



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

Appeal Number: AA/07830/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2015**

**Decision & Reasons Promulgated
On 4 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

N N
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert (Counsel instructed by Fadiga & Co)
For the Respondent: Mr D Clarke (Home Office Presenting Officer)

DECISION AND REASONS - RESUMED HEARING

1. This matter comes before the Tribunal as a resumed hearing to consider Article 8 private life. The matter was originally dealt with as an error of law hearing on 22 September 2015 where the Tribunal upheld the First-tier Tribunal's decision to dismiss the appellant's asylum claim and otherwise concluded that there was a material error of law in the decision by the failure of the First-tier Tribunal to deal with Article 8 ECHR.
2. For the background I refer to and rely on the Upper Tribunal decision and reasons promulgated on 29 September 2015.

3. For this hearing Mr Gilbert produced a skeleton argument dated 23 November 2015. The appellant and his witness I N gave evidence, the details of which are set out in the record of proceedings. Reliance was placed on a country expert report of Antonio Giustozzi dated 17 November 2015, correspondence from the British Red Cross, medical evidence found in the appellant's bundle from pages 50 to 71 and letters of support found in the appellant's bundle at pages 72 to 88. Further medical evidence was adduced at the hearing by way of a report typed on 20 April 2015, report typed 23 December 2014, letter dated 26 August 2014 and letter dated 5 December 2012. The appellant relied on a report entitled The 2015 Afghanistan Refugee and Returnee Overview.
4. Mr Clarke for the Secretary of State relied on the Country of Origin Information Response dated 17 September 2015, **Akhalu (health claim: ECHR Article 8) [2013] UKUT 00400 (IAC)**, **JL (medical reports - credibility) China [2013] UKUT 00145 (IAC)** and **R (on the application of Naziri and Others) v SSHD JR - scope - evidence) IJR [2015] UKUT 00437 (IAC)**.

Statutory Framework

5. The requirements to be met for leave to remain on the grounds of private life paragraph 276ADE(1) are that as at the date of application, the applicant:
 - (i) does not fall for refusal under any of the grounds in Section S-LRT1.2 to S-LRT2.3 and S-LRT3.1 in Appendix FM; and
 - (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
 - (vi) subject to sub-paragraph (ii), is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) that there would be very significant obstacles to the appellant's integration into the country to which he would have to go if required to leave the UK.
6. Article 8(1) the Right to Respect for Private and Family Life and Article 8(2) are relevant. The approach adopted by this Tribunal is first of all to consider whether or not the appellant meets the Article 8 provisions under the Rules in paragraph 276ADE and if not, then to consider whether there are compelling or other circumstances not covered by the Immigration Rules such that the appellant may have established a claim under Article 8 outside of the Rules (**R (on the application of Nagre) v SSHD [2013] EWHC 720**). In such cases it must be shown that removal would be disproportionate having regard to non-standard and particular features of the case of a compelling nature to show that removal would be unjustifiably harsh.
7. Section 19 of the 2014 Immigration Act introduced into the Nationality, Immigration and Asylum Act 2002 Part 5A containing Sections 117A-117D. In considering Article 8 outside of the Rules and the question of

proportionality the Tribunal must have regard to the factors listed as public interest considerations in Section 117.

117B Article 8: public interest considerations applicable in all cases.

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the UK, that persons who seek to enter or remain in the UK are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the UK are financially independent, because such persons –
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the UK unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the UK.

Submissions

8. Mr Clarke relied on the Reasons for Refusal Letter dated 9 September 2014 and the COIR. Mr Clarke conceded that the Article 8 Immigration Rule under 276ADE(vi) was the central issue to be considered and/or Article 8 outside of the Rules. There was no challenge to the medical evidence relied on.
9. It was submitted that the appellant was now an adult, had lived most of his life in Afghanistan and was effectively living independently in the UK and would be able to resettle in Afghanistan given that he speaks the

language. Reliance was placed on the existence of the Assisted Voluntary Return Scheme as referred to in **Naziri** with particular reference to the assistance provided for vulnerable persons. The appellant would be given short-term assistance including accommodation. It was clear from the objective material that some mental health treatment was available including the particular drug prescribed to the appellant.

10. In terms of the medical evidence it was submitted that the reports were not capable of corroborating the credibility of the appellant's claim simply the diagnosis as PTSD. There was no evidence of suicidal tendencies. Reliance was placed on the adverse credibility findings made by the First-tier Tribunal. It was clear the appellant did not wish to return to Afghanistan and his depressed mood was directly relevant to the possibility of removal.
11. As regards the tracing issue, it was submitted that there was effectively a period of five years before the appellant provided any information about the whereabouts of his family. Reference was made to a maternal grandmother and extended family members in a doctor's letter. Article 3 medical grounds have not been established. Article 8 outside of the Rules was not engaged. Reliance was placed on **Akhalu**. The current evidence showed that the appellant's mental health was improving and in terms of proportionality Section 117B was applicable to the extent that the appellant was not financially independent, the establishment of private life was not a route to settlement and the medical evidence was lacking.

