



IAC-AH-DN-V1

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

Appeal Number: AA/05424/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2016**

**Decision & Reasons Promulgated
On 17 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**S H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, Counsel instructed by Malik & Malik Solicitors

For the Respondent: Ms Alice Holmes, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Bird sitting at Taylor House on 13 August 2015) dismissing his appeal in a decision of the Secretary of State to refuse to vary his leave to remain in the United Kingdom on asylum or humanitarian protection grounds, against the Secretary of State's concomitant decision to remove him from the United Kingdom by directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The First-tier Tribunal did not make an anonymity direction. However, as the

appellant is pursuing an asylum claim, I consider it is appropriate that the appellant is accorded anonymity for these proceedings in the Upper Tribunal.

Relevant Background

2. The appellant's accepted date of birth is 9 June 1996. He applied for asylum in the UK in August 2011 having entered the United Kingdom illegally. On 15 March 2013 his asylum application was refused, and he was granted discretionary leave to remain until 9 December 2013 until he reached the age of 17½ in accordance with the Secretary of State's published policy on the handling of asylum applications of unaccompanied asylum seeking children.
3. In his witness statement of 21 September 2011 which he made in support of his asylum claim, he said that his father originated from Jalalabad. He however had been born in Peshawar, Pakistan. He initially lived in Pakistan with his parents, siblings and a paternal uncle. His father worked in Afghanistan, and would come home during days off. He worked as a cook for PRT, which was an organisation related to American troops. His father would prepare Afghan food for the Afghans who worked for the PRT.
4. Eventually there came a point when Pakistani government officials forced them to leave their homes in Pakistan, as they had been built on land illegally. They moved to an area near Jalalabad City. His father continued his work with the PRT, and was able to come home from work every day. His father started to receive threats from the Taliban. The first threatening letter came about a year to a year and a half after they had moved back to Afghanistan. The last letter arrived about eight months before the appellant left Afghanistan. The first letter had been dropped inside their door during the night. The man who wrote the letter said he was the commander of the Taliban. Many things were said which he could not remember. But he remembered that it said they were slaves of the foreign troops, and that if they caught them they would destroy them. He did not read the letter himself but his parents told him about the letter. His father had no choice but to continue working as he had no other way to support the family so he had to ignore the threats.
5. It did not stop him going with his father to cook after these letters were received because his father said he needed to learn how to cook. He was not sure how long it was before the second letter came. As far as he knew, there were three or four letters sent in total. He guessed that they would drop off a letter whenever they heard about his father being at work.
6. One day his father was seized by the Taliban when he was leaving the mosque in the company of an old man. Before he was taken away, his father was questioned by the Taliban in front of the old man. The Taliban asked his father who was the boy with him when he cooked. The old man told the Taliban that the boy was the appellant. His father confirmed this, and told the Taliban that his son was at home.
7. The police came the following morning and asked some questions. They also questioned the old man about what had happened. About seven or eight days later,

his father's body was dropped outside the house during the night. He could see that his father had been hanged. His mother and uncle then decided that he should go to the city. They told him he had to go away because otherwise he would be killed if he stayed. They sold some land which his father had bought. He did not know how much it was sold for. His uncle also took out a loan, so that he had enough money to pay for him to leave. It was two days after his father's funeral that his uncle and mother told him about their intentions. Around fifteen days later, he left the house to start his journey. He travelled alone to Jalalabad City and stayed the night at a hotel, and in the morning the agent came to collect him.

8. On 15 July 2014 the Secretary of State gave her reasons for refusing to vary the appellant's leave to remain. She reiterated the original reasons for refusing his asylum claim. He may on some occasions have accompanied his father when he worked as a cook. But he had remained in the same house for nearly a month, and he had not been approached by anyone. He also had not been stopped on his way to Jalalabad. There had been no direct threats against him personally since he was allegedly identified to the Taliban. So it was not accepted the Taliban had any adverse interest in him.
9. It was noted that within his additional witness statement of 26 November 2013 he attempted to address some of the issues raised in the original reasons for refusal letter. He said that the threatening letters from the Taliban threatened both him and his father. He said that the Taliban knew who his father was, and that he was helping his father and that everyone knew that he helped his father. From what he had heard about the Taliban, they did not usually come to someone's house to take them. They normally took people when they were outside their homes such as on their way to work. The fact that they had not done anything in seventeen days did not mean that they were not planning to do something. Seventeen days was not a long time.
10. The fact remained that the appellant had remained in the same house for nearly a month. There was a week or so while his father was missing, and then a further seventeen days at least after his burial. In that period no-one approached him. He had failed to submit any further evidence, such as the threatening letters, to substantiate his claim any further. The findings made in the original refusal remained valid.
11. On the topic of internal relocation, the Secretary of State cited **PM and Others (Afghanistan) CG [2007] UKAIT 0089** for the proposition that those returned to the United Kingdom are not at real risk, without more, of being suspected by the authorities as insurgents. She cited **RQ (Afghanistan) CG [2008] UKAIT 0013** for the proposition that it would not be unduly harsh to expect an appellant with no individual profile to live in Kabul and assist in the rebuilding of his country. The respondent asserted that the recent case of **AK (Afghanistan) CG [2012] UKUT 163** supported this view.

