



IAC-FH-NL-V1

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

Appeal Number: AA/07529/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12 January 2016**

**Decision & Reasons Promulgated
On 27 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MAR
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms S Fijiwala, Home Office Presenting Officer

For the Respondent: Ms J Rothwell of Counsel instructed by Duncan Lewis & Co

DECISION AND REASONS

Background

1. This is an appeal against the decision of First-tier Tribunal Judge Ferguson promulgated on 1 October 2015, brought pursuant to the permission granted by First-tier Tribunal Judge Scott-Baker on 19 October 2015.
2. Although before me the Secretary of State for the Home Department is the appellant and MAR is the respondent, for the sake of consistency with the

proceedings before the First-tier Tribunal I shall hereafter refer to MAR as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a national of Afghanistan whose date of birth is given as 1 January 1986. He first came to the United Kingdom as a student in April 2011 and secured subsequent grants of leave until 30 October 2014. He returned to Afghanistan for a visit between 27 September 2012 and 13 October 2012. During the currency of his leave, with still something approaching a year of leave left to run, he made an application for asylum on 27 November 2013. His application was in due course refused by the Secretary of State for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 6 March 2015, and an immigration decision refusing to vary leave and directing that the Appellant be removed from the United Kingdom was taken on 10 March 2015 (served on 12 March 2015). The Appellant appealed to the IAC and his appeal was allowed by the First-tier Tribunal Judge for the reasons set out in his decision.
4. The background to the Appellant's asylum claim is set out at paragraphs 2 and 3 of the decision of the First-tier Tribunal Judge and I can do little better than to quote those paragraphs:
 - "2. His claim is based on a number of different reasons why he fears that he will be persecuted by the Taliban. As set out in his interview and statements these include that he worked in various roles including as an interpreter for the American security forces from 2003 translating documents to be used in the training of Afghanistan police. He left that role in 2004 after the unit where he was based was the subject of a suicide bomb attack. He then worked with USAID for a short time delivering medical supplies. After that he worked as a finance officer for an NGO founded by USAID called Bakhtar Development which provided finance and training to help the health sector in Afghanistan. He was promoted to various roles and continued working there until 2011. He also studied part time at American University in Afghanistan in 2008 but stopped his studies within the year because of threats to him from the Taliban that he was working with Christians and against Islam. He stopped that job after the office in Baghlan where he had been working was attacked by the Taliban. He said that he had received phone calls from the Taliban personally threatening him.
 3. In addition, he claims he is at risk because he worked as a finance officer in Dr Abdulah Abdulah's Presidential election campaign in 2009. He said that he did this part time as well as working for the NGO. He was given a bodyguard in this role and provided evidence of his involvement with Dr Abdulah including identity cards and photographs of them together. He received two threatening phone calls from the Taliban whilst working there."
5. It is also to be noted that the Appellant gave evidence of his involvement with the British army during his time in the United Kingdom - which is recorded in the decision of the First-tier Tribunal Judge in the following terms at paragraph 10:

"Other photos of him in army uniform were taken in 2011 with British soldiers training in London: he had a contract to provide interpreting

services to help them role play exercises to train for deployment in Afghanistan”.

6. It may readily be appreciated that the Appellant has a very particular and specific profile indicating a longstanding association with the US and British armed forces as well as other agents for change and development in Afghanistan.
7. The First-tier Tribunal Judge made reference to the Appellant’s supporting evidence (cited at length at paragraph 6 of his decision), and also identified those issues that were in dispute between the parties (paragraphs 7 and 8). The Judge, having heard evidence from the Appellant both in examination-in-chief and under cross-examination, reached positive findings on credibility which he adequately explained at paragraphs 20-25 of the decision. These findings are not challenged by the Respondent.
8. In particular I note the following findings and conclusions of the First-tier Tribunal Judge, at paragraph 24:

“Every aspect of his education and employment history is established to the low standard. As a result the Appellant has established that he has the profile of a person who may be of interest to the Taliban. He has directly worked for organisations linked to the USA. His account is consistent with the background evidence.”
9. The Judge went on to quote at paragraph 24 some of the background evidence that was before him, in particular extracts from a UNHCR assessment that confirmed the climate of intimidation, threats, and abductions against individuals targeted by the Taliban in the period in 2012 congruent with the Appellant’s return to Afghanistan during a brief break from his studies in the UK.
10. The Judge also referred to the Secretary of State’s OGN from February 2015 at paragraph 27 of his decision, and at paragraph 28 made general reference to background evidence. In particular the Judge said this:

