



IAC-PE-AW-V1

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

Appeal Number: AA/08343/2014

THE IMMIGRATION ACTS

**Heard at Field house
On 13th August 2015**

**Decision & Reasons Promulgated
On 8th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MR WAHIDULLAH KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jafar - Counsel

For the Respondent: Miss Pal - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Wahidullah Khan a citizen of Afghanistan born 1st January 1995.
2. He appeals against the decision of the Respondent made on 1st October 2014 to refuse to grant asylum and to remove him from the United Kingdom. The Appellant appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Chana on 9th January 2015. Permission was granted to appeal against that determination and on 24th

March 2015 having heard submissions I found that there was a material error of law in the determination of First-tier Tribunal Judge Chana and I set his decision aside with no preserved findings of fact.

3. I now proceed to remake the decision.
4. The main ground seeking permission to appeal against the determination of First-tier Tribunal Judge Chana was that he erred in ignoring the central submission put forward at the hearing that the Appellant's brother's case had recently been actively reviewed by the Respondent and his brother had been granted Indefinite Leave to Remain (ILR) having been granted refugee status in 2007. It seemed to me, and I so found, that it was arguably a material error of law for Judge Chana to fail to take any account whatsoever of this.
5. The Appellant claims that his father was a member of Hizb-i Islami (HI) and that as a result of this his family home was attacked and his mother was harassed by the local police. Apparently the police were looking for his father. His brother left Afghanistan for the same reasons and gave the same reasons for his fear of persecution on return to Afghanistan. His claim was dismissed by the Home Office but allowed on appeal to the First-tier Tribunal. The Appellant claims to fear the people who were coming to the family home asking questions about his father.
6. I have a statement from the Appellant prepared on 6th August 2014. He states the following.
7. He arrived in the UK on 26th August 2011 and claimed asylum. He was placed in foster care. His asylum application was refused but he was granted discretionary leave to remain (DLR) until 1st July 2012. He moved to live with his elder brother in Maidstone but continued to receive support from Social Services. He had provided a statement to the Home Office refuting the reasons for refusal given in their initial refusal letter but noted that the second refusal letter referred to the contents of the first refusal letter which he felt was unfair. He had also given the Home Office details of his brother, Safigoulla Khan. This was never mentioned by the Home Office. He and his brother came from the same family and they provided details of the family background. They gave similar accounts. His brother's appeal was allowed. He was found to be credible. He does not understand why, if his brother's claim was allowed, the Home Office can take the view that it would be safe for him to return to Afghanistan.
8. He has had no contact with his mother since he arrived in the UK or with the rest of his family. He does not know whether they are alive or where they are. He has had no assistance from the Home Office in looking for his family. He only has his elder brother and his foster parents. When he was in the care of his foster parents they treated him like their own. He is still in touch with them.

9. He has health problems. He suffers severe headaches and depression. He has nightmares and flashbacks of the attacks on their home. He has been told that he is exhibiting symptoms of Post Traumatic Stress Disorder (PTSD).
10. He has made friends. He has a mentor called David Clifford who takes care of him and has taught him lots of things. He relies on him a lot. David encouraged him to get proper therapy for his depression.
11. He would be harmed by his father's enemies if he were returned to Afghanistan. Social Services helped him approach the British Red Cross to look for his family. They have not done anything because they are too busy. He is waiting for an appointment.
12. In a statement dated 14th August 2012, he said that he was very young when the police officers would come to his home asking questions about his father and does not really recall much of what happened. He remembers that his mother was very upset and was crying when these people came. She explained that they had to leave their home because of visits from the police and it was then that his elder brother fled Afghanistan and came to the UK. His mother took him and his younger brother and sister to Peshawar. She sold land to get him the money to come to the UK.
13. In a statement dated 25th November 2011 the Appellant said he has one sister and two brothers including the one in the UK. He said that one night in June 2011 his mother told him that he had to go with a man who would take him from Afghanistan. His mother had moved them all to Pakistan because the Government Police kept asking about his father and harassing them. He was unable to remember when they went to Pakistan but said they lived in Peshawar for about five years. They then returned to Afghanistan because they felt that Pakistan was not safe. They had some trouble with the police because they had no ID. The attacks on the house started about six days after they returned to Afghanistan. The house was burnt down. He said that during the attacks on his house he was very scared. One night as they ran away they heard the sound of shots being fired. Vehicles had approached the house. His mother said she did not know who the people attacking them were. The attacks would happen at night. Either they would be woken up by the sound of vehicles or their mother would wake them up. They would then run away. The house was destroyed during the last attack. It was burnt down. They were attacked every two or three nights. They went to their uncle's. He knew that his brother was in the UK. His mother had given him his phone number. When he has to talk about what happened he feels unwell and sad. He does not know where his mother and siblings are. He does have an uncle and gave details of the area in which he lives.
14. I have a statement from the Appellant's brother dated 8th August 2014. He states that his whole family was targeted and persecuted by his father's enemies on account of being a commander with Hizb-i Islami. He

fled Afghanistan and claimed asylum in the UK in 2008. They were in Pakistan for five years and then his brother came to the UK. He has had no contact with his family recently. He did have contact when he first arrived here but lost contact. It would not be possible for his brother to relocate within Afghanistan and in any event they do not know where the rest of their family is and he would have no family support or protection. The family home has been destroyed. The Judge who heard his appeal accepted his account.

