



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

Appeal Number: PA/12140/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 9 March 2022**

**Decision & Reasons Promulgated
On 9 August 2022**

Before:

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

Between:

**NS (AFGHANISTAN)
(ANONYMITY DIRECTION MADE)**

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini, Counsel, instructed by Times PBS Ltd
For the Respondent: Ms Cunha, Senior Presenting Officer

DECISION AND REASONS

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

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity on account of our finding that he succeeds in his appeal against the refusal of his claim for international protection and qualifies as a refugee. This direction applies both to the appellant and to the respondent. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this order could amount to a contempt of court.

A. *PROCEDURAL HISTORY IN THE UPPER TRIBUNAL*

1. This decision follows a hearing before the Upper Tribunal which was convened for the purpose of remaking the decision on the appellant's appeal. His appeal was originally dismissed by the First-tier Tribunal (Judge Cruthers). In a decision which was issued on 17 December 2020, Upper Tribunal Judge Blundell allowed the appellant's appeal against Judge Stedman's decision and directed that the decision on the appeal would be remade in the Upper Tribunal in relation to a further assessment of the credibility of the appellant's account that his family have relocated since his departure from Afghanistan to escape the Taliban, which is germane to whether any risk on return that the appellant may face still subsists. The Upper Tribunal expressly preserved the positive findings of fact reached by the FtT, the judge having accepted everything the appellant said about the events preceding his departure from Afghanistan. A copy of that decision is appended to this one.
2. Given the discrete nature of the error identified by the Upper Tribunal in its decision of 17 December 2020 the scope of this hearing is limited and the remit of the assessment we must make pertains to the level of risk on return to Afghanistan that the appellant faces, including consideration of the location of the appellant's family and the extent of any threat they have faced since the appellant's departure.
3. There was a period of delay after the Upper Tribunal's first decision following which the matter was eventually listed to be heard on 9 March 2022.

B. *BACKGROUND*

4. At [2] and [5] of the previous decision, the Upper Tribunal set out the relevant background to these proceedings in the following way:

[2] The appellant entered the UK and claimed asylum on 9 February 2018. The account which he gave - shorn of detail which is unnecessary for present purposes - may be summarised very shortly. He stated that he had opened the door of his family home, late at night, to find a group of hungry Taliban fighters who demanded food. Fearing that he had little choice, he allowed them to enter and his mother cooked for them. Shortly after they left, however, he and his family heard gunshots. The following day, the appellant went from his home village in Nangarhar to Jalalabad, in order to collect the rent on the house and the shop which were owned by his family. Whilst he was there, the Taliban came to his house and told his mother that the Taliban fighters had been killed and that they held the appellant responsible. She was told that he was to surrender himself at the mosque. On hearing this news from his mother, the appellant immediately made arrangements to leave Afghanistan. By arranging for the ownership of the house in Jalalabad to be transferred to the tenant, the appellant raised the funds to

pay an agent in a matter of days, whereupon he left the country and travelled to the UK by unlawful or clandestine means.

...

[5] The judge accepted the appellant's primary account. She summarised her findings at [69] of her decision. She accepted that members of the Taliban had visited the appellant's home in the manner I have described. She accepted that his mother had cooked for them and that they stayed at the house for 1.5 hours. She accepted that the appellant and his younger brother (then aged seventeen had heard gunfire after the Taliban had left the house and that the Taliban had visited the family home the following day, whilst the appellant was in Jalalabad. She found that the appellant had been told of this visit by his mother, by telephone, whilst he was in Jalalabad. She found that he did not go home and she accepted that he made arrangements to leave Afghanistan four days later. She concluded that the appellant had been in sporadic contact with his mother and brother since leaving Afghanistan and that there were connectivity problems; his last contact had been at the start of 2020.

