychology reports of Ms Malkin. Her diagnosis of PTSD and a mixed anxiety and depressive disorder is consistent with the experiences the appellant sets out.
23. It was suggested at the hearing that Ms Malkin's indication in the most recent report at paragraph 7.1 on page 14 of the bundle that the appellant "has done relatively well" since the previous assessment was inconsistent with the appellant's statement in his most recent witness statement dated 13 December 2017 that "my PTSD has got worse and any progress I made has gone". It was not my view that this was in any way an inconsistency. The second psychology report and the 2017 witness statement both deal with the appellant's detention by the immigration authorities in July 2017 when there was a misunderstanding as to his ongoing protection appeal. My reading of Ms Malkin's second report is that since seeing the appellant in 2015 he had made progress but that the detention in Brook House had caused a setback. This is recorded by Ms Malkin at paragraph 6.5 of her second report on page 12 of the bundle as follows:

"6.5 As stated above, JN reports that since his period of detention, he had been feeling more anxious and upset, had problems sleeping and concentrating, and his mood had once again been low. He also finds himself constantly thinking about the period in detention, when he was very frightened and confused, and worried about being sent back to Afghanistan. The thoughts about being returned to Afghanistan have brought back the memories of his flight from home, and of losing his family. These thoughts have once again become intrusive at times."
24. Ms Malkin also identifies in paragraph 6.10 on page 13 of the bundle that the appellant's assessment for depression had worsened slightly to moderate depression from the earlier diagnosis of mild depression. She also identifies "severe" PTSD in paragraph 8.3 on page 15 of the bundle and attributes these conditions as being "a direct consequence of his arrest and detention".
25. Ms Malkin's conclusion was that if the appellant were returned to Afghanistan he would become retraumatised and his existing symptoms exacerbated. This would impact on his ability to function, particularly where, as identified by Dr Giustozzi, the provision of mental health services in Afghanistan is extremely limited and specialist treatment for PTSD is almost non-existent.
26. In order to assess whether the appellant could be expected to relocate to Kabul, I refer to the very recent country guidance of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**. The headnote to that case reads as follows:

"Risk on return to Kabul from the Taliban

 - (i) A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.

Internal relocation to Kabul

- (ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.
- (iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.
- (iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.
- (v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.

Previous Country Guidance


- (vi) The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.
- (vii) The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.
- (viii) The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) also remains unaffected by this decision."

27. It will be apparent that the Tribunal identifies in AS (Afghanistan) that the factors of age, including the age at which a person left Afghanistan, the nature and quality of connections to Kabul, physical and mental health and language, education and vocational skills are relevant factors when assessing whether it would be unduly harsh or reasonable for someone to relocate to Kabul.
28. The assessment for this appellant is, in my view, relatively straightforward. He left Afghanistan at the age of 14, he has been in the UK for seven years since then. He has never been to Kabul and nothing here suggests that he has any meaningful contacts or support there. Certainly, there is a possibility that his uncle in Peshawar might be able to provide financial support but nothing here indicates that the appellant has been able to contact him since he came to the UK seven years ago. That is therefore not a meaningful source of support for the appellant now.

29. I have identified above that the appellant has been identified as suffering from PTSD and a moderate depressive and anxiety disorder. The country evidence is clear as to the very limited treatment that would be available. It is not my view that somebody suffering from that condition given the appellant's overall profile, without any other person to assist him or support him in Kabul and where he will have no easy access to either accommodation or finance, would be able to access what limited treatment exists.
30. Further, this appellant is of very limited education, undisputed by the respondent. I note that he has obtained a certain amount of education in the UK and I accept that this is something that he might be able to rely on to give him some assistance in the job market in Afghanistan, but the other factors pertaining here, his age when he left the country, his mental health problems and his notable isolation were he to return to Kabul lead me to the conclusion that he is not someone who will be able to obtain work and support himself. In all the circumstances, it is my view that the appellant cannot be expected reasonably to locate to Kabul and that the circumstances he would face would be unduly harsh. Where that is so he has made out his claim for international protection.
31. For all these reasons I find that the appellant has shown that he is at a real risk of harm on return and that he cannot avail himself of internal relocation in order to avoid that harm. He has therefore made out his appeal on protection grounds.

Notice of Decision

The appeal is remade as allowed on protection grounds.

Signed 
Upper Tribunal Judge Pitt

Date: 3 May 2018