



IAC-AH-DN-V1

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

Appeal Number: AA/05128/2015

**THE IMMIGRATION ACTS**

<b>Heard at Birmingham On 19<sup>th</sup> February 2016</b>	<b>Centre City Tower,</b>	<b>Decision Promulgated On 15<sup>th</sup> March 2016</b>	<b>&amp; Reasons</b>
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**W U  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Neale of Counsel instructed by Paragon Law  
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Burns of the First-tier Tribunal (the FTT) promulgated on 6<sup>th</sup> July 2015.

2. The Appellant is a male Afghan citizen born 1<sup>st</sup> January 1997 who arrived in the United Kingdom in July 2009 and claimed asylum. His application was refused although because of his age he was granted discretionary leave to remain until 4<sup>th</sup> November 2012. His appeal against that refusal was dismissed.
3. The Appellant applied for further leave to remain on 30<sup>th</sup> October 2012, and his application was refused on 6<sup>th</sup> March 2015. He appealed that decision and his appeal was heard by the FTT on 23<sup>rd</sup> June 2015 and dismissed on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal relying upon three grounds which may be briefly summarised as follows. Firstly the FTT erred in failing to give full reasons for findings of fact, and erred in finding that the Appellant would not be at risk of forced recruitment from the Taliban, in his home area in Logar Province. It was contended that the FTT had misread Dr Giustozzi's report, and had not appreciated that when Dr Giustozzi was referring to economic factors as being the main challenge to the Appellant, this was a reference to conditions in Kabul and not Logar Province.
5. Secondly the FTT had erred in considering internal relocation by failing to engage with material evidence and failing to give full reasons for findings of fact. The FTT had not engaged with background evidence submitted on behalf of the Appellant.
6. Thirdly the FTT erred when considering paragraph 276ADE(1)(vi) of the Immigration Rules, and when considering very significant obstacles, had failed to engage with material evidence and give full reasons for findings of fact.
7. Permission to appeal was initially refused by Judge Plumptre, but following a renewed application permission to appeal was granted by Upper Tribunal Judge Warr in the following terms;

"It is said that the First-tier Judge misinterpreted the report of Dr Giustozzi and in the light of the points made in the renewed grounds of appeal the point is perhaps arguable.  
All the grounds of appeal may be argued."
8. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

### **The Appellant's Submissions**

9. Mr Neale relied upon his skeleton argument dated 15<sup>th</sup> February 2016. In brief summary Mr Neale made the following points.
10. In relation to the first ground of appeal it was apparent that the FTT had placed particular weight on Dr Giustozzi's report, but it was clear, when

the report was read as a whole, that the FTT had misinterpreted the report. In paragraph 14 when Dr Giustozzi commented that “finding a job will probably be his greatest challenge” Dr Giustozzi was referring to Kabul, and not conditions in the Appellant’s home area in Logar Province. It was submitted that the FTT had not given any other reasons for rejecting the UNHCR view that there was a real risk of forced recruitment in Taliban controlled areas, and the Appellant’s home area was controlled by the Taliban. While the FTT was not bound by this view, it was bound to give full reasons for rejecting it.

11. In relation to the second ground the FTT accepted that the Appellant had no family in Kabul and had never lived there. It was speculation by the FTT to comment in paragraph 49 that there was the possibility of the Appellant resuming contact with his uncle. The FTT failed to take into account background country evidence submitted on behalf of the Appellant such as the reports by Schuster and Majidi contained at pages 13-32 of the Appellant’s supplementary bundle of country evidence before the FTT, and a report by Catherine Gladwell a pages 121-122 of the same bundle. These reports indicate the difficulties that would be faced by returnees, and while it was acknowledged that the FTT was not required to refer exhaustively to every piece of evidence, in this case the FTT had disregarded two vital pieces of evidence which were specifically put forward and drawn to its attention which supported the submission that the Appellant would be at risk of destitution and homelessness in Kabul, which would amount to unduly harsh conditions.
12. The FTT commented that the Appellant had displayed an ability to adapt to life in the United Kingdom, but had not taken into account that he had the assistance of social services in so doing.
13. Mr Neale submitted that the third ground was similar to the second ground, in that the FTT had not taken into account relevant background evidence, and had failed to give adequate reasons for finding that there would be no very significant obstacles to the Appellant’s reintegration. The FTT had erred at paragraph 57 by taking into account section 117B when considering paragraph 276ADE(1) and reliance was placed upon Bossade [2015] UKUT 00415 (IAC) as authority for the contention that this was wrong.