15. I also have a statement from David Clifford dated 12th August 2014. He states that he met the Appellant in February 2013 when he volunteered as a “mentor” with Kent Refugee Action Network and the Supporting Vulnerable Refugee Youth Project. He sees the Appellant at least once a week for around 90 minutes. The Appellant has met many of his family and he was invited to spend Christmas with them in 2013 but was unable to make it. They are friends. He believes that the Appellant is genuinely very afraid of what would happen to him if he had to return to Afghanistan although the Appellant has never actually spoken to him about it. He describes the Appellant as “a very gentle, sensitive and likeable young man”. He is making good progress with English and is very keen to find a job. He has applied for a Prince’s Trust Course and gaining work experience in a local charity shop. He states that the Appellant’s mental health difficulties are very apparent to anyone who spends any time with him. His mood is frequently very low and he suffers from severe anxiety. He can be very agitated. He is frequently tired as a result of nightmares and sleeplessness. His memory is very poor. He forgets appointments for example. He lives with his brother on whom he believes he is very dependent for both emotional and practical support. He says the Appellant is not in his opinion a particularly mature person for his age and it would be hard for him to live alone without any support. He said that one of the reasons the Appellant has not been receiving ongoing help for his psychiatric issues is that following his initial PTSD diagnosis he had some sessions of therapy but then turned 18 and relocated to Kent at the same time. Since then his mental health issues have been treated only by his GP who he believes had recently referred him for psychotherapy sessions.
16. There is also a statement from Steve and Trudy Hutchings, the Appellant’s former foster carers. They state that the Appellant spent his first week with them crying and was very withdrawn. He was having nightmares. The other children in their care had heard him shouting out. He spoke very little English and it was hard to get the correct interpreter to be able to understand him. He was very keen to learn and started to go to a centre where he was learning English. He suffered from bad headaches and stomach pains. On one occasion they mentioned the police to him and he went pale. He told them later that the police in his village would often beat him up and take things from him. They describe things that he likes to do. They have kept in touch with him since he went to live with his brother. They say it was obvious from the start that the Appellant was suffering from some sort of trauma and he did not act like other children of

his age. He would become withdrawn and sit with his head in his hands. They believe that he got a lot of comfort from his religion. They describe the difficulties getting him help for his psychological difficulties. He left their care on 8th June 2012. They provided some photographs of the Appellant some taken on Christmas Day and at Halloween.

17. There is a statement dated 28th July 2014 from Tina Baker, a Leaving Care Personal Advisor with North Somerset Council. She says that the Appellant has engaged well with David Clifford and that he talks to his former foster carers frequently. He misses them. He is trying hard to build a life for himself in the UK and regards it as home. He has completed his level 1 in an ESOL course to improve his English and is keen to move on with level 2. He wants to work. He is making real efforts to integrate into the community.
18. Ana Garcia, a Consultant Recruitment Social Worker with North Somerset Council says that the Appellant was clear that he wanted to go to live with his brother but he misses his foster carers and it took him a while to adjust. She describes him as polite and respectful. She says that returning him to Afghanistan would have a severely detrimental impact on him.
19. There is a letter from the Appellant's GP dated 18th July 2014 saying that the Appellant was diagnosed in February 2012 with PTSD. He has been prescribed fluoxetine. He had recently been referred to the Psychology Service to help his PTSD.
20. I heard oral evidence from the Appellant.
21. At the start of the hearing I asked Miss Pal if she had any comments to make about the fact that the Appellant's brother was granted ILR at around the same time the Appellant was being refused asylum. She said that the Home Office does not normally do an actual active review. His brother made an application by letter for ILR. The application was considered and granted. I expressed the opinion at that point that that did not explain why he was granted ILR and it seemed to me to be reasonable to suppose that someone must have considered all the facts in the round decided that there would still be a risk to him on return and internal relocation would not be possible. She said that that was probably not the case.
22. The Appellant adopted his statement made in December 2014.
23. In cross-examination he confirmed that he has had no contact with his mother and that his brother is trying to contact their parents. The Red Cross had said that they would put photographs of him and his brother on their website and perhaps their parents could be contacted that way but on the day they had an appointment with the Red Cross no interpreter was available and they were told that any action was limited by their failure to get instructions.

