



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

Appeal Number: AA/07176/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> March 2015**

**Decision & Reasons  
Promulgated  
On 01<sup>st</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR YOSUF KHORRAMI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms F Kadic, instructed by A. de Ruano, Solicitors London

**DECISION AND REASONS**

1. Mr Khorrami is a citizen of Afghanistan whose date of birth is recorded as 18<sup>th</sup> March 1996. On 18<sup>th</sup> September 2013 he made application for further leave to remain in the United Kingdom, claiming international protection as a refugee. On 8<sup>th</sup> September 2014 a decision was made to refuse the application resulting in an appeal to the First-tier Tribunal which appeal

was heard on 14<sup>th</sup> November 2014 by Judge of the First-tier Tribunal Clapham.

2. Judge Clapham made positive findings in respect of the specific claim based on fear of the Taliban and generally but found there to be insufficient evidence in respect of the issue of internal relocation, in other words the judge found that it had not been established that it would not be unduly harsh. The appeal was dismissed on asylum grounds.
3. Judge Clapham, however went on to allow the appeal on human rights grounds: Article 8 ECHR. Mr Khorrami has a sister in the United Kingdom who is married and who has two children. Although there is no specific reference in the Statement of Reasons to the guidance in the case of Kugathas [2003] EWCA Civ 31 it is clear that the Judge was invited by the Presenting Officer at the hearing to consider that case given what appears at paragraph 33 of the statement of reasons.
4. At paragraph 47 the judge said:

“I can accept [Mr Khorrami’s] position that he is close to his sister, the sister’s husband and also the two nieces. Standing [sic] the circumstances of this [Respondent] who had become aware of the disappearance of his father and his brother and standing also [sic] [Mr Khorrami’s] separation from his mother, it is perhaps not surprising that [he] should be close to his sister and her family and it seems to me that in this case there are more than the usual emotional ties.”
5. Not content with the Decision, by Notice dated 19<sup>th</sup> December 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal. It was suggested in the grounds that there had been insufficient, if any, reference to section 117B of the Nationality, Immigration and Asylum Act 2002 as was required by Section 117A and that there was insufficient basis for the findings given the guidance in Kugathas. On 6<sup>th</sup> January 2015 Judge of the First-tier Tribunal Cruthers granted permission. Thus the matter comes before me.
6. At the commencement of the hearing Ms Kadic invited me to accept further evidence in relation to the asylum aspect of the appeal. She relied on Rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008. She put before me an article headed “*Afghan Minister for Refugees and Repatriation warns against force [sic] returns*”. She also relies on an injunction against removals to Kabul in respect of certain categories of individual. Given the nature of the appeal, I was content to allow further evidence. However it would be unfair to the Secretary of State to allow that further evidence without the Secretary of State having the opportunity to meet it. I indicated therefore that were I to find that there was an error of law in relation to the human rights point then the best course would be to remit this appeal to the First-tier Tribunal in order that

findings can be made on human rights whilst at the same time reopening the asylum appeal limited to the issue of internal relocation.

### Was there an error of law?

7. It is trite law that a party who has been unsuccessful in an appeal is entitled to know the basis upon which they have been unsuccessful. It follows that there must be sufficient or adequate reasons given rather than simply a bald assertion. My concern is that on one reading the Judge found that Mr Khorrami's sister had become a surrogate for his mother. Whether that was sufficient to allow the appeal, having regard to Kugathas, does not mean that there are, without more, more than the usual emotional ties within the context of the guidance of that case. I observe that the Appellant in the First-tier Tribunal, Mr Khorrami's brother-in-law gave evidence and his evidence was not challenged though having had the opportunity to look through that statement there is little in it that one would expect to have been challenged.
8. The further grounds relates to Section 117B. It does seem to me that the judge has not ignored that provision. There are clearly observations consistent with consideration of it such as the ability to speak English and not being a burden on the state. Again it is trite law that it is not necessary to set out each and every aspect of the case.
9. Despite Ms Kadic's best efforts to persuade me otherwise, it does seem to me that the Article 8 finding appears to be largely informed by the assessment by the judge that there were more than the usual family ties. That is inadequately reasoned. Whether on remittal the judge who hears the matter will find that there are more than those usual ties is yet to be determined but in my view there is a material error of law in this appeal and it cannot stand.
10. The issue then is whether I should re-make the case or remit it to the First-tier Tribunal. As there are inadequate findings and as it may well be that evidence will be called, the better course, as I indicated to the parties, is to remit this matter, as I do, having regard to paragraph 7(2) of the Senior President's Practice Statement 25 September 2012, with the following directions:

### Directions

- (a) Remitted to Hatton Cross (given the listing delays at Taylor House) to be listed before a Judge, other than Clapham, at the Direction of the Resident or a Designated Judge.
- (b) The discrete issue in relation to Article 8 ECHR arising out of the family life contended for in the United Kingdom shall be determined afresh.

- (c) The credibility findings in respect of the asylum claim will be preserved so that the only issue remitted to the First-tier Tribunal is the issue of internal relocation i.e. whether or not it would be unduly harsh for Mr Khorrami to return to Kabul where it is proposed by the Secretary of State that he could safely return.
- (d) Time estimate of 3 hours.
- (e) Dari interpreter required

**Notice of Decision**

The appeal to the Upper Tribunal is allowed and remitted to the First tier Tribunal in accordance with the Directions set out herein

No anonymity direction is made.

**Signed**

**Date 31<sup>st</sup> March 2015**

**Deputy Upper Tribunal Judge Zucker**