



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

Appeal Number: PA/12147/2017

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 13 November 2018**

**Decision &
Promulgated
On 08 January 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**A S
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Samra of Harbans Singh & Co (Soho Road)

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Dhaliwal promulgated on 5 January 2018 in which she dismissed the Appellant's appeal on protection grounds against the decision of the Respondent dated 6 November 2017 refusing asylum in the UK.
2. The Appellant is a national of Afghanistan born on 10 December 1990. He arrived in the United Kingdom clandestinely in October 2007. On 2 December 2010 he made an application for asylum. The application was

deemed withdrawn on 15 March 2011 because the Appellant had absconded. It appears that the Appellant subsequently re-emerged and on 28 February 2017 made further submissions in respect of his asylum claim. This resulted in him being interviewed on 18 May 2017. Thereafter, upon due consideration, the Respondent refused the asylum claim for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 6 November 2017.

3. The Appellant appealed to the Immigration and Asylum Chamber.
4. The First-tier Tribunal Judge made some findings in favour of the Appellant, but ultimately rejected the claim on the basis that it was reasonable for him to relocate to Kabul.
5. The Judge made the following favourable findings.

(i) At paragraph 15:

"I did not find any factors which undermined the Appellant's credibility in this regard and I am likewise able to accept that

(i) the Appellant lived with his family in the Baghlan Province,

(ii) the father of the Appellant was a commander for the Taliban,

(iii) due to his father's influence, both of his older brothers joined the Taliban and

(iv) as the Appellant was about to be recruited, his mother and maternal uncle arranged for him to leave the country."

(ii) At paragraph 16:

"When I take the evidence in the round, I am satisfied that the account given by the Appellant of him being recruited and being trained by the Taliban is reasonably likely to be true."

(iii) At paragraph 19:

"As the country guidance is that Baghlan is a province that is controlled by the Taliban and I accept that the father of the Appellant is a commander for the Taliban, I am clear that Baghlan is not a safe location for the Appellant to return to."

6. Further to the findings of fact, the Judge indicated the framework of consideration of the issue of protection: for example, at paragraph 17 - *“I move on to consider whether the Appellant is still at this present time at risk from the Taliban, if so, whether there is sufficiency of protection from the state and whether relocation can mitigate that risk.”* Further to the finding that there was a risk in Baghlan, the Judge stated: *“I therefore go on to consider relocation to Kabul. Internal relocation may be both relevant and reasonable but this will depend on the person’s profile and personal circumstances.”* (paragraph 20). The Judge then referred to elements of the country guidance and country information materials that were before her (paragraphs 21-23) before considering the particular circumstances of the Appellant.

7. The Judge ultimately reaching the following conclusion:

“I am not satisfied that the Appellant has discharged the burden of proof to establish that he is entitled to be granted asylum. Taking into account all of these factors, I have concluded that whilst the core of the Appellant’s claim is reliable and he may be at risk from the Taliban in Baghlan, he is able to return and relocate to Kabul where there will be no risk to him. I therefore do not find that it would be unduly harsh in any way for the Appellant to return to Afghanistan.” (paragraph 34).

8. The Judge went on to consider humanitarian protection and human rights outside the scope of the protection claim, before dismissing the appeal on asylum, humanitarian protection, and human rights grounds.

9. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Blundell. Judge Blundell identified two matters of concern. The material parts of the grant of permission are in the following terms:

*“I find it difficult to reconcile the Judge’s acceptance that the Appellant would be in fear of the Taliban in his home area and her decision (in relation to Kabul) that the Taliban have no ongoing interest in him due to the passage of time. I am also concerned that the Judge failed to consider the significance of what was (first) said in **PM (Afghanistan) [2007] UKAIT 89** when considering the extent to which the Taliban would be likely to detect the Appellant in Kabul when he came to seek employment or accommodation. Whilst the relevant part of that decision was cited at [21] of the Judge’s decision, it is arguable that she failed to apply that guidance in her subsequent assessment. As contended in the grounds, the Appellant’s close family was accepted to have significant links to the Taliban and it is*

arguable that the Judge failed to consider the country guidance and the more recent background material against that background.”