### **The Respondent’s Submissions**

14. Mr Richards confirmed that no response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 had been submitted, but contended that the decision of the FTT disclosed no error of law.
15. I was asked to accept that the FTT had set out all the evidence that was considered, and I was referred in particular to paragraph 3. The FTT could not be expected to refer to each individual piece of evidence and need only mention evidence that was considered to be particularly pertinent.

16. Mr Richards submitted that when reading paragraph 14 of Dr Giustozzi's report, it was not clear that he was referring to conditions in Kabul when commenting that finding a job would be the Appellant's greatest challenge. It was submitted that the FTT's conclusions on this report were open to it.
17. With reference to the Gladwell article relied upon by the Appellant, which made reference to difficulties encountered by returnees who were viewed as 'westernised outsiders', and made reference to some being mugged due to a perception that being returned from Europe must mean returning with money and referred to one individual being kidnapped and held to ransom, Mr Richards pointed to paragraph 13 of Dr Giustozzi's report which directly contradicted this view and stated;

"13. Westernised attitudes are quite common in Kabul, particularly in the wealthiest neighbourhoods. Wearing western style dresses is quite common for example, and even consumption of alcohol is quite frequent, although never in public. Mr U's westernised attitude would only be a problem if he settled in rural areas or in the most conservative areas of the country, such as southern Afghan cities."
18. Mr Richards submitted that the FTT had considered all the evidence, attached what weight was thought appropriate to that evidence, and the grounds amounted to a disagreement with findings that had been properly made.

### **The Appellant's Response**

19. Mr Neale reiterated that if Dr Giustozzi's report was read as a whole, it was clear that he was referring to Kabul when talking about economic difficulties.
20. Whilst the FTT was not bound to set out every piece of evidence, the FTT must engage with the main submissions and make findings thereon. This the FTT had failed to do. The FTT had not explained why it was not accepted that the Appellant would be unable to find work and employment which would lead to destitution.
21. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

#### **Ground 1**

22. Dr Giustozzi commences his report by setting out evidence of his expertise, which includes listing his publications on Afghanistan, and his visits to Afghanistan. In the second paragraph he confirms that he has been asked by the Appellant's representatives to prepare a report, and sets out the documents that he received. Dr Giustozzi does not confirm what specific issues he was asked to comment upon. It appears from the report that Dr Giustozzi has dealt with risk on return to the Appellant's

home area in Logar Province, and also dealt with the option of relocation to Kabul. I set out below the concluding paragraph of the report;

“14. In sum, Mr U would face considerable levels of violence in his home province of Logar if returned there. The level of violence in the country as a whole is still increasing, although it is much lower than the average in Kabul. Finding a job will probably be his greatest challenge. The Afghan government has had to admit that the economic situation is deteriorating to the point where a major social crisis might be in the making.”

23. In paragraphs 10-13, Dr Giustozzi concentrated on the situation in Kabul and commented upon the deteriorating economic situation in Kabul, and the difficulties of finding accommodation and employment. It is my view, that in making the comment that “finding a job will probably be his greatest challenge”, Dr Giustozzi was referring to Kabul rather than Logar Province.
24. I do not however accept that the FTT erred materially in interpretation of this report. It is correct that in paragraph 31 the FTT placed particular weight on the report when considering the Appellant’s claim that he would be at risk of enforced recruitment by the Taliban in his home area. What I find relevant, and as noted by the FTT, is that Dr Giustozzi did not raise forced recruitment as an issue in his report. If there had been a risk of forced recruitment by the Taliban, Dr Giustozzi would have included this in his report.
25. Therefore the FTT was entitled to place weight on the absence from the report of any reference to forced recruitment and it was open to the FTT to conclude that taking into account the lower standard of proof, there was no real risk that the Appellant would be recruited by the Taliban against his will if returned to Logar Province.