12. She had also taken into account the Country of Origin Report for Afghanistan dated May 2013 which stated that Kabul was currently home to almost 5 million people, and it was considered that he could safely relocate there. The size of this population and the sheer scale of the city meant that the Taliban would neither have the reach nor the resources to find him on return to Kabul or even to be aware that he had re-entered into Afghanistan. He was an 18 year old male with no confirmed medical conditions. He had conducted his asylum interview in Pashtu, one of the native Afghan languages. He had travelled from Afghanistan to the United Kingdom with the use of agents. He had also been able to adapt to life in the United Kingdom despite the differences in language and culture. Since arriving in the UK, he had studied at various educational establishments. He could use the skills he had gained in the UK to assist him to find employment on return to Afghanistan. His actions demonstrated a degree of resourcefulness and ability to adjust and adapt to his surrounding environment. So he can support himself with or without the help of his family on return to Afghanistan.

The Hearing Before, and the Decision of, the First-tier Tribunal

13. Both parties were legally represented before Judge Bird. The appellant adopted as his evidence-in-chief a witness statement signed by him on 17 February 2015. Though he was now 18 years of age, he did not feel the situation was any safer in Afghanistan because on a daily basis they had heard news of attacks by the Taliban and other extremist groups who targeted cities throughout the country, especially Kabul because it was the heart of the government. Since the majority of international forces had left Afghanistan at the end of 2014, the situation had got worse because the Taliban were using this opportunity to come to power.
14. He could not go to Kabul because he had no-one there who was able to support him in any way. He was still unaware of the whereabouts of his mother and younger siblings. He had contacted the Red Cross again earlier this year and requested that his family was traced through S H, his paternal uncle who lived in Jalalabad, as the Red Cross can only trace through male family members. A Red Cross message was left for the head of his area, Milik (Habibur Rehman) to get in contact with him in January 2015, and he was still awaiting a response from the Red Cross. (Earlier in his statement he had given a telephone number for the same individual, who he described as the head of his village. He said he had obtained this telephone number in 2012, and had spoken to him requesting confirmation from the National Improvement Council that his father had been killed.)
15. As his father's eldest son, he maintained he would be at risk returning to Afghanistan from a western country, as he definitely would be seen by the Taliban in a negative light. He wished to confirm that the threat letters that his father received were addressed to both of them. Even though he was only a child, the Taliban had also mentioned him in their letters because he used to travel with his father to and from the PRT and they knew that he was his son. On the date that his father was kidnapped in May 2011, an elderly man had seen the Taliban stopping his father and questioning him when he came out of the mosque after evening prayers. The Taliban

asked the elderly man about the identity of the boy that worked with his father, and the elderly man told them that it was him (the appellant). After his father was killed, he stayed in hiding indoors in the home for about seventeen days.

16. In her subsequent decision, the judge set out her findings at paragraph [22] onwards. For the present purposes, it is only necessary to refer to her findings at paragraphs [29] to [36], which I reproduce verbatim below:

“29. Steps have been taken by the respondent to trace the appellant’s family. Information of the family tracing is at paragraphs 32 to 34 of the respondent’s letter. The appellant himself has undertaken some steps by contacting the elders of the village in which his family lived. I also heard evidence from his sister who has visited the village. No trace of the family was found. To the lower standard I accept that efforts have been made to trace the appellant’s family and that these have so far proved unsuccessful. I have to, however, take into account the fact that the appellant is not being returned to Afghanistan as a minor but will now be returned as an adult.

30. Essentially the appellant has to show that he has a well-founded fear of being persecuted in Afghanistan. There is no objective evidence to support the appellant’s belief that the Taliban will be looking for him. The appellant’s own account is that he remained in his village after his father’s death for nearly a month. Arrangements were being made for him to travel out of Afghanistan whilst he was living in the family home. He then walked to Jalalabad during the day. There were no threats made against the appellant personally. The appellant’s sister has also travelled to Afghanistan recently. There was no evidence that there were any enquiries being made of the appellant. The sister spoke to villagers to enquire about the whereabouts of her mother and siblings. I heard no evidence that the appellant was being sought by anyone.