Submissions by Mr Gilbert

12. It was the duty of the Secretary of State to meet the obligations for tracing. The appellant entered the UK as a child and his role needed to be considered in the context of his age and mental health difficulties. Reliance was placed on the evidence of the Red Cross to demonstrate the efforts made to secure the tracing of family members and this established that the appellant fully engaged with the Red Cross and that process. None of the evidence was consistent with any avoidance action on the part of the appellant as it was clear that he was positively engaging with the tracing process.
13. The medical evidence was strong. Two consultants had found the appellant to be suffering from symptoms of post traumatic stress disorder. It was submitted that it was the symptoms presented by the appellant that were capable of corroborating the account given. There were no concerns that the appellant was faking and it was clear he was seriously unwell and in need of treatment. There had been worsening of the symptoms over the last three months arguably because of difficulties with the new doctor (the appellant now being moved to the adult mental health team) and the appellant (as a vulnerable person) struggled with moving home and interruption of his treatment. It was submitted that the appellant was a vulnerable individual who had experienced suicidal ideation which was consistent with past medical evidence in which he had described suicidal

feelings. The recent medical evidence showed a decrease in his mental state. Reliance was placed on suicidal ideation as an indicator of the difficulties faced by the appellant in dealing with stress and coping and were relevant to his ability to integrate.

14. Reliance was placed on the evidence establishing the high level of vulnerability of the appellant. All professionals engaged with him described an exceptional level of care was required and provided which was indicative of his inability to look after himself.
15. Doctor Giustozzi had provided a detailed, well sourced and balanced report which could be relied on by the Tribunal. It was of assistance when considering the obstacles to be faced by the appellant if returned. The violence from the Taliban had increased significantly and the appellant's home area was located in an area where there had been an increase in violence. In any event he had lost contact with his family and therefore realistically Kabul would be the only place for return and where the appellant would be at risk of destitution. There was huge unemployment and given the appellant's vulnerability and lack of connection in Kabul together with his mental health difficulties he would not be able to compete to obtain employment and establish an independent life.
16. In considering Article 8 outside of the Rules and Section 117 it was submitted that the appellant was very integrated in the UK; he spoke English and he was still "looked after" by Social Services and not yet living independently in the UK. The evidence produced in the testimonies demonstrated significant integration from the level of friendships established and he was growing up in the UK during his formative years. Given the network in connections established in the UK by the appellant and his emotional and practical reliance on those connections his removal would amount to a disproportionate breach of private life in the UK.

Discussion and Decision

17. I am satisfied that the appellant has established a significant private life in the UK by reason of his length of residence in the UK, the strength of his connections in the UK, his high level of continuing vulnerability and his high level of integration in the UK personally, socially and emotionally. Furthermore I am satisfied that there are very significant obstacles to his integration into Afghanistan which include his youth and vulnerability, absence from Afghanistan for more than six years, lack of familiarity with Afghanistan as an adult and lack of familiarity with Kabul, continuing mental health problems, no experience of employment and absence of any family. These are of relevance in the context of the UNHCR Guidelines which highlight that the additional extended family and community ties in Afghan society constitute the main protection and coping mechanisms particularly in rural areas where infrastructure has not developed. I have also considered the situation existing in Kabul with reference to evidence cited in **Naziri** of factors including the lack of employment opportunities in Kabul and inadequacy of financial settlement

packages and the essential nature of family connections. In **Naziri** reference was made to the UNHCR 2013 Eligibility Guidelines addressing internal relocation from the perspective of safety and reasonableness. The guidelines observe that personal traits and circumstances of the individual must be evaluated together with the security situation, respect for human rights and possibilities of economic survival in the area concerned. UNHCR suggest that internal relocation is reasonable only where the individual can expect to benefit from meaningful family, community or tribe support in the area of prospective residents. It is acknowledged that in circumstances single able-bodied men and married couples of working age without identified specific vulnerabilities may be able to subsist without family and community support in urban and semi-urban areas.