10. The first matter identified in the grant of permission to appeal is not pursued before me by Mr Samra. In my judgment it was wise of Mr Samra not to rely on it. Indeed, for completeness, I should say that he did not initially refer to it at all in his oral submissions; it was only when Mr Mills mentioned it in his submissions that Mr Samra acknowledged that he was not seeking to rely upon it.
11. For the avoidance of any doubt: in my judgement there is no difficulty at all in reconciling the notion that the Appellant might be at risk in his home area where he is known, but might not be at risk in Kabul where he is not known. As I note, this point was not pursued any further and I say no more on it.
12. It follows that the focus of argument before me was in respect of the First-tier Tribunal Judge’s evaluation of the reasonableness or otherwise of relocation to Kabul against the framework of country guidance and country information.
13. Accordingly, in the premises, I invited Mr Samra to take me to the particular materials that provided the relevant framework upon which he would wish to rely in developing the challenge to the decision of the First-tier Tribunal Judge. This was because it was at the core of the grounds of appeal - and the grant of permission to appeal - that the Judge had in some way deviated from guidance either in law or in substantial material fact to an extent that it amounted to error of law.
14. In this context Mr Samra took me first of all to the Appellant’s bundle before the First-tier Tribunal which included case law. My attention was directed to paragraph 130 of **PM and Others (Kabul, Hizb-i-Islami) Afghanistan CG [2007] UKAIT 89** - which was referenced in the grant of permission to appeal with the acknowledgement that Judge Dhaliwal had referred to it at paragraph 21 of her decision.
15. In the circumstances, before turning to the specific paragraph cited by Mr Samra it is helpful to set out what Judge Dhaliwal said about this case - which in essence was to restate what was said in the headnote:

*“In **PM and Others (Kabul, Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089** the Tribunal held: (i) Those returned from the United Kingdom will not, without more, be at real risk at the airport or*

after arrival in Kabul. (ii) Those returned from the United Kingdom are not at real risk, without more, of being suspected by the authorities as insurgents. (iii) The past of an individual seeking accommodation or work in Kabul, or elsewhere, may be discovered and mentioned to the authorities. Similarly, the authorities may become aware of someone newly arrived in an area. That may result in a person being detained for questioning but there is no satisfactory evidence such questioning gives rise to a real risk of serious harm. (iv) Subject to an individual's personal circumstances, it is unlikely to be unduly harsh (or unreasonable) to expect them to relocate to Kabul if they have established a real risk of serious harm in (and restricted to) areas outside Kabul." (paragraph 21).

16. The specific passage at paragraph 130 of **PM** to which Mr Samra took me is in the following terms:

"We accept that those who fall into the hands of the Taliban, unless considered friendly to them, are likely to be ill-treated."

17. Mr Samra then took me to the citation at paragraph 23 of the Judge's decision from a report by the Immigration and Refugee Board of Canada dated 15 February 2016 titled 'Afghanistan: Whether the Taliban has the capacity to pursue individuals after they relocate to another region (2012 - January 2016)'. The passage cited by the Judge is in these terms:

"The Taliban may be able to find a person who relocates to a different area and that they have been successful in doing so, particularly when targeting their well-known or well-positioned opponents ... the Taliban has shadow governors and military commanders in almost all provinces; communication and information sharing between the command structure is likely, including in efforts to obtain information about a person's background ... it is more difficult to track people who have moved into urban environments but even then the Taliban have spies and members who can gather considerable information."

18. Mr Samra next took me back to the Appellant's bundle and the case of **RQ (Afghan National Army - Hizb-i-Islami - Risk) Afghanistan CG [2008] UKAIT 00013** and a report cited therein from the UNHCR on internal flight. The particular passage is from paragraph 28.08 of the UNHCR report (dated June 2005). It is in these terms:

"It is not difficult to track people down in Afghanistan, although it might take time. Neighbours and landlords will check people's backgrounds, because everyone thinks in terms of security, and so they would want to check a newcomer's background in their home area. Further, messages are sent across the country via chains of

communications based on personal contacts, and it would be natural to investigate where someone was from in order to see what role they could play in such a network. The postal service is unreliable and only delivers to the district centres, not to the villages, so that travellers are often used to deliver messages and goods to relatives and friends."

