



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04968/2017

THE IMMIGRATION ACTS

Heard at Liverpool
on 2 August 2018

Decision & Reasons promulgated
on 17 August 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FARID AHMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown instructed by Citizens Advice Bureau (Bolton)
For the Respondent: Mr Tan Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 3 August 2017 First-tier Tribunal Judge Bannerman (“the Judge”) dismissed the appellant’s appeal on protection on human rights grounds. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application to the Upper Tribunal on 3 January 2018; the operative part of the grant being in the following terms:

“having accepted that the appellant was in the Afghan army [54], it is at least arguable that the judge failed to make a clear finding as to whether he accepted that the appellant was a deserter, and if so, what the consequences would be. Although it is unclear what evidence, if any, was put forward in support of the argument that he may be at risk on return from the Afghan government, the point is sufficiently arguable to merit further consideration at a hearing. It is also arguable that the judge failed to give sufficient reasons to explain why the background evidence relied upon by the appellant did not “tip me away” from the existing country guidance in *AK (Afghanistan)* [65]. A country guidance decision is pending on the second issue. This appeal will be listed for hearing after the decision is published.”

Error of Law

2. The appellant is a citizen of Afghanistan born on the 1 January 1987. Having considered the evidence Judge Bannerman set out findings of fact from [51] of his decision, the core finding being that it was not found that the appellant is credible [52].
3. The Judge did accept the appellant is an Afghani and specifically finds that he was in the Afghan army, but beyond that there was very little in his story that, even to the lower standard of proof, was credible [54].
4. At [58] the Judge does not find the appellant is already at risk from the Taliban and went on to consider the issue of relocating to Afghanistan having left the army and considered the availability of a sufficiency of protection and relocation.
5. The Judge finds that as a soldier in Afghanistan there was no reason whatsoever why the appellant will be prejudiced by returning to his home state where it was found he was likely to receive appropriate care when returning to Afghanistan and to Kabul, in particular from the army.
6. The Judge accepted the submission made by Mr Brown at the hearing that the appellant's home area of Badakhshan is in an area where there are security threats and is a Taliban stronghold, but finds that [60] that the appellant will be going back to Kabul, a place he has stayed in previously. At [62] the Judge finds:

“This relocation to Kabul, if one can call it a relocation though his family is in Badakhshan but he has stayed in Kabul, would be entirely reasonable and Kabul is an area that is appropriate for him to relocate to. I consider that there is a sufficiency of protection having regard to the country guidance and refer to paragraph 13 above regarding country information”.

7. The appeal was relisted prior to the handing down of the country guidance case and therefore adjourned to today's hearing.
8. In *AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118* the Upper Tribunal held that 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. 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 that general position. 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.
9. The case of *AK (Afghanistan)* remains good law and the ground of challenge asserting the Judge erred in following the guidance set out in that case, despite Mr Brown inviting the Judge to do otherwise, has not been shown to be infected by arguable legal error.

10. Mr Brown sought to challenge the proposition that *AS (Safety of Kabul)* meant his client must fail with his appeal. Mr Brown submitted the starting point was paragraph 230 in which the Upper Tribunal deciding the country guidance case emphasise that whether internal relocation is reasonable for a particular person requires case-by-case consideration; which requires consideration of a number of specific factors set out in that paragraph.
11. Mr Brown referred to a number of paragraphs in the earlier section of the country guidance decision in which it was noted that finding the appellant in *AS* was not at risk on return to his home area or elsewhere from the Afghan government had not been challenged and stands, that it was not the appellant's case in *AS* that treatment in Kabul would be in breach of article 3 ECHR or Article 15(c) of the Qualification Directive. Mr Brown also referred to [77] in which the Tribunal recalled "a person could not be targeted simply because they were a relative of a person who is a target or a threat to the Taliban". It was submitted that even if this is the case it will be necessary to look at other family members in the area and that there was limited evidence of risk although certain categories have enhanced risk category such as journalism, educationalists, and members of the security forces. Mr Brown submitted the appellant was at risk as a member of the security forces which was not a category specifically looked at in the country guidance decision - see also [95].
12. The above paragraphs fall within the section of the country guidance case in which the Tribunal was setting out the evidence received, and submissions made. General findings in relation to risk start at [173]. Mr Brown specifically refers to [174] in which the Tribunal writes:
 174. The risk of a specific individual being successfully targeted depends upon their identification as a target (for example, due to past or present actions/circumstances) and the ability of the Taliban to locate and then carry out an attack on that person, as well as their will or priorities in doing so. The evidence was broadly in agreement as to the order of importance of targets for the Taliban in Afghanistan being (i) senior serving government officials and the security services, (ii) spies, and at the lower level, (iii) other collaborators (including the wider security forces, government authorities, foreign embassies, the UN, NGOs and anyone passing information to the government about the Taliban) and deserters. Dr Giustozzi's evidence was that the Taliban keep a blacklist of all those who are wanted by the Taliban/identified as legitimate targets, some of whom are included just because of their high-profile position and others at a lower level are identified because they have been through a system of sentencing and only then are they a legitimate target.
13. Mr Brown submitted the country guidance indicated there was an element of reasonableness that had to be taken into account when considering internal relocation. It was submitted the Judge accepted the appellant was in the army, but it was unclear if any findings were made that risk may follow.
14. The Judge clearly records that Mr Brown made submissions at the original hearing in relation to what was said to be the appellant's home area. The submission by Mr Brown that his client was entitled to know whether the judge had found he would face a real risk in that area, which was required, and that as no specific finding had been made, the Judge had erred. On this point the Judge considers risk on return to Kabul clearly finding it [62] that it was doubtful whether the appellant returning to Kabul would be an act of internal relocation

for although his family lived in the stated home area the appellant had stayed in Kabul. The Judge seems to be finding that Kabul is to be treated at the appellant’s home area for the purposes of assessing risk on return. The alternative, that the judge considered Kabul as a place of internal relocation on the basis the appellant could not return to his family area, clearly implies a finding that the appellant did face a real risk at that location. The Judge did not find the appellant could return to Badakhshan.

- 15. The claim the appellant would face a real risk as a result of his profile is a claim that was found to lack credibility by the Judge. The Judge did not find the appellant had established that he had been targeted at all, even when he was in the army. Mr Tan referred to the fact the appellant was at the lowest level of recruit who had not been deployed to fight the Taliban by the army and who left Afghanistan in 2012. The finding by the Judge about the lack of risk in the past has not been shown to be infected by arguable legal error.
- 16. The Judge has made sustainable findings that the appellant can return to Kabul in light of his profile as found. The recent country guidance case, when undertaking the fact specific assessment required in cases of this nature, reinforces the findings of the Judge on this point.
- 17. Mr Brown’s submission the Judge failed to consider risk that will be faced by the appellant as a deserter from the army has no arguable merit as a considerable number of recruits’ desert each month from the Afghan army and there is no evidence that a deserter from the army will face any risk from the Afghan authorities as a result of this fact on return, per se. More importance in this case is that Judge did not find that the appellant’s claims with regard to risk on return were true. The Judge found the appellant was in the army and that he left the army but, beyond that, any further claim was not shown to be credible.
- 18. Having considered the original decision, evidence provided to the Judge, current country guidance case, and submissions made, I find the appellant has failed to establish the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Decision

- 19. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 20. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 7 August 2018