Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05881/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 May 2019	**On 16 May 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ML
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Mr A Mackenzie, Counsel, instructed by Luqmani Thompson & Partner Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (SSHD) against the decision of Judge of the First-tier Tribunal Beach (the judge), promulgated on 1 March 2019, allowing ML's appeal (hereafter claimant) against the SSHD's decision, dated 26 July 2014, refusing the claimant's protection and human rights claim.

Background

2. This appeal has a somewhat complex procedural history. What I have to determine has however been narrowed to a single issue. Did the judge err in law in her assessment of the internal relocation alternative available to the claimant?

3. The claimant is a national of Afghanistan born in April 1995. He entered the UK on 18 July 2008 aged 13 years old. He was placed in the care of a Local Authority and claimed asylum on 24 July 2008. His asylum claim was based on his Hazara ethnicity and the targeting of his father (a teacher) by the Taliban. His asylum application was refused on 4 November 2008, but he was granted Discretionary Leave as an unaccompanied minor until 3 November 2011. He made an in-time application for further leave to remain based on his fear of persecution in Afghanistan but this application was refused on 26 July 2014. He has been lawfully present in the UK since at least 4 November 2008, a period of over 10 years.

4. An appeal against the SSHD's decision was allowed on 28 October 2014 but, on 15 January 2015, the Upper Tribunal found there had been a material error of law and remitted the appeal for a fresh hearing back to the First-tier Tribunal. The First-tier Tribunal subsequently dismissed the claimant's appeal on 19 June 2015. Although he obtained permission to appeal to the Upper Tribunal, in a decision promulgated on 29 December 2015 the Upper Tribunal found no error of law in the First-tier Tribunal's decision.

5. The claimant then sought permission to appeal to the Court of Appeal and permission was ultimately granted at an oral renewal hearing on 18 October 2017. On 28 March 2018 the parties agreed a Consent Order remitting the appeal back to the Upper Tribunal to determine whether there had been a material error of law in the First-tier Tribunal's decision. The Upper Tribunal found there had been an error of law in the First-tier Tribunal's decision and the appeal was, once again, remitted to the First-tier Tribunal for a fresh hearing. In the meantime, the claimant's representatives made submissions to the respondent regarding his 10 years lawful residents in the UK. On 17 December 2018 the SSHD wrote to the claimant accepting that he had completed 10 years lawful residents in the UK and that he was prima facie entitled to be granted ILR. The claimant had not however received formal notice of a grant of ILR by 30 January 2019, the date of his 3rd de novo appeal hearing before the First-tier Tribunal.

The First-tier Tribunal decision

6. In her decision promulgated on 1 March 2019 the judge set out in detail the claimant's immigration history, the basis of his asylum claim, and the written and oral evidence from the claimant and his

three witnesses. The claimant maintained that he and his family had to flee Afghanistan as a result of threats from the Taliban directed to his father because his father was a teacher in a girl's school and because of their Hazara ethnicity.

7. The judge set out her extensive findings from [43] to [74]. She considered the claimant's nationality and ethnicity (which had been disputed) and concluded that he was of Hazara ethnicity and did come from Afghanistan ([46] to [48]). The judge next considered the claimant's credibility. The judge noted that the claimant was only 13 years old at the date of his asylum claim and that this, together with his evidence that had been told throughout his journey to the UK to be selective in what he admitted to the SSHD, may have contributed to some vagueness in his recollection of events and to inconsistencies in his account. Noting that the core elements of the claimant's account had been consistent throughout the asylum process, and having regard to the claimant's actual evidence in his asylum interview, and by reference to the evidence given by the claimant's witnesses relating to Ghazni Province in Afghanistan, the judge found that the claimant's father had been a teacher in Afghanistan who believed in the rights of girls to be educated and that he faced problems for the Taliban.

8. The judge then considered with the claimant would face a well-founded fear of persecution if returned to Afghanistan. Although the judge concluded that the appellant was not at real risk from the Taliban in Ghazni itself, she found that he would face a real risk of persecution during any attempt made to travel to his home area from Kabul, to where the claimant would be returned. In reaching this conclusion the judge considered the Country Guidance case of **MI (Hazara - Ismaili - associate of Nadiri family) Afghanistan CG** [2009] UKAIT 00035 and the more recent decision of **AS (Safety of Kabul) Afghanistan CG** [2018] UKUT 00118 (IAC). The judge additionally relied on an expert country report from Professor William Maley. This expert report considered the risks accompanying any journey to Ghazni and the current level of discrimination faced by Hazaras. The judge additionally considered recent background materials relating to the position of Hazaras.

9. The judge then considered whether the claimant would be able to avail himself of the internal relocation option by remaining in Kabul. From [68] to [74] the judge explained why, despite the claimant being an educated, healthy single adult male, it was nevertheless unreasonable or unduly harsh, applying **AS**, for him to relocate to Kabul. In reaching this conclusion the judge took into account the fact that the claimant left Afghanistan at the age of 12, that he had been outside Afghanistan for more than 10 years, that he had never lived in Kabul and had no network of support available to him, that his Hazara ethnicity (and being a Shia Muslim) would expose him to further

discrimination, particularly given the findings in the unchallenged expert report concerning a sharp increase in sectarian violence, and that he may be considered as someone well-disposed to Western values, which would further increase the risk of ill-treatment.