24. He said he was having psychotherapy sessions but these had stopped and he is now only seeing his GP.
25. The Appellant's brother adopted his statement. I asked him if he thought his brother would be able to cope on his own if he were returned to Afghanistan. He said he could not even if he were able to find somewhere to live. He said his brother is very upset and depressed about the loss of his family. He is dealing with everything that has happened to him in his head. He gets very upset when he has to talk about Afghanistan. He is withdrawn and has a poor appetite. He doubts whether his brother could cope without him. There would be no social support for him in Afghanistan. He just wants to put everything that happened in Afghanistan behind him. He said his brother's psychotherapy sessions have all been completed. Social Services are trying to arrange more. He has not had contact with his mother since she left Pakistan.
26. David Clifford adopted the two letters that are in the bundle. He said he and the Appellant are friends. The Appellant is a very truthful individual. He does not even tell small lies. He is shy and he will not speak out. He is constantly agitated. He said the Appellant had been taken to hospital a couple of months ago with suspected heart problems but in fact he had had a panic attack. The anxiety ebbs and flows and he gets particularly anxious around the time that a hearing in court is due. He believes him to be terrified at the thought of having to go back to Afghanistan. He is taking beta blockers for panic attacks and depression.
27. In her submissions Miss Pal said she would rely on the reasons for refusal letter in particular the comment that it is unlikely that the Appellant's mother would not be questioned by the police or that she would have moved the family to Pakistan then back to Afghanistan without male help. It is not accepted that the Appellant would be at real risk because of imputed political opinion. He came to the UK knowing that his brother was here and moved in with him. She submitted that he is an economic migrant. He needs to show that there is a causal link between his PTSD and events in Afghanistan. His brother's claim does not assist him. It is irrelevant. Paragraph 276ADE(vi) has no significance because there are no obstacles to integration in Afghanistan.
28. In his submissions Mr Jafar relied on the fact that the Home Office made no mention at all of his brother's case in the refusal letter. He relied in his submissions on an unreported Upper Tribunal decision **JA v SSHD**, in particular relying on paragraphs discussing the current case law on Afghanistan and the conditions there. There was reference to **RQ (Afghan National Army - Hezbi-e Islami - risk) Afghanistan CG [2008] UKAIT 00013** in which it was held that unless there are particular reasons it would not be unduly harsh to expect an Appellant with no individual risk factors to relocate to Kabul. The decision was made on 11th June 2013 and Upper Tribunal Judge Goldstein said that the picture that is painted is one where even today the Afghan authorities continue to perceive supporters and members of Hizb-i-Islami as acting against the

Government and a threat to the Government's authority and the country's security.

29. I have taken account of the paragraphs of that decision relied on by Mr Jafar. He also relied on an expert report provided by Jawad Hassan Zadeh who said that the Appellant would have to live in an inn because he is a single person and the standard of these places is squalid and unhygienic. They are essentially mud houses. If he has to live in such a place it will destroy his slim chance of work. He says that if the Appellant's past comes to light he is likely to be imprisoned on suspicion of aiding and abetting Hizb-i-Islami.
30. The most recent medical report that I have is from Dr Elinor Bradley, a specialist doctor with the Maidstone Community Mental Health Team. She saw the Appellant on 4th December 2014. It is not a particularly illuminating report. I will set out the last paragraph verbatim:

“On mental state examination he is well kempt man who was quite engaging. His speech was difficult to assess as this was through an interpreter but it appeared fluent with mood euthymic and reactive. He described interrupted sleep and flashbacks and reduced appetite. There were no other somatic or cognitive symptoms of depression. There were no thoughts of self-harm or harm to others. With regards to thought he described flashbacks as intrusive images and thoughts of his own making which made him anxious. He was concerned about returning to Afghanistan for fear of his life. There were no delusions apparent. He described perceptual abnormalities: a poorly formed internally derived voice which did not cause him distress and did not have the feel of true hallucinations. His cognition was not assessed. Insight was also difficult to assess today.”

31. She set out a care plan which says that he should continue with his medication increasing the dose of fluoxetine by twenty mgs. She confirms a current diagnosis of Post Traumatic Stress Disorder and says he may benefit from talking therapy.

Burden and Standard of Proof

32. The burden is on the Appellant to show with regard to the asylum appeal that returning him would expose him to a real risk of an act of persecution for reasons set out in Regulation 6 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. With regard to Humanitarian Protection he would have to show substantial grounds for believing that he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of his protected human rights.

