



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/52101/2020

Appeal Number: UI-2021-001589 -

[IA/01824/2020]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> September 2022**

**Decision & Promulgation  
Promulgated  
On 1<sup>st</sup> November 2022**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**SAAS  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Rutherford, of Counsel, instructed by Rodman Pearce Solicitors Ltd

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Afghanistan born in 1998. He arrived in the UK in June 2018, and claimed asylum. His asylum claim was refused in a decision dated 22<sup>nd</sup> October 2020. His appeal against the decision

was allowed by First-tier Tribunal Judge Hawden-Beal in a determination promulgated on the 25<sup>th</sup> June 2021.

2. Permission to appeal was granted to the Secretary of State on 26<sup>th</sup> July 2021. I found that the First-tier Tribunal had erred in law and set aside the decision allowing the appeal. I made directions for the appellant to provide further information about medical and other risks he faced on return to Afghanistan, and for the respondent to reconsider her refusal letter in light of this and the changed circumstances in Afghanistan as outlined in her country of origin policy and information documents.
3. The matter comes back before me now to remake the appeal. The unchallenged finding that the appellant had been kidnapped by an armed group, whom he believed to be the Taliban, and detained by them for four months November 2017, as set out in the decision of the First-tier Tribunal at paragraph 61 is retained, but the rest of the findings and the decision of the First-tier Tribunal were set aside.
4. At the start of the hearing Ms Everett said that there were a couple of areas in which she need clarification from the appellant before setting out the position of the respondent in this appeal. Ms Rutherford called the appellant who adopted his witness statement and answered questions in response to examination in chief, cross examination and one question from the judge. We then preceded to submissions. At the end of the hearing I told the appellant I would allow the appeal, but would send my decision in writing.

#### *Evidence & Submissions – Remaking*

5. The appellant's key evidence in his witness statements and oral evidence is, in summary, as follows. He is now a westernised person having lived in the UK since June 2018 a period of more than four years. He no longer wears Afghan clothes, he is clean shaven or has a stylised beard, he drinks alcohol in pubs, he has explored other religions and read their sacred books and speaks completely fluent English. He fears that he will unwittingly reveal elements of this westernisation if he is returned to Afghanistan and that as the Taliban are so militant in opposing western ways this will put him in danger of serious harm. He also believes that there is a real risk that the Taliban will punish him for escaping from them, and that he is at risk of serious harm in Kabul and in his home area by reason of his westernisation and his previous escape from them. He added in oral evidence that he is scared of the Taliban whom he believes would harm him, and opposes them politically, but if confronted by them he would be too scared to express his opinion opposing them.
6. The appellant also says that he would not be able to receive the follow up he has in the UK from his GP and the community mental health team to treat his post-traumatic stress disorder as most medical professionals have left Afghanistan. He fears that a deterioration in his

mental health will mean he is even less able to guard himself against the Taliban, and may mean that he ends up destitute as he has nowhere to go on return. He also has very poor eye sight in his left eye. In the UK he has the support of his father with whom he lives. His mother died when he was three years old so he has no close family in Afghanistan, as he has no brothers or sisters. His father has tried to contact his uncle in the village but has not been unsuccessful. He has no contact with any former friends, and did not know if they were dead or alive.

7. Ms Everett submitted that she was in an unusual situation as the decision letter was written prior to the Taliban coming to power, and so she was practically in the position of a first decision-maker. She had reviewed the respondent's CPIN and background evidence, although not a lot of evidence is coming out of Afghanistan due to the nature of regime. On the basis of the evidence it is not accepted for the respondent that everyone is at risk in Afghanistan. However, she accepted for the respondent that this appellant was opposed to the Taliban and afraid of persecution by the Taliban, but as a result of his fear of persecution would not confront them about their political views. On this basis, following HJ (Iran) v SSHD [2010] UKSC 31, she conceded that the appellant was entitled to succeed in his appeal on refugee and human rights grounds.
8. Ms Rutherford did not need to make any submissions given the concession by the respondent.

### *Conclusions - Remaking*

9. It is accepted by the respondent, and I find, that the appellant is politically opposed to the Taliban. He has been detained by them against his will and ill-treated, and he is now a vulnerable westernised person. His claim for asylum therefore engages the Convention reason of political opinion. As accepted by Ms Everett, those who oppose the Taliban have a well founded fear of persecution on return to Afghanistan. It is likely that this appellant would not, however, actively oppose the Taliban because he is very scared of them, which is, in turn, entirely credible given his experience of being detained and ill-treated and having on-going problems due to the physical and psychological injuries he sustained during his period of captivity. However, the reason why he would not openly express his political beliefs is because he is afraid of the persecution he would experience in Afghanistan from the Taliban were he to do so. I therefore find that the appellant qualifies for asylum applying the four stage test as outlined in HJ (Iran).

### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the appeal by allowing it on asylum and human rights grounds.

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 his protection claim.

