



IAC-FH-AR-V1

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

Appeal Number: AA/05212/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th October, 2015
Given extempore**

**Decision & Reasons Promulgated
On 7th October, 2015**

Before

Upper Tribunal Judge Chalkley

Between

**NM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel, instructed by Duncan Lewis & Co

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) and consequently, this determination identifies the appellant by initials only.

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan who was born on 1st January, 1993. His immigration history merits setting out in full.

Immigration History

2. He entered the United Kingdom clandestinely on 20th May, 2008 and was served with form IS151A and made an application for asylum. On 24th July, 2008 the asylum claim was refused, but he was granted discretionary leave until 1st July, 2010, as he was an unaccompanied minor. On 24th June 2010, he lodged application for further leave to remain which was considered and refused by the respondent on 12th October, 2010.
2. The appellant then lodged an appeal on 28th October, 2010, and on 19th January, 2011, his application was referred back to the Secretary of State for reconsideration of some sort. On 2nd February, 2011, the application was reconsidered and refused and the appellant lodged an appeal on 17th February, 2011, which was heard on 17th March that year and dismissed on 5th April, 2011.

The first appeal

3. That was the determination of First-tier Tribunal Judge Harris ('the Harris determination'). On 15th April, 2011 the appellant made application for permission to appeal to the First-tier Tribunal which was refused on 4th May, 2011. He exhausted his appeal rights on 18th May, 2011 and on 19th May that year he ceased complying with his reporting conditions. He was considered to be an immigration absconder on 10th November, 2011.
4. On 31st August, 2012, the appellant was encountered trying to smuggle himself out of the United Kingdom in the rear of a freight vehicle. He was detained as a person liable to removal from the United Kingdom and served with directions for his removal. On 12th September, 2012, judicial review proceedings were sought and removal directions were subsequently deferred. Further representations were considered by the Secretary of State but these were refused on 26th February 2013. Further representations were made on 18th June, 2014 and these were refused on 15th July, 2014.

The second appeal.

5. On 28th July 2014, the appellant exercised his right under Section 82 of the 2002 Act and his appeal was heard at Taylor House on 5th February, 2015, by First-tier Tribunal Judge Davidson. The First Tier Tribunal Judge properly referred to the Harris determination and recognised that he was bound by the decision of the former Immigration appeal Tribunal in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * [2002] UKIAT 00702.

6. The First Tier Tribunal Judge purported to apply the country guidance case of *GS (Article 15(c) indiscriminate violence) Afghanistan CG [2009] UKIAT 00044* and considered evidence from Amnesty International and from Dr Giustozzi, an expert employed to produce a report on behalf of the appellant, but noted that neither the Amnesty report nor the expert report referred to the case of *GF (Afghanistan)* and, as a result, the First Tier Tribunal Judge suggested that those reports were not deserving of full weight. He dismissed the appellant's appeal on asylum grounds and on humanitarian protection grounds and concluded that the appellant would be able to relocate to Afghanistan.
7. At the end of paragraph 43 of his determination, the judge says that he has no evidence one way or the other in respect of the appellant's family members and therefore makes no finding as to whether or not the appellant has a family in Afghanistan. At paragraph 45 the judge suggests that there is no need for the respondent to trace the appellant's family, because the judge is persuaded that, "*the appellant is now an adult and well able to establish contact with them himself, if he wants to. Some of his family were obviously concerned for his welfare since they sent him to the UK. It is inconceivable that those members of his family would not still be concerned for his welfare and welcome him back on return to Afghanistan*". Apart from anything else that is a contradictory finding.
8. The determination is challenged, however, firstly because it fails to take account of the more recent country guidance decision of the Upper Tribunal in *AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163*, which in Section B of the head note, makes it clear that that decision replaces *GS*. Had the judge considered *AK* and in particular paragraphs 224 to 253 of it, he would have realised the need to consider the appellant's personal circumstances and would have realised it was insufficient to approach the question of relocation by asking if there is evidence to depart from the finding in *GS*. That was the wrong approach. He also failed properly to consider the expert evidence by suggesting that it was not deserving of full weight because it referred to *GS*.
9. Mr Jarvis has sought to persuade me that the conclusions in *AK* and *GS* are the same. They are very similar but, with respect to him, they are not the same. I have concluded that this appeal does need to be reconsidered afresh. I set aside the decision.
10. In remaking the decision the First-tier Tribunal Judge will, of course, be bound by *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702*, but insofar as he or she hears further evidence from the appellant, they will have to make their own findings of fact and they will also have to assess the appellant's credibility. It is only after having considered carefully the appellant's personal circumstances that the Tribunal will then be in a position to properly assess the risk to this appellant on return by applying *AK (Afghanistan)* and paying particular regard to paragraphs 224 to 253 of it.

Notice of Decision

I have decided that the appeal shall be remitted to the First-tier Tribunal for hearing afresh before a First-tier Tribunal Judge other than First-tier Tribunal Davidson

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 their 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.

Richard Chalkley

Upper Tribunal Judge Chalkley