



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

Appeal Number:
AA/09988/2014

THE IMMIGRATION ACTS

**Heard at: Manchester Piccadilly
On: 20th January 2016**

**Decision &
Promulgated
On 20th April 2016**

Reasons

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

**Mohammad Juma Noori
(no anonymity direction made)**

Respondent

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Ms Faryl, Counsel instructed by Watson Ramsbottom Partnership

DETERMINATION AND REASONS

1. The Respondent is a national of Afghanistan born on the 19th May 1994. On the 29th April 2015 the First-tier Tribunal allowed his appeal, on asylum and human rights grounds, against a decision to refuse to vary his leave and to remove him from the United Kingdom pursuant to s47 of the Immigration, Asylum and Nationality Act 2006. The

Secretary of State now has permission¹ to appeal against that decision.

Background and Matters in Issue

2. The Respondent arrived in the UK on the 24th February 2009 when he was 14 years old. In accordance with her policy on Unaccompanied Asylum Seeking Children the Secretary of State granted him Discretionary Leave, limited until he turned 17 and a half in November 2011. Shortly before that leave expired the Respondent applied to 'upgrade' his status to that of refugee, or in the alternative further leave to remain on a discretionary basis.
3. The reasons for refusal letter is dated 4th November 2014. It was accepted that the Appellant is a Shi'a Hazara, and that as a result he had suffered mistreatment in Afghanistan, but not that this kind of discrimination amounted to persecution. It was not accepted that the Appellant was at any risk of forced recruitment or otherwise by the Taliban. The Secretary of State noted that the Respondent still has family in Afghanistan: a father, two brothers and a sister. Attempts have been made, by the Home Office and the Red Cross to trace them, using the information supplied by the Appellant. Although they were not located, the Secretary of State believes her obligations to trace his family were met. If the Respondent has any subjective fears of returning to his home in Ghazni he could go and live in Kabul. The Secretary of State relies on the findings of the Upper Tribunal in PM and Ors (Afghanistan) CG [2007] UKAIT 00089 and RQ (Afghanistan) CG [2008] UKAIT 00013, both decisions in which Kabul was held to be a generally safe and reasonable internal flight alternative for healthy adult males.
4. The appeal came before the First-tier Tribunal. Judge Dickson heard oral evidence from the Respondent, and from the Respondent's Hungarian girlfriend, Ms Szabina Petrovics. The Respondent relied on the Refugee Convention and Article 8 ECHR.
5. In respect of Article 8 the Tribunal accepted the credible evidence of the Respondent and his girlfriend that they were a couple. However they were not living together and the Tribunal did not consider this relationship amounted to a family life. What it did was to serve to illustrate the extent to which the Respondent had "adapted to English life and friendships". His private life had been established over seven years as a young man and although the matter was finely balanced the Tribunal did not consider it to be proportionate to remove him now. A relevant factor in that balancing exercise was the delay in dealing with the upgrade application. This "unfortunate and

¹ Permission was refused on the 27th May 2015 by First-tier Tribunal De Haney but granted upon renewed application by Upper Tribunal Judge Grubb on the 30th July 2015

unacceptable” delay had been attributed by the Secretary of State to staff shortages. The appeal was therefore allowed with reference to Article 8. That finding, and outcome, are not challenged by the Secretary of State.

6. In respect of the asylum grounds of appeal, the First-tier Tribunal made the following findings of fact:

- i) The Respondent is a Shi’a Hazara from Ghazni;
- ii) He left Afghanistan when he was 13 years old;
- iii) Before he left Afghanistan the Taliban had taken his father and brother to a training camp;
- iv) They had returned with his father in order to take him;
- v) He managed to escape before they came back to take him;
- vi) The Appellant has not heard from any family members since he left Afghanistan and has no idea whether they are even alive;
- vii) Significant parts of Ghazni are now under Taliban control;
- viii) The background material showed the security situation in Kabul to have significantly worsened with the Taliban frequently attacking targets in and around the city;
- ix) The Hazara population has come under attack and during Spring 2015 staged daily protests in Kabul;
- x) The humanitarian situation in Kabul is poor with around 70% of the population living in ‘informal’ settlements, ie in shacks, tents or derelict buildings and the unemployment rate is high;
- xi) The Respondent has never been to Kabul;
- xii) He has no contacts there.

Having apparently accepted that the Respondent would be at risk of persecution in Ghazni the primary focus of the determination is internal flight. Having identified the factors listed above the Tribunal notes the objective background material in respect of being ‘connected’ in Afghan society: “being unknown or distrusted within the current situation in Afghanistan creates a lack of safety and security, acute loneliness, depression and hinders opportunities to progress”. Applying these findings to Lord Bingham’s guidance in Januzi the Tribunal finds the Respondent to have discharged the burden of proof and the appeal is allowed.