C. THE EVIDENCE BEFORE THE UPPER TRIBUNAL

5. The appellant continued to rely upon the documentation filed before the First-tier Tribunal but produced a supplementary bundle containing a supplementary witness statement and two online news articles relating to the security situation in Afghanistan from August 2021 onwards. The respondent continued to rely upon the previous documentation filed before the First-tier Tribunal and placed reliance upon the Country Policy and Information Notes (CPINs) for Afghanistan entitled "Fear of Taliban, Version 2.0" and "Humanitarian situation, Version 1.0", both published in February 2022.
6. In addition to the evidence filed and served by the parties, the Upper Tribunal has before it the updated CPINs for Afghanistan that have been published following the hearing before us on 9 March 2022, including "Fear of Taliban, Version 3.0" and "Humanitarian situation, Version 2.0", both published in April 2022.
7. We heard oral evidence from the appellant who gave evidence in Pushtu, with the assistance of an interpreter (with whom he had no difficulty communicating). The appellant answered a few questions from his counsel before he was extensively cross-examined by Ms Cunha. We do not propose to rehearse what was said by the appellant at this stage of our decision. We will instead refer to his evidence insofar as it is necessary to do so to explain our findings of fact.

D. SUBMISSIONS

8. Ms Cunha relied upon the CPINs for Afghanistan (as noted above), candidly revealed to us that following the evacuation of coalition forces, and the onslaught of the Taliban's control over Afghanistan, the

Home Office's position has been to grant Humanitarian Protection to Afghans and that no returns were being made to Afghanistan. Notwithstanding that, she argued that the appellant would need to show a fear of persecution or fear of harm from the Taliban. The crux of the appeal would amount to whether the appellant could qualify as a refugee, failing which he would in any event be given Humanitarian Protection. Although there is no policy in force mandating such grants of leave, Ms Cunha was aware that this had happened in 20 matters she had overseen since August 2021.

9. Ms Cunha drew paragraph 2.4.2. of the CPIN entitled "Fear of Taliban" to our attention which reads as follows:

2.4.2 After gaining control, the Taliban announced a 'general amnesty' for anyone who had fought against them. However, there are reports indicating this amnesty and other guidance and policy announced by the Taliban leadership has not been followed across the country and that some Taliban members are acting in revenge, arbitrarily and under their own authority...
10. She submitted that in light of the CPIN and the lower standard of proof and the previous preserved findings of past risk which must form a weighty factor when considering present risk, she did not advance the submission that the appellant was not at risk. In the light of those reasons, Ms Cunha stated the Home Office would not advance any opposition to the appeal.
11. Given these pragmatic and realistic submissions, we indicated to Mr Bazini that we did not need to hear submissions from him.

E. ISSUES

12. We consider that the only issue before us is that identified in the previous decision of 17 December 2020, namely, the level of risk on return that the appellant faces including consideration of the location of the appellant's family and the extent of any threat they have faced since the appellant's departure.

F. ANALYSIS

(i) Credibility and Factual Matrix

13. We note at the outset that Ms Cunha did not seek to challenge the appellant's credibility and indeed, did not seek to oppose the appellant's appeal that he be recognised as a refugee.
14. In his evidence, the appellant confirmed that his family had fled to Pakistan and that he had last spoken to them in August 2021 at the time the Taliban took over the country. The appellant reiterated that the Taliban was harassing his family because of him and that this is the way in which they normally operate. Prior to moving to Pakistan, the appellant stated that his family had moved within Jalalabad City from one district to another. His family had fled either the same night or the day after the appellant had as their lives were also in danger. The appellant confirmed that under the new Taliban regime, there is a

definite danger to his and his family's lives because the Taliban are now in complete control. The appellant stated in plain terms that whether one year or ten years had passed since the incident where the fighters were shot after leaving his family home, the Taliban would get their revenge as it is their custom. He stated that the Taliban know who their enemy is, and the appellant would be accused of working for other people for the Taliban which put his life in danger.

15. We have no hesitation in accepting the appellant's evidence rehearsed above as being credible, plausible and consistent with the preserved positive findings of fact already made by the FtT. Moreover, as discussed below, it transpires that the appellant's evidence is consistent with the objective evidence contained in the CPINs published by the Home Office. We thus assess the risk on return based upon this factual matrix.

(ii) *Risk Presented by the Appellant*

16. First, as noted above and submitted by Ms Cunha, paragraph 2.4.2. of the CPIN entitled "Fear of Taliban" (published February 2022) reads as follows:

2.4.2 After gaining control, the Taliban announced a 'general amnesty' for anyone who had fought against them. However, there are reports indicating this amnesty and other guidance and policy announced by the Taliban leadership has not been followed across the country and that some Taliban members are acting in revenge, arbitrarily and under their own authority...