“The background evidence referred to at paragraphs 25 and 28 above establishes that there is no sufficiency of protection for someone in the position of [the Appellant], whatever general sufficiency of protections the country guidance case may have found to exist in parts of the country.”
11. It is common ground between the representatives before me that the reference to paragraphs 25 and 28 in the quotation above must represent a typographical error or slip, it appearing that the Judge had in mind the passages cited at paragraphs 24 and 27.
12. It is to be noted that in addition to the express citation of the OGN at paragraph 27 the Judge also said, *“there are many background documents in the Appellant’s bundle which show examples of the risk posed by the Taliban to people targeted by them”*.
13. The Judge went on at paragraph 29 to say this:

“The risk to him has arisen over time including when he was working in Kabul. Kabul therefore cannot be considered as a place of internal

relocation for him. Internal relocation to any other part of Afghanistan would be unduly harsh in the absence of assistance from a network of family members and without being able to work in the roles he has previously held out of fear of coming to the attention of the Taliban again.”

14. In those circumstances the Judge allowed the appeal under the Refugee Convention.

Consideration of Challenge

15. The Secretary of State raises a challenge based on sufficiency of protection and internal relocation.

16. Ms Fijiwala acknowledges that the first paragraph of the Secretary of State’s Grounds of Appeal is not drafted in a coherent manner. It is in these terms:

“In allowing the asylum appeal the Judge finds that the risk to the appellant “has arisen over time including when he was working in Kabul” [29]. The Judge fails to explain why Kabul cannot in those circumstances be considered as a place of internal relocation”.

Ms Fijiwala acknowledges that in circumstances where the Judge appears to be finding that there is a risk of persecution in Kabul, necessarily it is not a suitable place of internal relocation.

17. Be that as it may the Respondent seeks to argue that the Judge has not adequately set out his findings in respect of a lack of sufficiency of protection in Kabul, and has not otherwise adequately dealt with the issue of internal relocation. I note that the grant of permission to appeal does not expressly grant permission on the basis of these grounds but rather raises a further matter which is to suggest that the Judge had not made adequate findings from the background material to which he had referred.

18. In seeking to amplify the grounds and develop the case before me, particular reference has been made by Ms Fijiwala to a number of the passages in the background evidence, and in particular passage in the OGN note to which the Judge made reference at paragraph 27 of the decision. Ms Fijiwala has emphasised a passage at paragraph 2.3.6 of the OGN, (which may be found at page 582 of the Appellant’s bundle that was before the First-tier Tribunal). The passage is in the following terms:

“In commenting on security in Kabul the Danish Immigration Service Fact Finding Mission report on Afghanistan of May 2012 cited the International Police Co-operation Board as stating that ‘there are places in Afghanistan where Afghan National Police is functioning well in terms of providing security especially in Kabul and other big cities like Herat, Mazar-i-Sharif and Faizabad’.”

This passage was relied upon by the Respondent as indicating that there was indeed a sufficiency of protection in Kabul.

19. It seems to me that that passage must be read in its proper context. It comes under the section of the OGN dealing with internal relocation, and in my judgment its value is with regard to considering the extent to which

the risk of *generalised violence* may be ameliorated by mechanisms of state protection. It is not, in my judgment, a passage that directly relates to individuals who have been *specifically* targeted: that is not the context of the paragraphs in which it is placed in the OGN.

20. In a similar way the case of **H & B v United Kingdom** (heard in the European Court of Human Rights on 9 April 2013), upon which the Respondent places reliance, is not in my judgment directly 'on point'. The case is noted at paragraph 2.4 of the OGN. Necessarily the court in that case focused on the particular circumstances of the two individual claimants, concluding that they had not demonstrated that their profile was such that the Taliban would be sufficiently interested to target them - see in this regard the following: "*there is insufficient evidence at the present time to suggest that the Taliban have the motivation or the ability to pursue low-level collaborators in Kabul or other areas outside their control*" and "*there is also little evidence that the Taliban are targeting those who have as requested by them already stopped working for the international community and who had moved to other areas*". The decision, however, significantly goes on to say this:

"... individuals who are perceived as supportive of the international community may be able to demonstrate a real and personal risk to them from the Taliban depending on the individual circumstances of their case, the nature of their connections to the international community and their profile".