31. The appellant is being returned to Kabul. I have to consider whether there will be any risk of persecution in Kabul. As I have said, there is no evidence that the appellant is being sought by the Taliban. His father did not have a high profile position with any organisation. Despite his father’s death, the appellant himself could not point to any interest in him. All that I have seen is a fear that the appellant may be targeted. The appellant himself could not be seen as being sympathetic to the government or any other agents attached to the government.

32. The appellant has therefore been unable to show that he has a well-founded fear of persecution because of his imputed political opinion. Further, the appellant is to be sent to Kabul and the question is whether the appellant will be able to return to Kabul or whether the appellant has a well-founded fear of being persecuted if he is returned there or that there is a risk to him of being sought by the Taliban. Again, there is very little evidence to support that the appellant is someone who will be of any interest to the Taliban and, further, that he cannot seek the protection of the authorities in his country.

33. Further, the Country of Original Information Report dated 5 May 2013 which is referred to at paragraph 51 of the respondent’s bundle provides evidence that there have been measures put in place to increase the general security in Kabul. It is therefore likely that the appellant will have sufficiency of protection available to him. The appellant may not have family support in Kabul but he is now an adult who will be able to re-establish his life in that city. The appellant

has acquired some skills whilst he has been in the United Kingdom. I have seen evidence that the appellant has been training as a hairdresser and will therefore be able to use these skills upon return.

34. The appellant, further, has been unable to show that he is entitled to subsidiary protection because there is a fear that he would be subject to serious and individual threat to his life as defined in Article 15(c) of the Council Directive 2004/83/EC simply because of being in Afghanistan. In this I am bound by the findings of the Upper Tribunal in **AK (Afghanistan) [2012] UKUT 163 (IAC)** where the Upper Tribunal found that the level of indiscriminate violence in Afghanistan taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.
35. The Upper Tribunal further found that “nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may ... but not to include Kabul), at such a level”. There have been changes to this country guidance. I find therefore that if the appellant is returned to Kabul there would be sufficiency of protection available to him there and, further, the level of indiscriminate violence does not engage Article 15(c) of the Qualification Directive. The appellant is therefore not entitled to Humanitarian Protection.
36. Article 8 was not argued before me at length but even were I to consider this I find that the appellant would not meet the requirements of Appendix FM in relation to family life and with regard to private life, although he has been in the United Kingdom since 2011 he has not spent half his life in the United Kingdom and, further, that he still has social, cultural or family ties in Afghanistan. The appellant therefore does not meet the requirements of Rule 276ADE and I find that in the particular circumstances it would not be unreasonable to expect the appellant to return to his country to re-establish his private life there. In the particular circumstances of this appeal I find there are no compelling circumstances for me to consider under Article 8 outside the Rules.”

The Reasons for Granting Permission to Appeal

17. On 4 November 2015, on a renewed application for permission to appeal, Upper Tribunal Judge Taylor granted permission to appeal for the following reasons:

“The grounds challenge the adequacy of the First-tier Judge’s reasoning both in relation to the assessment of risk on return, and to the judge’s conclusions on the proportionality of removal. They are arguable.”

The Hearing in the Upper Tribunal

18. At the hearing before me to determine whether an error of law was made out, Mr Ahmed said that he was not pursuing the point made in paragraph 2 of the renewed application for permission to appeal. Paragraph 2 said that the finding at paragraph [34] of the decision was erroneous as it was not supported by the current objective evidence which confirmed the escalating levels of violence in the country and which was the subject of litigation in the case of **R (on the application of Naziri and Others) v SSHD IJR [2015] UKUT 00437 (IAC)**.

19. Mr Ahmed focused his attack on paragraph [30] of the decision. He submitted the judge was wrong to say there was no objective evidence to support the appellant's belief that the Taliban would be looking for him. The judge was also wrong to say there were no threats made against the appellant personally, as it was the appellant's evidence in paragraph [12] of the witness statement which he adopted before the First-tier Tribunal that the night letters had been addressed to him as well as to his father.
20. On the topic of whether the appellant could reasonably relocate to Kabul, he accepted that the country guidance of **PM and Others** did not assist the appellant's case.
21. He submitted that the appellant would be at risk from the Taliban, once his past history became known. He would not be able to remain anonymous. He confirmed that the appellant was not pursuing an Article 8 claim.
22. In reply, Ms Holmes submitted that the judge had given adequate reasons for finding that the appellant did not have a well-founded fear of persecution in Kabul at the hands of the Taliban, and that internal relocation to Kabul was thus both safe and reasonable.