7. It is this conclusion which is challenged in this appeal. The Secretary of State submits that in reaching its conclusion the First-tier Tribunal has not done enough to distinguish the Respondent’s position from that of any other young Afghan man. The Secretary of State relies on the extant country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) and HK and Ors (minors- indiscriminate

violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 378 (IAC).

My Findings

8. As noted above, this appeal only concerns the asylum grounds of appeal before the First-tier Tribunal. The appeal was allowed on human rights grounds and that finding is unchallenged and preserved.
9. The challenge is to the decision to allow the appeal on asylum grounds. Mr McVeety points to the established principles that apply to country guidance cases, namely that they should be followed unless there are good reasons to depart from them. Mr McVeety submits that the Tribunal appears to have been unduly swayed by the fact that at the date of the appeal the President of the Upper Tribunal, McCloskey J, had ordered a stay on removals to Afghanistan. The stay was subsequently lifted and removals have continued apace.
10. I have read the country guidance cases cited with care.
11. The Secretary of State submits that the First-tier Tribunal has here failed to apply the guidance in HK when assessing the truthfulness of the Respondent's account of forced recruitment of his father, elder brother and then himself. I have not found this decision to be particularly helpful. The Tribunal in that case simply makes the point that there has not been shown to be a general risk to Afghan boys of forced recruitment by the Taliban, particularly in the provinces under scrutiny in that case (Loghar, Kunduz and Kunar). It then goes on to state that such claims should be assessed on a case by case basis. That is exactly what the Tribunal has done here. The Tribunal heard oral evidence from the Respondent, and read his interview records and statements. Having done so it was satisfied that his account was true. The fact that his brother had been taken and - at the date that the Respondent left Afghanistan was still in the training camp - was plainly relevant to whether the Respondent himself might be said to be at risk [see for instance paras 35-36 HK]. The Judge was entitled to believe the witness and to make the findings that he did.
12. Similarly it is difficult to see in what way Judge Dickson made findings at odds with the guidance in AK. Whilst the Upper Tribunal in

that case found that Kabul can in general be considered to be a safe and reasonable internal flight alternative it stressed, in accordance with the classic principles, that each case must be considered on its merits [at 243]:

“As regards Kabul city, we have already discussed the situation in that city and we cannot see that for the purposes of deciding either refugee eligibility or subsidiary protection eligibility (and we are only formally tasked with deciding the latter) that conditions in that city make relocation there in general unreasonable, whether considered under Article 15(c) or under 15(b) or 15(a). We emphasise the words “in general” because it is plain from Article 8 (2) and our domestic case law on internal relocation (see AH (Sudan) in particular) that in every case there needs to be an inquiry into the applicant’s individual circumstances; and what those circumstances are will very often depend on the nature of specific findings made about the credibility of an appellant in respect of such matters as whether they have family ties in Kabul. But here our premise concerns an appellant with no specific risk characteristics and someone found to have an uncle in Kabul: see above paras 3,5,154, 186 and below, paras 250-254). To summarise our conclusion, whilst when assessing a claim 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 IDPs living there, these considerations will not in general make return to Kabul unsafe or unreasonable, although it will still always be necessary to examine an applicant’s individual circumstances”.

13. In this case various factors were identified which cumulatively led to a finding that internal flight would be unduly harsh for *this appellant*. He is a Shi’a Hazara, a group who already face discrimination and on the evidence before the Tribunal, were facing increasingly violent attack. He has not been to Afghanistan since he was 13 (at the date of the appeal he was nearly 21) and has never lived in Kabul. He has - in contrast to the appellant in AK - no relatives, friends nor alternative support network in Kabul. He has no means of tracing his family members or discovering their whereabouts. Although not expressly relied upon in respect of internal flight the Tribunal’s findings as to the strength and depth of his private life in the UK may also be relevant to this assessment: he is not simply an Afghan who has never been in Kabul, but he is a young man who has spent the past seven formative years in the UK. Whilst it is unarguable that the Tribunal did not specifically cite AK in

its determination (it is not clear whether the case was drawn to the court's attention) I am satisfied that this error is in no way material. The refusal letter to which it had regard cited older country guidance which also made it plain that *in general* Kabul is a reasonable place to seek internal flight; moreover the Tribunal made a number of sustainable findings about the Respondent's particular circumstances which justified its findings that *for him* life in Kabul would not be reasonable.

14. The final point made on the Secretary of State's behalf was that the Judge placed too much emphasis on the 'stay' of returns to Afghanistan, operational at the date of the appeal. It is evident that this did feature in the submissions made; the Secretary of State in fact requested an adjournment until the issue was resolved. I am not however satisfied that this was a factor which swayed the Tribunal. The determination makes clear that it was the factors individual to the appellant which led to the findings of fact.

Decisions

15. The decision of the First-tier Tribunal does not contain an error of law and is upheld.
16. I was not asked to make a direction for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
29th January

2016