21. In my judgment it is clear that the outcome in the case of **H & B** turned on the very particular facts of those claimants. Nonetheless the Court recognised that there were individuals who might still be at risk from the Taliban, depending on the particular circumstances of their case. Indeed, as with most asylum cases, the level of risk will turn on the particular circumstances of the individual. It is abundantly clear that the First-tier Tribunal Judge in this case considered that the very particular background of the Appellant was such as to make him of continuing adverse interest to the Taliban - as indeed had been the case when he had returned to Afghanistan for a brief period in 2012. Not only did the Judge identify the risk to the Appellant at that time by citing from the UNHCR assessment (at paragraph 24 of his decision), the Judge also identified the continuing risk by citing from paragraph 3.10.11 of the Respondent's OGN, again citing the UNHCR as a source of information - see paragraph 27.
22. As regards internal relocation, Ms Fijiwala emphasised the passage at 2.3.6 - already cited above - in which it was said that the Afghan National Police were functioning well in big cities outside Kabul. It was argued that even if the Appellant were at risk in Kabul the Immigration Judge had not dealt adequately with the notion that the Appellant might be able to relocate to some place outside Kabul where he would not be at risk and where it would not be unduly harsh for him to go.
23. In the first instance I note that the RFRL only proposes Kabul as a location of internal flight. Moreover it is apparent that the submissions of the Presenting Officer - summarised in this regard at paragraph 15 of the First-

tier Tribunal Judge's decision - also only suggest Kabul as a possible location for the Appellant in Afghanistan.

24. Be that as it may, and in any event, I note the Judge's conclusion at paragraph 29 was, in effect, that it would not be reasonable for the Appellant to relocate to another area where he did not have a support network and he would not be able to undertake the same sort of work that he had previously undertaken whilst in Afghanistan. This approach, in my judgment, echoes that identified in the case of **MSM (journalists: political opinion: risk) Somalia [2015] UKUT 00413 (IAC)** to the effect that an individual should not be denied refugee status on the ground that they could seek alternative employment. In effect what the Judge is saying in my view is that it would not be reasonable to expect the Appellant to relocate to a zone where he would have to change the way that he had led his life hitherto and cease his involvement in the reconstruction of Afghanistan because to do otherwise would attract a very real risk of persecution.
25. Ms Rothwell for her part placed emphasis on the Judge's reference to having had regard to "*many background documents in the Appellant's bundle which show examples of the risk posed by the Taliban to people targeted by them*". In this regard Ms Rothwell drew my attention in particular to the European Asylum Support Office Country of Origin Information Report dated January 2015, (which begins at page 359 of the Appellant's bundle), and in particular those passages dealing with the risk in and around Kabul at page 395 onwards. Ms Rothwell argued that in as much as the Judge did not descend to any greater specificity in citing the background materials, such an omission was not ultimately material. Ms Rothwell acknowledged in this regard that perhaps the Judge could have better expressed his findings and conclusions, but submitted that there was a wealth of evidence such that the overall conclusion of the Judge in the context of his careful analysis of the individual circumstances of the Appellant, and his identification of relevant passages from the background material that were cited, is such that no material error is detectable.
26. I accept Ms Rothwell's submission. It seems to me that it is clear that the First-tier Tribunal Judge considered that the Appellant had a very particular profile that had caused him to be directly targeted by the Taliban, and to have been the subject of specific personally-targeted threats such as to put him at risk both in 2012 when he visited, but also subsequently and at the present time. The Judge also dealt adequately with the concept of internal relocation as it was put to him by the Respondent, and in any event.

Notice of Decision

27. The decision of the First-tier Tribunal contained no material errors of law and stands.
28. The Secretary of State's challenge is dismissed. MAR's appeal remains allowed

29. The anonymity order is preserved.

The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.

Signed:

Date: 25 January 2016

Deputy Upper Tribunal Judge I A Lewis