



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/01183/2020 (P)<sup>1</sup>

THE IMMIGRATION ACTS

Determined on the papers  
On 27<sup>th</sup> November 2020

Decision & Reasons Promulgated  
On 03 June 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

AK

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation on the papers

For the appellant: Ms M Cleghorn, instructed by Halliday Reeves Solicitors

For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

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<sup>1</sup> The coding in this order is in accordance with the Senior President's Judges' Instructions

**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.

1. The Tribunal may pursuant to Rules 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) (“the Upper Tribunal Procedure Rules”) make decisions in appeals without a hearing. The Upper Tribunal gave the provisional direction owing to the Covid-19 pandemic that the decision on the error of law in this matter could be determined on the papers and invited submissions from both parties. I have had regard to the views of both parties pursuant to rule 34(2) of The Upper Tribunal Procedure Rules.
2. Further, I bear in mind the principles established in **Osborn v The Parole Board** [2013] UKSC 61. I have concluded that the matter although pertaining to asylum does not require, in the interests of justice and fairness, a hearing to determine the matters on the error of law or remaking. Both parties are legally represented, and issues have been clearly explained and their views on the grounds fully set out.
3. Directions were issued by UTJ Coker on 22<sup>nd</sup> September 2020 in this appeal as to the proposal to set aside the decision of FtTJ Henderson and remake the decision granting the appeal of AK on asylum grounds.
4. The appellant is a national of Afghanistan born on 1<sup>st</sup> January 2001 and entered the United Kingdom on 21<sup>st</sup> April 2016 as an unaccompanied minor. He was granted discretionary leave to remain and an unaccompanied asylum-seeking child until 1<sup>st</sup> June 2018. His application for asylum was refused. His application for further leave was refused on 29<sup>th</sup> May 2018 and he appealed.
5. FtTJ Henderson dismissed AK’s appeal against the refusal of his asylum claim and claim for humanitarian protection but allowed his human rights, Article 3, claim for reasons set out in a decision promulgated on 14<sup>th</sup> April 2020. In particular the judge found the appellant was abused by a Jihadi group in Kabul and that there were serious risks of violence to those returning from Europe from sources including the Taliban and criminal networks. FtTJ Henderson found the UNHCR report identified deteriorating conditions, that there were strong information networks of the Taliban in Kabul and difficulty in hiding in the community; those factors identified at paragraphs [54] – [57] put the appellant at risk.

6. There was no appeal by the respondent seeking to challenge the findings of fact that the appellant met the Article 3 threshold in Kabul, and that it would be unduly harsh for him to relocate there.
7. UTJ Coker found the dismissal of his appeal to be incorrect and gave a preliminary view that, given the findings of fact, which had not been the subject of challenge, the appeal on asylum grounds should have been allowed. She proposed that in the absence of any submissions to the contrary to allow the appeal, set aside the decision of FtTJ Henderson on asylum and allow the appeal on asylum grounds.
8. On 6<sup>th</sup> November 2020 I issued directions to the Secretary of State that she must reply to the directions issued.
9. The response from the respondent dated 9<sup>th</sup> November 2020 stated

*'The SSHD accepts that, given the unchallenged findings of fact reached by FTTJ Henderson in a Decision and Reasons promulgated on 14 April 2020( in particular at [54-57], it is open to the Upper Tribunal to conclude that A's appeal should be held to succeed on asylum grounds'.*
10. In the light of the above I find the Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007), but preserve the findings of fact identified, in particular paragraphs [54] -[57], and remake the decision taking into account the submissions made by the Secretary of State and allow the appeal.

## **Order**

The appeal of AK is allowed on asylum grounds and remains allowed on human rights grounds (Article 3).

Signed: *Helen Rimington*

Upper Tribunal Judge Rimington

Dated: Signed 27<sup>th</sup> November 2020

## **TO THE RESPONDENT**

### **FEE AWARD**

As I have allowed the appeal, I have considered making a fee award but no fee was paid and thus I make no order.

Signed: *Helen Rymington*  
Upper Tribunal Judge Rymington

Dated: Signed 27<sup>th</sup> November 2020