



IAC-AH-SC-V1

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

Appeal Number: AA/08383/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 December 2015**

**Decision & Reasons Promulgated
On 5 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**O H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran (Counsel instructed by JD Spicer & co)
For the Respondent: Mr S Kandola (Home officer presenting officer)

DECISION AND REASONS following resumed hearing

1. The appellant was born on 30 August 1994 and is a citizen of Afghanistan.
2. In a decision and reasons dated 13.11.2015 the Upper Tribunal found a material error of law by the First-tier Tribunal (Judge CM Phillips) ("FtT") in a decision dated 30 January 2015 in its consideration of Article 8 ECHR. A copy of that decision is annexed hereto and to which I refer for the background issues. At the resumed hearing Article 8 ECHR outside of the rules was in issue. I heard evidence from the appellant. Two medical reports (letter dated 14.12.2015 from high intensity therapist and a letter

dated 24 February 2015 from Dr G Hibbert) were admitted under the provisions of Rule 15(2)(a) Immigration (Upper Tribunal) Procedure Rules 2008. I heard submissions from both representatives and in addition I took into account the skeleton argument produced by Ms Loughran.

3. I remake the decision of the FtT under Article 8 by allowing it under private and family life. I rely on the oral evidence, witness statements and the medical evidence that was before the FtT and before me. There was no challenge to the actual consideration of Article 8 outside of the Rules. Ms Loughran submitted that the medical evidence, which the FtT failed to take into account, was relevant to the issue of private and family life. I agree with that submission. Although I found that the FtT's failure to take into account that evidence in consideration of the asylum claim was not material, it nevertheless remains highly relevant to the issue of private and family life. I find that the appellant was diagnosed with Post traumatic stress disorder (PTSD) by a clinical psychologist and that he received medical help in the form of counselling and medication. The recent medical evidence confirms that this treatment is continuing. The FtT found that the cessation of counselling was because the appellant had recovered. I am satisfied that the evidence did not and does not support that finding. I find that the appellant suffers from PTSD and is in receipt of treatment. The FtT also took into account in its consideration of the appellant's vulnerability, that the appellant was pursuing his educational studies and was employed. I am satisfied that his ability to study and work does not detract from the diagnosis and need for treatment, rather it is a question of the degree to which and how the diagnosis impacts on his daily life. Further more whilst the FtT found the core issue of the appellant's asylum claim of working for a TV company to be lacking in credibility, there was no finding that his account of his family members being killed by the Taliban was untrue. This was relevant to the issue of family life and mental ill health. The FtT found that the appellant had some family life in Afghanistan in the form of his aunt. I find that the appellant's relationship with his aunt was poor based on his consistent evidence that he was abused by her in the past and the reasons he was sent out of Afghanistan by her was because she perceived him to be a risk to her family. There was no evidence of meaningful family life with his aunt before the FtT.
6. I find that the appellant entered the UK in 2010 as an unaccompanied minor at the age of 16 years. He was taken in by his elder brother who fled from Afghanistan in 2001 and came to the UK and who is now a British citizen and working as a bus driver. I find that they have established family life as a real meaningful close and committed relationship in which the appellant's brother has played the role of a parent to the appellant in the UK. They have lived together intend to remain living together for the foreseeable future. I take into account the impact of separation on other family members. The evidence establishes that his brother gained significant support and emotional strength from his relationship with the appellant, which in my view has greater significance for both of them given the tragic and horrific circumstances of the killings and death of

other family members. In addition the appellant's brother also suffered from mental ill health; a major depression and PTSD as evidence in the medical report from Dr J Boatall at page 177 of the A/B. The fact that the appellant is working and shows some level of independence in his daily life as found by the FtT, is of relevance but not determinative of the existence and strength of his family ties or connection with his brother. I accept the submission made in the skeleton argument at paragraph 13 - 14 regarding the evidence establishing the family life that exists which is over and above the "normal" level of dependency between adult siblings, and engages Article 8.

7. In reaching my decision I rely on principles in **Kugathas v SSHD [2003] INLR 170** and **Ghising (family life- adults- Ghurka policy) [2012] UKUT 00160 IAC**. In **H (Somalia) 2004 UKIAT 00027** the Court considered that circumstances for family life existed where siblings had a quasi parental relationship and where living in a permanent common household. In **Nadarajah Sentharan [2004] EWCA Civ 950** the Court took into account that the appellant had arrived as a minor lived with family members in the UK and had no family life in his country of origin. Further in **R (on the application of Ahmadi) v SSHD [2005] EWCA Civ 1721** family life of two Afghan siblings who recently lived together was considered in the context of the potential for family life together and not having regard to the short time the siblings spent together in the past. The Court concluded that there was ample authority for the proposition that Article 8 required the State to refrain from interference with existing family life but also not to inhibit the development of real family life in future.
8. On the particular facts in this appeal I am satisfied that there is established a real and committed and meaningful family life for the appellant with his older brother, and other family in the UK including their sister who is a British citizen. I take into account the impact of removal on the appellant's brother also, as he derives strength from his relationship with the appellant. The fact that his brother intends to get married does not lessen the strength of the family life with the appellant (**ZB (Pakistan) v. SSHD [2009] EWCA Civ 834**).
9. The appellant has also established a private life since his arrival in the UK as a minor. He was granted discretionary leave until his adulthood and established his private life during that period. That in my view is not a precarious situation upon which I am required under section 117(4) Nationality Immigration & Asylum Act (as amended) ("2002 Act") to place weight given that he was lawfully in the UK with leave and pursued opportunities for education and connections in the UK. He has engaged positively in education and has been offered a place to study Pharmacy at university level. He is still pursuing higher education. He has established a level of vulnerability because of his age on arrival in to the UK, his mental ill health and on going need for counselling and treatment, and his ties with surviving family members in the UK, and absence of any real ties in Afghanistan. It is also of significance that he entered the UK as a child

and to that extent had not chosen to enter the UK. The medical evidence (in particular that of Dr J Boatall) is that he suffers from severe low mood and anxiety in relation to events before arriving in the UK and which were life threatening and she also concluded that the life of the appellant's brother would be "shattered" in the event of his removal. The appellant has also established himself as financially independent. I have regard to section 117 2002 Act as regards the public interest factors (set out in paragraph 18 skeleton argument). I find that the appellant can speak English and is able to pursue his education in English and has every prospect of being able to study at University on a medicine related course. I find no reasons why the appellant would be an economic burden on the UK. The evidence establishes that he is firmly integrated into the UK. The factors listed in S.117 2002 Act are not exhaustive and I have concluded that there are others of relevance and significance as described above. Taking into account all of the above I conclude that cumulatively the decision to remove the appellant is disproportionate and that the interests of the appellant outweigh the public interest in the removal of the appellant as a failed asylum seeker.

10. I find that the family and private life is of sufficient gravity so as to engage Article 8. The removal of the appellant would sever his and those of family members strong ties and significantly impact his mental well being emotionally and psychologically. The decision is in accordance with the law as the appellant is a failed asylum seeker and his discretionary leave expired. The removal would lead to an interference with his strong family and private life in the UK. For all of the reasons given above including age, strength of connections, personal history, domestic and compassionate circumstances, the interference would not be proportionate having weighed the interests of the appellant and his family members with the public interest in removal of him as an adult failed asylum seeker.

11. **Decision**

I set aside and remake the FtT human rights decision by substituting a decision to allow the appeal under Article 8 family and private life outside of the Rules.

Signed

Date 31.12.2015

GA Black
Deputy Upper Tribunal Judge G A Black

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.

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 31.12.2015

GA Black
Deputy Upper Tribunal Judge G A Black