10. The judge then considered Article 8. The judge referred to the SSHD's acceptance that the claimant had lived lawfully in the UK for 10 years and that he was entitled to ILR. The judge found that the claimant did fulfil the requirements of paragraph 267B and that it would be disproportionate to remove him from the UK. The judge consequently allowed the appeals on both protection grounds and human rights grounds.

The grounds of appeal and the parties' submissions

11. It is unnecessary for me to set out the SSHD's full grounds in any detail. This is because Ms Everett sensibly relied on a single ground challenging the judge's assessment of the internal relocation alternative. I nevertheless consider it appropriate to say a few words in respect of some of the grounds even though they were not pursued at the 'error of law' hearing.

12. The original grounds challenged the adequacy of the judge's findings relating to his Hazara ethnicity. The judge however gave rational and cogent reasons for concluding that the claimant was an Afghan Hazara. The judge was unarguably entitled to rely on the evidence from three witnesses whose credibility did not appear to be challenged by the Presenting Officer in his closing submissions before the First-tier Tribunal. At [46] the judge was entitled to attribute vagueness in the claimant's account to his young age and the fact that he lived in a rural area of Afghanistan and had never travelled outside that area prior to fleeing the country. At [47] the judge gave rational and clearly sustainable reasons for accepting the opinion evidence from the claimant's Hazara witnesses. The grounds criticise the judge's conclusion that the claimant could not safely journey to Ghazni as being unsubstantiated by evidence and insufficiently reasoned. The judge however relied on the unchallenged expert report and recent background evidence which she clearly set out in reaching her conclusion. The grounds contend that the appeal before the First-tier Tribunal was 'spurious' because the claimant had already been informed that a grant of ILR would be forthcoming and that his continued prosecution of his appeal undermined his credibility. Not only is there no record of any such argument being advanced before the First-tier Tribunal, but the claimant was fully entitled to pursue his appeal as the status of refugee is one recognised in international law and one that bestows benefits on a recognised refugee and further obligations on the recognising state. It is additionally concerning that the judge who granted permission to appeal, whilst noting that the

'spurious' ground could not be an error of law, expressed "some sympathy with that being asserted by the Home Office."

13. In light of the above summary Ms Everett very properly abandoned all of the grounds of appeal save for the challenge to the issue of internal relocation.

14. I pause to note that the SSHD has not challenged the judge's Article 8 assessment. There has consequently been no challenge to the judge's decision allowing the appeal on human rights grounds.

15. Ms Everett submitted that, despite referring to the need for a "nuanced" approach to internal relocation, the judge's reasoning was insufficient and incapable of sustaining her conclusion. Although the judge identified potential problems that the claimant may face, her findings were overly speculative and could not, even when cumulatively considered, render the possibility of relocating to 'Kabul' unreasonable.

16. Mr MacKenzie invited me to find that the judge's assessment of internal relocation was sustainable. **AS (Afghanistan)** did not consider the position of ethnic minorities, including Hazaras, and the judge was entitled to rely on more recent evidence of an upsurge in the targeting of Hazaras. The judge took all relevant matters into account, weighed up at those matters and reached a conclusion open to her.

Discussion

17. I am satisfied, for the following reasons, that the decision does not disclose any error on a point of law requiring it to be set aside.

18. The only challenge to the judge's decision advanced at the 'error of law' hearing related to her assessment of the availability of internal relocation. It has not been suggested that the judge misdirected herself in respect of the legal test for assessing the internal relocation alternative. The judge demonstrably considered and applied **AS (Afghanistan)**, the most recent Country Guidance case dealing with the issue of safety of return to Kabul ([55], [56], [57] and [68]). The judge was aware that, in general, it would not 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 the city. The judge was aware that she had to consider the claimant's particular circumstances, including his age when he left Afghanistan and at the date of the hearing, the nature and quality of any support network that was available to him in Afghanistan, and his language, education and vocational skills [55].

19. The judge was entitled to attach weight to the absence of any support network available to the claimant in Kabul, and to the fact that the claimant had never lived in Kabul and had no contact with anyone else in Afghanistan. The judge referred to paragraph 95 of **AS (Afghanistan)** which made, albeit fleeting, reference to there being some evidence of risk to Shia Muslims. The judge was demonstrably aware that **MI (Afghanistan)** found that persons of Hazara ethnicity would not, by reason of being Hazara, be at real risk of serious harm in Afghanistan, but she was entitled to attach significant weight to the unchallenged expert report by Professor William Maley which detailed a sharp increase in discrimination against Hazaras. Whilst it was not suggested that this discrimination amounted to persecution, it was a material factor that the judge was entitled to take into account when assessing the viability of the internal relocation option to Kabul for this particular claimant. The judge was additionally entitled, when assessing the viability of internal relocation (as opposed to a risk of persecution), that the claimant was likely to be considered as someone disposed to Western values (in **AS (Afghanistan)** the Upper Tribunal found that there was some evidence of a possible adverse social impact or suspicion affecting social and family interactions in respect of those who were perceived as being Western).

20. I am satisfied that the judge carefully considered all factors necessary for a lawful assessment of internal relocation. The judge weighed up these factors together and gave clear and sustainable reasons for her conclusion in light of the expert report and the background evidence before her. I find that the challenge to the appeal on protection grounds is not made out and that the judge was rationally entitled to her conclusion.

Notice of Decision

The First-tier Tribunal's decision did not involve the making of an error on a point of law.
The SSHD's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the claimant in this appeal 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 claimant and to the SSHD. Failure to comply with this direction could lead to contempt of court proceedings.

15 May 2019

Signed Date

Upper Tribunal Judge Blum