19. In this context I also note the following passage in RQ at paragraph 105 - immediately following the quotation from the UNHCR report:

"That extract supported the evidence of the Appellant and his expert witnesses. Outside Kabul, we accept that enquiries would be made about an individual's background and that the rumour mill would wish to satisfy itself as to whether an incoming unknown individual posed a risk to that community. We do not consider that (absent family connections who could provide safety in a particular area) internal relocation outside Kabul would be available to Appellants with difficulties in their home areas."

20. In my judgement the Tribunal's comments at paragraph 105 of **RQ** demonstrate that the passage from the UNHCR report was considered to be of particular significance and application for somebody seeking to relocate in a place other than Kabul. To that extent, it is not directly on point in the circumstances of the instant case.

21. Be that as it may, I do note paragraph 107 of **RQ**:

*"However, if news of being specifically wanted by a warlord or commander is likely to reach Kabul, we accept that an Appellant's safety in Kabul cannot be satisfactorily assured to the domestic protection standard set in **Horvath** ..."*

In this context, it is also relevant to note paragraphs 101 and 102, which are in these terms:

"101. However, where an individual was 'wanted' by the Taliban or Hizb-i-Islami, then the evidence was that the situation in Afghanistan remains sufficiently lawless that if he were found, there would be nothing to prevent them dealing with him as they thought fit. A person who was wanted in his home area for a specific reason would be able to show a real risk of persecution (or treatment entitling him to humanitarian protection, as appropriate) in his home area.

102. The next question was whether such a person could relocate away from the risk and whether it would be unduly harsh to

*expect him or her to do so. Where there was an individual risk, it would be a question of fact whether internal relocation was an option. In general, for a person with no particular profile, the Tribunal had held that there was no risk in Kabul engaging the international protection Conventions (**M v Secretary of State for the Home Department (Afghanistan) [2004] UKIAT 00035**).*"

22. These matters find expression in the headnote of **RQ** at (6)(b)

"the safety of internal relocation to Kabul is a question of fact based on the particular history of an individual Appellant and of the warlord or faction known to be seeking to harm him."

Otherwise it is to be noted that the headnote at paragraph (5) says this:

"Where the risk to a particular Appellant is confined to his home area, internal relocation to Kabul is in general available. It would not be unduly harsh to expect an Appellant with no individual risk factors outside his home area to live in Kabul and assist in the rebuilding of his country."

23. For completeness, I should note that included in the Appellant's First-tier Tribunal bundle were extracts from the case of **ZN (Warlords, CIPU list not comprehensive) Afghanistan [2005] UKIAT 00096**. **ZN** considers the situation where there was what was described as a vendetta by a powerful warlord against an individual. Mr Samra did not seek to place any particular reliance upon it in the context of the submissions advanced before me. I do note, however, that **ZN**, again, emphasises the fact-sensitive nature of the assessment of any individual case - each case must be decided on its own facts - and that in circumstances where the matter is essentially one of fact-finding for the First-tier Tribunal the Upper Tribunal will be slow to interfere with that evaluation, particularly in the context as here where the initial task is to consider whether there has been an error of law.
24. Having been taken through these various passages by Mr Samra I invited his comments on paragraph 24 of First-tier Tribunal Judge Dhaliwal's decision:

"I therefore start this part of my considerations on the basis that the Taliban can find persons that they wish to find as they have the resources to do so and whilst it is more difficult to find persons that have moved into urban areas, it can be done."