17. That statement is maintained in the April 2022 version of the CPIN, however in our view, paragraphs 2.4.3 to 2.4.9 bear reading and make plain that a person in the appellant's position - i.e. perceived as being responsible for the killing of Taliban fighters - may be considered a threat to the Taliban and likely to be at risk of persecution. Paragraphs 2.4.3 to 2.4.9 reads as follows:

2.4.3 Although Taliban soldiers have been instructed not to impose arbitrary penalties and to await a court's judgment, acts of punishment have been reported in some areas, including public shaming of men accused of petty crimes, executions of persons accused of kidnap, whose bodies are then publicly displayed with signs warning other criminals of the same fate, and public stoning (see Taliban justice).

2.4.4 There are reports of human rights abuses, including targeted killings, torture, threats and intimidation, against civilians associated with, or perceived to have supported, the former government or international community, former members of the security forces (which may depend on their previous role), women (particularly in the public sphere), LGBTI persons, ethnic and religious minorities, journalists, human rights defenders, members of the judiciary, persons deemed to have transgressed cultural or religious mores (which may include those perceived as 'Westernised'), and persons deemed to have resisted or opposed the Taliban.

2.4.5 Access to independently verified information is limited, often conflicting, and the scale of targeting is unclear. Reports are subject to claim, denial and counterclaim (see Limits on reporting, propaganda and misinformation and Potentially vulnerable groups).

2.4.6 Other groups, though not exhaustive, may include: civilians accused of spying, teachers and those involved in the education sector including students, tribal elders and religious leaders who resist the Taliban's doctrine, and family members supporting or perceived to be associated with the above profiles (see Potentially vulnerable groups).

2.4.7 The country guidance case AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 (IAC) (1 May 2020), heard on 19 and 20 November 2019 and 14 January 2020 held that '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' (paragraph 253(i)).

2.4.8 Given the significant change in country circumstances, at the time of writing there are - as per [46] and [47] of SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 (13 July 2012) - very strong grounds supported by cogent evidence to justify a departure from [253(i)] of AS (Safety of Kabul). However, each case must be considered on its facts.

2.4.9 The current evidence suggests that persons likely to be at risk of persecution, because they may be considered a threat or do not conform to the Taliban's strict interpretation of Sharia law, include but are not limited to:

- Former government employees and members of the Afghan National Armed Forces (ANSF), including the police
- Former employees/those linked to international forces and organisations, including interpreters
- Women, particularly those in the public sphere
- Ethnic/religious minorities, in particular Hazara
- Persons who have credibly resisted or opposed, or are perceived to resist or oppose, Taliban requests or control
- Persons who do not conform to, or are perceived to not conform to, strict cultural and religious expectations/mores, in particular women, and which may also include persons perceived as 'Westernised' after having spent time in the West, though no clear definition of what 'Westernised' means or entails is available.
- Journalists critical of the Taliban • Human rights defenders, lawyers and judges
- LGBTI persons

18. From paragraphs 2.4.3 and 2.4.4, it is clear that Taliban soldiers have been reported to have committed extra-judicial acts of punishment including mistreatment and even execution. It is plain to us that the appellant, perceived as being responsible for the killing of Taliban

fighters, would fall under the category of a civilian associated with or perceived to have supported the former government or international community against the Taliban or as paragraph 2.4.9 suggests a person who is 'perceived to resist or oppose, Taliban control'. In any event, the appellant could also fall under the category of a civilian "accused of spying" given that he is perceived to have been instrumental in the shooting of the Taliban fighters shortly after they left his family's home. It is also noteworthy that paragraph 2.4.6 states that those at risk includes "family members" associated with this category of disloyal civilian, such as the appellant.

19. Given the above objective evidence of the current country situation, we find that the appellant would be at risk on return to (and throughout) Afghanistan, given his profile as a person who previously resisted the Taliban owing to the perception the Taliban hold of his involvement in the killing of their fighters.
20. The appellant's appeal is allowed on asylum grounds.

Notice of Decision

We remake the decision by allowing the appellant's appeal under the Refugee Convention.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 June 2022