My Findings

33. I have given careful consideration to all the evidence put before me in this case.
34. The Secretary of State does not accept the account given by the Appellant and her position is that even if the account were true the Appellant could relocate to a different area of Afghanistan.
35. I have taken into account all of the background information relied upon and the expert report. There is a lot of evidence before me that the Appellant has suffered considerable anxiety and depression. Miss Pal said that the Appellant has to establish a causal link between those symptoms and what happened to him in Afghanistan. It seems to me that that causal link has been established. Everyone who has provided evidence including Mr Clifford and the Appellant's former foster carers whose statement I indeed found very helpful have confirmed this. He does not like to talk about Afghanistan. He bases his fears of return on what happened there and it is these fears that are causing his distress and anxiety. I make the following findings bearing in mind the medical evidence before me.
36. I do not attach any weight to the submissions of Ms Pal that the authorities in Afghanistan would have questioned the Appellant's mother and that she would not have been able to get to Pakistan on her own with her children. This has not been established. The Appellant's account has been consistent. Given the low standard of proof I am prepared to accept it. Having said that he has been in the UK for four years and has never actively supported Hizb-i-Islami. I therefore accept that he may be at risk in his home area but I do question whether he would be of any interest elsewhere in Afghanistan. He would of course have to register wherever he decides to live. I accept that some efforts have been made to find his family. The question is whether it would be unduly harsh for him to have to relocate within Afghanistan.
37. The Appellant was only 16 years old when he came to the UK and his foster carers have said how difficult it was for him. I accept that he can be said to be a young man who has had the benefit of an education in the UK. He is physically healthy. I accept that he would only be one of many in Afghanistan suffering from psychological problems, given the state of war that has been ongoing and the vast number of lives lost and I accept that some treatment would be available. I accept the evidence of the expert of the practical difficulties the Appellant would face in obtaining accommodation and work. He has never worked and would have no support from family. I accept that he depends on his brother a great deal and that prior to living with his brother was with foster carers who apparently gave him excellent care and support. I accept and give weight to the fact that he has a family life with his brother, as his brother is the only family he currently has. He has had little experience in living on his own, supporting himself financially or looking for work. He has been described as immature and accepts that he is vulnerable. The evidence is that he is making every effort to build up a life in the UK with his brother.

38. The current reports on Afghanistan say that there were increased numbers of civilian casualties in Afghanistan in the first half of 2014. There is reference to more civilians having been killed and injured in ground engagements and crossfire between anti-government elements and Afghan national security forces. The majority of these incidents involved improvised explosive devices. A 17% increase in civilian deaths and 28% increase in injuries were recorded. A report in May 2014 by the International Crisis Group refers to the overall trend being one of escalating violence and insurgent attacks. Given the Appellant's previous experiences and the way they have affected him I accept that it would not be easy for him to deal with the current situation on the ground in Afghanistan and that it would inevitably exacerbate his anxiety.
39. I turn now to the issue of his brother's status in the UK. Ms Pal submitted that it is quite irrelevant to the Appellant's case. I have considered the comments in **Ocampo [2006] EWCA Civ 1277** and **TK (Georgia) [2004] AIT 00149** which are not strictly applicable as the decisions in this case were made not by a Judge but by the Respondent. A Judge of the First-tier Tribunal did however allow the Appellant's brother's appeal against the decision of the Respondent so **Devaseelan** has some applicability. I must accept that one Home Office caseworker may make a different decision to another on the same set of facts and one Judge a decision different to another Judge. I accept that in this case the view of the Respondent may have been that the general situation in Afghanistan, including the attitude of the authorities to those imputed to be supporters of Hizb-i-Islami has improved since the Appellant's brother's appeal was allowed such that a grant of refugee status to the Appellant was not justified. Ms Pal conceded that there would have been no 'active review' of the Appellant's brother's refugee status which arguably is not what is envisaged by the 1951 Refugee Convention. I go only so far as to say that for a young man like the Appellant it was reasonable to assume that since the Home Office had on the face of it decided that it was not safe or reasonable for his brother to return to Afghanistan, it would be equally unsafe and unreasonable for him to do so. It is disappointing that no connection was apparently made by the Respondent between the two cases.
40. Having considered all the circumstances in the round and bearing in mind the guidance set out in **Januzi v. Secretary of State for the Home Department & Ors [2006] UKHL 5** I find that it would be unduly harsh to expect the Appellant to return to Afghanistan and relocate away from his home area where he would face a real risk of persecution on account of his imputed political opinion.

Notice of Decision

The appeal is allowed on asylum grounds.

No anonymity direction is made.

Signed

Date: 2nd October 2015

N A Baird
Deputy Upper Tribunal Judge Baird

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 2nd October 2015

N A Baird
Deputy Upper Tribunal Judge Baird