Discussion

23. As was clarified in Mr Ahmed's oral submissions, the focus of the error of law challenge is not whether it is reasonable for the appellant to relocate to Kabul without having family members to receive him there, but simply whether it is safe, having regard to the appellant's profile. Similarly, it is not suggested (by reference to the evidence canvassed in the **Naziri** litigation) that the judge erred in law in not finding that the appellant qualified for humanitarian protection or subsidiary protection.
24. In the witness statement that he adopted before the First-tier Tribunal the appellant explained at paragraph 9 that PRT stands for Provisional Reconstruction Team. Mr Ahmed referred me to the UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan dated 5 August 2013, which was included in the appellant's objective bundle for the hearing in the First-tier Tribunal.
25. Under the heading of potential risk profiles, there is a category which describes individuals associated with, or perceived as supportive of, the government and the international community, including the international military forces.
26. One sub-group of these is government officials and civil servants. Family members of government officials had been threatened and kidnapped by AGEs (anti-government elements) to force government employees to quit their jobs; in other cases relatives of government employees were reported to have been killed by AGEs as an act of retaliation against these employees.

27. Another sub-group is civilians associated with or perceived as supportive of the ANSF or the IMF. AGEs have reportedly threatened and attacked Afghan civilians who work for the IMF as drivers, interpreters or in other civilian capacities. UNAMA reports having documented many cases of AGEs murdering or mutilating persons suspected of collaborating with pro-government forces. In some instances civilians, including children, were reported to be targeted on the basis of suspicions that members of their families work for the ANSF.
28. A further sub-group is other civilians perceived as supporting the government or the international community. AGEs are reported to kill civilians deliberately to punish them for supporting the government, the killings intended to serve as a warning to others. AGEs are also reported to use night letters (Shab Nameha), threatening text messages and local radio broadcasts to warn civilians against supporting the government.
29. After discussing these various sub-groups, the UNHCR concludes that, *depending on the individual circumstances of the case* (my emphasis), persons associated with, or perceived as supportive of the government or the international community, including the IMF, may be in need of international refugee protection on the grounds of their imputed political opinion. Depending on the specific circumstances of the case, family members and other members of their households or individuals with these profiles may also be in need of international protection.
30. As submitted by Ms Holmes, in paragraph [30] of her decision the judge was addressing the question of whether the appellant had a well-founded fear of persecution in Afghanistan as at the date of the hearing before her. She was not saying that there was no objective evidence to support the appellant's account of what had happened in Afghanistan before he left. She was saying that there was no objective evidence to support the appellant's belief that the Taliban will (i.e. in the future) be looking for him.
31. She is not to be taken as thereby ignoring the UNHCR eligibility guidelines or the risk profiles to which Mr Ahmed drew my attention. In any event, as I explored in oral argument, arguably the guidelines undermine the appellant's case of ongoing risk, rather than supporting it. For if, as the judge found, his father had paid the ultimate price for his collaboration with the PRT, this made it less likely, rather than more likely, that the Taliban would pursue a vendetta against his family members, such as the appellant. Furthermore, the guidelines stress that the person's individual circumstances need to be looked at, and this is what the judge has done in reaching the conclusion that the appellant does not have a well-founded fear of being targeted by the Taliban in Kabul.
32. When the judge says there were not threats made against the appellant personally, she is clearly talking about the appellant's experience following his father's death, while he was still living in the family home. Mr Ahmed points out that the appellant's evidence was that he only remained in the village after his father's death for between seventeen and nineteen days. But, according to the appellant's account,

his father was kidnapped by the Taliban some seven or eight days before his body was dropped outside the home. In that period there were no threats made against the appellant personally, and he was not in hiding. The fundamental point made by the judge holds good: following his father's kidnapping and subsequent murder, the Taliban left the appellant alone although they knew where to find him.

33. The appellant's reliance on the alleged contents of the night letters does not carry matters any further. Indeed, arguably they weaken the appellant's case, rather than strengthen it. For if the night letters made threats against him personally, as well as threats against his father, because everyone knew (including the Taliban) that he was assisting his father in cooking for the PRT, the Taliban would not have needed to establish the identity of the boy who was helping the appellant's father when kidnapping his father outside the mosque.
34. It was open to the judge to find, for the reasons which she gave, that the appellant would not have a risk profile on return to Kabul which would engender a real risk of persecution in Kabul by AGEs, even if it became known that the appellant's father was a cook for the PRT and that the appellant, when a young teenager, had accompanied his father on some of his assignments.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

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.

Signed

Date