18. In reaching my decision I have taken into account the evidence from the appellant which in general terms I found to be credible having regard to his personal, emotional and private life in the UK and his lack of contact with family in Afghanistan. I place significant weight on the impressive and convincing evidence given by the appellant's witness I N. I found this witness to be extremely knowledgeable and to have considerable experience of working with young people who have claimed asylum in the UK. I place weight in particular on her evidence as to the high level of vulnerability demonstrated by the appellant and the resultant high level of support provided to enable him to deal with daily life and practical issues.
19. I am satisfied that the appellant does come within the category of a person with identifiable vulnerabilities. Not only did he enter the UK as an unaccompanied minor at the age of 12 years but he has also been in the care of the local authority and, of significance, he remains in the care of the local authority as a looked after child and a decision taken to continue the support provided to him notwithstanding that he is now over 18. The local authority has clearly accepted responsibility for the appellant and provides him with supported living accommodation, a social worker and in addition he has practical support from his mentor and this will continue until at least the age of 21 years. In the Government report 2003 entitled "Every Child Matters" looked after children are viewed as already significantly disadvantaged and highly vulnerable members of society requiring support and assistance often beyond the age of adulthood. The report emphasises the need to work towards a permanence plan for young people by adopting a shared responsibility and multi disciplinary approach. The Local authority decision carries weight in my assessment.
20. In addition I am satisfied that the appellant also has continuing vulnerability by reason of his mental ill health. The appellant has been provided with significant support from the children's mental health services and as established in the various reports he was diagnosed with post traumatic stress disorder by two consultant psychiatrists. I acknowledge that since he has entered into the adult mental health system he appears not to have engaged with those services in any useful way. I find that he is taking prescribed medication for depression and

although there has been some overall improvement, he still remains subject to the diagnosis of post traumatic stress disorder and continues to require further treatment in the form of counselling. The most up-to-date report confirmed that he had now re-engaged with the system and would be provided with further support. I accept his explanation that he did not make a meaningful connection with his “new” psychiatrist with whom he felt unable to develop a helpful relationship. I entirely accept the submission made by Mr Gilbert that the appellant’s high level of vulnerability and mental health difficulties are significant factors in terms of how he would be able to re-integrate if returned to Afghanistan. The fact that the appellant is an adult carries little weight given he remains to be treated as a young person.

21. I further place weight on the conclusions made in **Naziri** as regards the current situation in Afghanistan. I further place weight on the findings made by Dr Giustozzi in his expert report. I am satisfied that the appellant is a person who would face very significant obstacles to re integration to the extent that he would be significantly restricted in terms of employment, accommodation, financial and other support given his high level of vulnerability and susceptibility to mental health difficulties. In addition I am satisfied that there is no family support available to the appellant in Afghanistan. Having regard to all of those factors the appellant faces a real risk of destitution and homelessness if returned to Afghanistan. Whilst accepting that there is in existence some form of support in terms of the Voluntary Return Scheme, this would provide short-term assistance only. This would not be at all adequate for a person such as the appellant who was described by his mentor as being “the most vulnerable person she had met”, given the high level of support required to enable him to deal with daily living and in navigating the wider world. It is of significance (and I take into account) that the appellant has exceptionally been provided with a long-term care plan including supported accommodation by the local authority which will potentially be available to him for another six years.
22. In addition to the appellant’s vulnerability he has also adduced evidence of strong friendships in the UK and developed educational skills including learning English. The evidence in the appellant’s bundle establishes a high level of commitment to integration into UK society demonstrated by his motivation to do well and to educate himself and his desire to obtain employment in future.
23. In dealing with tracing issues I have taken into account the correspondence from the British Red Cross. Whilst accepting that there was a lack of activity or input by the appellant for a number of years after his arrival in the UK, I am satisfied that there has been no attempt on his behalf to avoid any engagement with the tracing process. It is clear that once that engagement was established he has positively contributed to the provision of information and demonstrated a keenness to locate the whereabouts of any family members in Afghanistan. I find no evidence to

show that there are family members living in Afghanistan with whom the appellant could obtain support be it emotional, financial or otherwise.

24. I have decided therefore to allow the appeal under Article 8 under the Immigration Rules paragraph 276ADE(vi). In the alternative, I allow the appeal under Article 8 outside of the Rules on the basis that the appellant has established a significant private life in the UK which deserves respect. I endorse the approach in **Razgar** having regard to the questions posed which are answered in the affirmative. The central issue is proportionality. I conclude for the same reasons as I have found that the appellant meets the Rules that there would be a disproportionate interference with his right to private life. In that context I have had regard to the public interest factors under Section 117 of the 2002 Act as amended. The appellant does speak English and can communicate well. He has not been able to obtain employment but has engaged with educational opportunities and I am satisfied that given the level of support required and provided he will be able to take up opportunities for further qualification and employment in the near future. The appellant has been in the UK lawfully since his arrival as an unaccompanied minor and was granted discretionary leave. In general terms his circumstances are precarious, however the high level of integration and high level of vulnerability shown by the appellant enables me to place less significance on Section 117B(5).

Notice of Decision

25. I allow the appeal on Article 8 grounds under paragraph 276ADE and outside of the Rules under Article 8 ECHR.

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 14.12.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT FEE AWARD

There is no fee award.

Signed

Date 14.12.2015

Deputy Upper Tribunal Judge G A Black