Signed: Fiona Lindsley  
2022

Date: 20<sup>th</sup> September

Upper Tribunal Judge Lindsley

## **Annex A: Error of Law Decision**

### **DECISION AND REASONS**

#### *Introduction*

1. The claimant is a citizen of Afghanistan born in 1998. He arrived in the UK in June 2018, and claimed asylum. His asylum claim was refused in a decision dated 22<sup>nd</sup> October 2020. His appeal against the decision was allowed by First-tier Tribunal Judge Hawden-Beal in a determination promulgated on the 25<sup>th</sup> June 2021.
2. Permission to appeal was granted to the Secretary of State on 26<sup>th</sup> July 2021 by Judge of the First-tier Tribunal Grant on the basis that it was arguable that the First-tier judge had erred in law in making contradictory findings about the claimant being able to relocate to Kunar and Kabul, and then finding it would be unduly harsh to expect him to do so at paragraph 75 of the decision. It is noted however that as the Taliban are now in control of Afghanistan the conclusion at paragraph 74 that the claimant would not be at risk from them in Kabul may no longer be sustainable.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any error is material and thus whether the decision and any findings of the First-tier Tribunal should be set aside.

#### *Submissions – Error of Law*

4. In short summary it is argued for the Secretary of State that the First-tier Tribunal found that the claimant would not have appropriate treatment for his PTSD in Kabul, but also noted that there was no up-to-date evidence on his physical and mental health. It is argued that it was therefore not adequate reasoned why it was found that the claimant could not be returned to Kabul due to inadequate medical care resulting from mental health problems combined with his poor eye sight.
5. No Rule 24 notice was filed for the claimant. Although Ms Rutherford was formally instructed to oppose the appeal when I put it to her that the First-tier Tribunal had decided that the claimant was not at risk in Afghanistan so the appeal had to be dismissed as internal relocation was not relevant, and was reasoned in a contradictory way, she agreed that this was the case.
6. I told the parties that I found the unchallenged finding that the claimant had been kidnapped by an armed group, whom he believed to be the Taliban, and detained by them for four months set out at paragraph 61 of the decision could be retained, but the rest of the findings and the decision of the First-tier Tribunal would be set aside.

7. It was agreed that the decision would be remade in the Upper Tribunal. The remaking hearing was adjourned as the claimant needed to obtain proper up to date evidence with respect to his mental health, and provide a statement addressing the issue of westernisation. It was agreed that this would be filed with the Upper Tribunal and served on the Secretary of State in eight weeks, and that it was expected that she would then consider whether the refusal of asylum to the claimant was maintained.

### *Conclusions – Error of Law*

8. The First-tier Tribunal find that the claimant is a vulnerable witness at paragraph 51 of the decision based on his medications and a brief letter from the GP from 2018. The First-tier Tribunal returns to this issue at paragraphs 70 -71 of the decision. In these paragraphs the conclusions are that the medical evidence and oral evidence on the issue of the claimant’s mental health are unsatisfactory. It is concluded that the claimant has PTSD, and the reasoning for this at paragraph 75 of the decision is as follows: he had PTSD in 2018 and it is not an easily treated condition, and he had some group therapy which finished four months prior to the date of hearing. The finding relating to the claimant having PTSD at the date of hearing are insufficiently reasoned.
9. At paragraph 61 of the decision, in an unchallenged finding of the First-tier Tribunal, it is concluded that the claimant was kidnapped by an armed group whom he thought were the Taliban and was detained for four months by them. The question remained however as to whether the claimant would be at risk from the Taliban on return, and it is concluded at paragraphs 66 and 67 of the decision that he would not be of interest to them as they had abandoned him and so he could return to Kunar or Kabul without risk from the Taliban. This conclusion is repeated at paragraph 74 of the decision. The consideration of relocation to Kabul, and issues with respect to medical treatment there, was therefore entirely unnecessary. The decision of the First-tier Tribunal therefore errs in law for allowing the appeal based on it being unreasonable for the claimant to relocate to Kabul due to his medical problems given that the primary finding was that he faced no real risk of serious harm in his home area.

### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I adjourn the re-making of the appeal.

Directions:

1. The claimant will, within eight weeks of the date this decision is served, file with the Upper Tribunal and serve on the Secretary of State detailed evidence of his medical condition including diagnosis, prognosis, current treatment and medication; and an updating statement from the claimant addressing his medical condition and its impact on his current life and return to Afghanistan, westernisation and any other matters which he argues place him at risk of serious harm on return to Afghanistan.
2. The Secretary of State will consider whether the refusal decision is maintained on receipt of this evidence and in light of the current CPINs on Afghanistan.
3. The remaking appeal will be relist for three hours (no interpreter) at the first available date before me ten weeks from the date this decision is sent.

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 his protection claim.

Signed: Fiona Lindsley

Date: 3<sup>rd</sup> May 2022

Upper Tribunal Judge Lindsley