25. Mr Samra acknowledged the substance of Judge Dhaliwal's observation, and accepted that it was an effective summary of the materials cited by the Judge. Moreover and more particularly, he acknowledged that it adequately reflected the substance of the materials to which he had taken me and which I have rehearsed above.
26. It follows that the Appellant is not able to maintain any argument that the Judge disregarded or misunderstood the nature of the issues in the appeal, the country guidance, or the country information.
27. Mr Samra otherwise in amplification of the grounds of appeal invited me to consider that notwithstanding the adequacy of the observation at paragraph 24 in the following paragraphs - paragraphs 25-29 - the Judge in substance speculated as to the circumstances of the Appellant on return, and the nature of any interest that the Taliban might have in him.
28. For the Respondent Mr Mills argued that the Judge had not fallen into any error of law but had made an appropriate evaluation of the particular facts of the individual case. He sought to emphasise the context of the two country guidance cases particularly relied upon before the First-tier Tribunal - **PM** and **RQ**. In particular he noted that references to landlords or neighbours checking the background of new arrivals was in the context of seeking to protect against any possible threat the new arrival might pose, not did not therefore relate to the possibility that such persons were concerned about the background of new arrivals with a view to informing the Taliban. **PM** was concerned with the influx of Pashtuns after an earlier insurgency; in **RQ** consideration was of the risk to specific individuals who had been in the Afghan National Army and might be targeted by the Taliban because of such membership; these were not cases that were focused upon people with little or no profile. This is reinforced by the references to the Taliban seeking to target individuals who are well-known or well-positioned opponents.
29. Mr Mills invited me to consider that from paragraph 25 onwards the Judge essentially embarked on a sustainably reasoned evaluation of whether there was reason to consider that the Appellant would be at risk because of some continuing adverse interest such that it would be reasonably likely that the Taliban would expend time, energy and resources in pursuing him.
30. I agree with the position advanced by Mr Mills. It seems to me clear enough that from paragraph 25 onwards the Judge is considering the individual circumstances of the Appellant against the background

summarised at paragraph 24 - a background acknowledged by Mr Samra to be one with which he does not take any dispute.

31. At paragraph 25 the Judge does little more than observe that it is some considerable time since the Appellant left Afghanistan, having left at the age of 12 or 13, possibly between ten or twelve years previously. That is an indisputable fact and in and of itself cannot be said to indicate any error.
32. The following paragraphs set out four points which the Judge considered relevant to her assessment of whether or not the Appellant is likely to be pursued in Kabul by the Taliban.
33. The first point, at paragraph 26, picks up from the period of absence from the country. It is in these terms:

“Firstly, I cannot ignore the fact that the Appellant left Afghanistan a considerable time ago and whilst his father may well have been interested in finding out his whereabouts ten years ago, there is no up-to-date information as to the risk, if any, that may be in existence today. In the absence of any up-to-date information as to whether his father is still in the same locality, holds the same position, holds the same views or indeed, whether he is still alive, I can only surmise based on what is in front of me. I find that if the Appellant’s father was unable to locate him ten to twelve years ago, there is not likely to be any interest or expectation that the Appellant will now be found. Any searches that his father may have put in place ten to twelve years ago are likely to have dissipated over time.”

34. I do not accept Mr Samra’s suggestion that the Judge was in some way idly speculating as to whether or not the Appellant’s father was still alive. It seems to me what the Judge was doing was trying to make an assessment on the available information as to the likelihood or otherwise of there being a continuing interest in identifying and pursuing the Appellant. In substance, the Judge sustainably was taking into account in her overall consideration that the passage of time would mean that any previous search would have dissipated; in substance the Judge was saying that it was not likely that the Appellant would be being actively sought by the Taliban.
35. At paragraph 27 the Judge comments that the Appellant’s appearance will have materially changed since leaving Afghanistan as a child of 12 to 13 years. Mr Samra points out that whilst his appearance might have changed his personal details would remain the same and accordingly,

were he to return to Kabul and offer those details up in the process of registering his presence or seeking employment, there was a potential for him to be identified by others.

36. In the first instance, it seems to me that it was open to the Judge to have made the observation that the Appellant would be “*physically unrecognisable*”. In context this was to identify – unobjectionably in my judgement – that it was not likely that the Appellant would come to the attention of Taliban members inadvertently by, as it were, being seen in the street or ‘bumping into’ somebody who may have known him from the past.
37. As regards Mr Samra’s submission that the Appellant would still have to use his own identity, such a circumstance only becomes a potential risk factor if he is being actively sought. That is a distinct and different point, addressed in the Judge’s overall assessment of whether the Taliban have any continuing interest in the Appellant. Accordingly, I find no substance in the criticism of the Judge’s evaluation at paragraph 27.
38. At paragraph 28 the Judge makes the observation that she accepts that the Appellant has not been in touch with his wider family, including in particular his maternal uncle, and therefore, in the circumstances, there is no reason for the Appellant’s father to become aware through family members if the Appellant were to return to Afghanistan. It seems to me this is entirely sustainable. In any event it is not a matter in respect of which any specific criticism is made by Mr Samra.
39. The Judge then says this at paragraph 29:

“Fourthly, it is unlikely that the Taliban themselves would have any interest in finding the Appellant as he is neither well-known nor known to be a well-positioned opponent. They are unlikely to know of the Appellant’s existence and his background. Even if they came to know of his identification in a population of almost 5,000,000 in Kabul, which I find unlikely, the passage of time means that there will be no current interest to pursue this Appellant in Kabul city where their assets are limited and their resources are focused on high target individuals.”
40. In my judgement this latter passage reflects the Judge’s consideration and application of much of the case law and country information cited above to the particular circumstances of the Appellant. In this regard the Judge offers reasons that are sustainable and open to her. I find no basis for criticising this passage.

41. Accordingly, I find that the Judge has adequately explained why she considered that the Appellant is not a person who is likely to be actively sought by the Taliban in Kabul if he were returned at the present time, and is not a person who is likely inadvertently to come to their attention by being, as it were, recognised in the street. Even if information were to get back to them as to his identity there is no reason to think that they would perceive him as somebody worthy of chasing down in Kabul.
42. These matters were essentially matters of fact for the evaluation of the Judge. I am not persuaded that in making that evaluation the Judge has in any way departed from the country guidance or otherwise fallen into error of law. Nor does the Judge's evaluation seem to be remotely inconsistent with the country information cited by the Judge - and I bear in mind that my attention has not been drawn to any contrary evidence that might point in a different direction.
43. Accordingly, I can identify no error in the approach of the Judge.
44. I am reinforced in this evaluation, it seems to me, by the more recent decision of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**. **AS** was heard prior to the hearing before Judge Dhaliwal but not promulgated until afterwards: necessarily it was not a decision that the Judge could have had available to her. In **AS** the type of issue considered herein was given consideration by the Upper Tribunal, who offered the following country guidance as set out at paragraph (i) of the headnote: "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." The decision otherwise goes on to speak about the availability of Kabul as a venue of internal relocation and in that regard says this at (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".

The 'general position' being that "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" (see headnote at (ii)).

45. I cannot see anything in **AS** that suggests the Judge reached an erroneous conclusion in the appeal. More particularly **AS** reinforces the correctness of the substance of the approach taken by the First-tier Tribunal Judge.
46. For completeness, I note one further point. During the course of submissions Mr Samra sought to argue that the First-tier Tribunal Judge had not given a full and comprehensive consideration to the concept of internal flight with reference to the sort of factors and guidance set out in the decision of **Robinson**. This was not a point pleaded in the grounds of appeal in support of the application for permission to appeal and was not a point mentioned in the grant of permission to appeal.
47. In the circumstances I did not permit Mr Samra formally to develop the point. Even had I done so, it seems to me that there is nothing in the background and circumstances of the Appellant that would take him outside the repeated observations in country guidance cases that generally for individuals relocation to Kabul is entirely viable. Insofar as brief reference was made to the most recent country guidance case, there is nothing to suggest other than that the Appellant is a single adult male in good health - indeed Mr Samra acknowledged as much. The only suggested distinguishing feature was that he had left Afghanistan at a very young age and therefore had had no direct experience of living in Afghanistan as an independent adult. That may be so but it is to be noted that the country guidance refers to the possibility of internal relocation even for somebody without any specific connection or support network in Kabul. Further, although the Appellant left at the age of 12 or 13, it was not until some three or four years later in 2007 that he arrived in the United Kingdom: it follows that he has been able to survive in difficult circumstances even whilst a minor. He has also lived for a substantial period of time whilst in the UK as an absconder. As suggested in the RFRL he appears to be an individual who has demonstrated considerable resource. In the circumstances, even if I were to have permitted argument on the internal flight **Robinson** relocation test, it seems to me that there is nothing that hints that such arguments could possibly avail the Appellant.

Notice of Decision

48. The decision of First-tier Tribunal Judge Dhaliwal contained no error of law, and accordingly stands.
49. The Appellant's appeal remains dismissed.

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

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: **5 January 2019**

Deputy Upper Tribunal Judge I A Lewis