## **Ground 2**

26. As rightly conceded by Mr Neale, the FTT cannot be expected to refer to every individual piece of evidence. The Upper Tribunal in Budhathoki [2014] UKUT 00041 (IAC) gave some guidance on this point, confirming that it was generally unnecessary and unhelpful for FTT judgments to rehearse every detail or issue raised in a case, but it was necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.
27. Dealing with the issue of internal relocation to Kabul, the FTT at paragraph 46 specifically refers to paragraph 243 of AK Afghanistan CG [2012] UKUT 00163 (IAC), relied upon by the Appellant. It is clear that the FTT considered that case, which gave guidance on the situation in Kabul and for ease of reference I set out below paragraph B(iv) of the headnote;

“Whilst when assessing a claim in the context of Article 15(c) in which the Respondent asserts that Kabul City would be a viable internal relocation alternative, it is necessary to take into account (both in assessing safety and reasonableness) not only the level of violence in that city but also the difficulties experienced by that city’s poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.”

28. The FTT took into account the submissions made on behalf of the Appellant which are set out in paragraph 47, and in which there is further reference to Dr Giustozzi’s report. The FTT refers to an article relied upon by the Appellant, although this is considered in paragraph 62 when considering very significant obstacles. It is correct that the article referred to is in fact by Nassim Majidi which relates to shortcomings in assistance for deported Afghan youth, rather than the article by Liza Schuster and Nassim Majidi, which is the article for which the FTT is criticised for not making reference to, as well as not making reference to an article by Catherine Gladwell contained in the Appellant’s bundle.
29. I do not accept that the FTT has ignored any of the articles relied upon by the Appellant. In paragraph 3 of the decision, the FTT lists the evidence that was produced, noting that three separate bundles were produced on behalf of the Appellant, and confirming that this evidence has been considered together with the skeleton argument which makes reference to background country evidence relied upon, and having taken into account oral submissions from both representatives. AK Afghanistan CG, remains a country guidance decision and therefore the FTT was entitled to conclude that generally conditions in Kabul would not make a return to that city unsafe or unreasonable. The FTT considered the submissions made on the Appellant’s behalf, that conditions had deteriorated since AK Afghanistan CG was published. The FTT found that the Appellant had no family ties in Kabul and had never lived there, but that he had no specific risk characteristics. The FTT remarked that there was the possibility of the Appellant resuming contact with his uncle, but did state that this was not known, and I do not find this to be a material error.
30. There is no country guidance case law which confirms that an individual such as the Appellant would be at risk if returned to Kabul. So far as internal relocation in Kabul is concerned, Dr Giustozzi’s conclusion was that finding a job would be the Appellant’s greatest challenge.
31. In my view the FTT has demonstrated that it considered all the evidence produced by both parties, and considered that evidence in the round. The FTT was entitled to conclude at paragraph 49, that although economic conditions in Kabul are difficult and there is a risk of some violence, relocation to Kabul would not be unduly harsh. The FTT did not err in commenting that the Appellant had shown “a degree of resilience in coping with life in the United Kingdom”, as that would appear to be the case, although there has been assistance and support from social services.

### **Ground 3**

32. The FTT erred, as contended by Mr Neale, in considering section 117B when considering paragraph 276ADE(1). Section 117B considerations are relevant when Article 8 is considered outside the Immigration Rules. However this error is not material, as it was not section 117B considerations that caused the FTT to conclude that the Appellant had not proved that there are very significant obstacles to reintegration if he left the United Kingdom.
33. On this issue, the same argument is advanced on behalf of the Appellant, as was advanced in the issue of internal relocation, in that it is contended that the FTT did not take into account all the relevant background evidence. I have already rejected that argument, concluding that the FTT did take into account all the relevant evidence.
34. With reference to the issue of very significant obstacles, I conclude that the FTT was entitled to find, on the evidence, that there would not be very significant obstacles to the Appellant's reintegration. The FTT at paragraph 62 again made reference to Dr Giustozzi's report, and the difficult economic conditions. In my view the FTT was entitled to take into account the Appellant had the benefit of education which he received in the United Kingdom, and was entitled to conclude that his ability to read and write and speak English would be of some assistance.
35. I do not find that the FTT disregarded any material evidence, or took into account and gave weight to any immaterial matters. In my view the FTT made findings which were open to it on the evidence, and gave adequate reasons for those findings.
36. The grounds submitted on behalf of the Appellant which have been very carefully argued, display a strong disagreement with the findings made by the FTT, but they do not disclose a material error of law.

### **Notice of Decision**

The making of the decision of the FTT did not involve the making of an error on a point of law such that the decision must be set aside.

I do not set aside the decision. The appeal is dismissed.

### **Anonymity**

An anonymity direction was made by the FTT. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 26<sup>th</sup> February 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 26<sup>th</sup> February 2016

Deputy Upper Tribunal Judge M A Hall