



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

Appeal Number: AA/10257/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 8 December 2015**

**Decision and Reasons  
Promulgated  
On 14 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**MOHAMMED NABI  
(NO ANONYMITY ORDER)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr H Samra, Harbans Singh Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The dispute at the heart of this appeal is whether First-tier Tribunal Judge A Green made relevant findings about the appellant's fears relating to the Home Office's allegation that it was reasonable to expect him to relocate to Kabul.

2. To put this question in context, Judge Green made the following findings in paragraphs 36 and 37 of his decision and reasons statement that was promulgated on 23 January 2015.

“36. In summary for the reasons give above, I find that the Appellant has been subjected to past persecution at the hands of the Taliban. He was threatened with forcible recruitment. He has been threatened with death or serious injury because of his refusal to co-operate with the Taliban. The Taliban killed his brother. In reaching this conclusion, I am mindful of paragraph 339K of the Immigration Rules. I must now consider whether there is a reasonable likelihood of persecution in the future.

37. Given the Taliban’s strength in Helmand, it is reasonably likely that were the Appellant to return to his home village, he would be persecuted in the future. The Appellant has not, however, provided any recent evidence of the threat of persecution that he could face on his return. His brother was tragically killed in July 2011, 3 years and six months before this hearing. He has not provided any more recent evidence to suggest that the Taliban are actively looking for him. Given the significance of the death of his brother, I am prepared to accept that there is a risk of persecution on his return. However, is his life in danger wherever he lives in Afghanistan? This leads to the question of internal relocation and, in particular, to Kabul (as proposed by the Respondent).”

3. Of course, it is well established in law that a person is not a refugee or otherwise in need of international protection if their fear of persecution does not extend to all parts of their country of origin. This is enshrined in article 8 of the Qualification Directive (2004/83/EC) as discussed by the House of Lords in Januzi and others v SSHD [2006] UKHL 5. There is no challenge to the legal authorities; the challenge is to whether Judge Green applied the law correctly.

4. Article 8 of the Qualification Directive contains the following provisions:

‘Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.’

5. The principal argument is that Judge Green did not properly assess the reasonableness of expecting the appellant to relocate to Kabul because he did not have full regard to the general circumstances in Kabul or to the appellant’s own circumstances. As argued in the grounds of appeal and as amplified by Mr Samra during the hearing, although the judge accurately

recorded the appellant's fears relating to relocation to Kabul in paragraphs 40 and 43, the judge made no findings about those fears.

6. In response, Mr Mills reminded me that although Judge Green accepted the appellant's account of what happened to him and his family in Afghanistan, those events happened a relatively long time ago. Although it was open to the judge to find that the appellant continued to have a well-founded fear of persecution in Helmand, the country information current at the date of hearing (and which remains current) indicated that the did not face a real risk of persecution or other serious harm in Kabul.
7. Mr Mills submitted that the appellant's profile was not such that the Taliban would look for him in that city. There was no reason other than speculation that the Taliban would devote resources to look for him in Kabul and therefore the appellant could not draw any beneficial inference from RQ (Afghan National Army - Hizb-i-Islami - risk) Afghanistan CG [2008] UKAIT 00013.
8. Mr Mills also criticised the grant of permission which seemed to be based on Judge P J G White's personal knowledge and assumptions of changes in the country situation relating to safety in Kabul and a pending country guideline case. Mr Mills and Mr Samra both acknowledged that these were not factors which raised arguable legal error in the decision and reasons statement appealed against. In addition, it is clear that TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595 (IAC) provides no useful information about the general situation in Kabul.
9. Turning to the question of whether it was unduly harsh to expect the appellant to relocate to Kabul, Mr Mills reminded me that Judge Green had considered the appellant's abilities and circumstances at paragraph 51 and upon that analysis had concluded that it was reasonable to expect the appellant to live in Kabul bearing in mind the evidence that there was sufficient protection available from the State authorities in that city (see paragraph 52).
10. In reply, Mr Samra focused on the fact that Judge Green had failed to consider the possibility of what might happen to the appellant should his presence in Kabul be discovered by the Taliban.
11. I reserved my decision and reasons which I now give.
12. As expressed by Mr Samra, two issues arise in this case. First, whether Judge Green properly assessed the fears the appellant has in Kabul. Secondly, whether Judge Green dealt properly with the evidence when he found it was reasonable to expect the appellant to relocate to Kabul.
13. In relation to the first issue, as Mr Samra submits, the decision and reasons statement reveals that Judge Green was well aware of the appellant's fears on return including those relating to Kabul (see paragraphs 40 and 43). I am satisfied that it is with these claims in mind

that Judge Green assessed the subjective and objective evidence to decide if the appellant had a well founded fear of persecution not only in Helmand but also in Kabul. Key to that issue was the question of whether there was adequate state protection available in Kabul. I am satisfied Judge Green addressed that issue in paragraphs 46 to 49. In so doing, he gave clear reasons for rejecting the appellant's claim to have a well founded fear of persecution in Kabul.

14. Judge Green then addressed the alternative issue about whether it was reasonable to expect the appellant to relocate to Kabul. He did this, drawing on his earlier findings, at paragraphs 50 to 52. I can find nothing in those paragraphs to suggest he was unaware of the appellant's circumstances or to suggest that he did not pay proper attention to the relevant statutory and case law.
15. For these reasons I find that the appellant's appeal to the Upper Tribunal fails because I am satisfied that Judge Green's assessment of the evidence and arguments and his application of the law are without error. The arguments now presented relate to mere possibility which of course falls below the real risk threshold. Therefore, I find the grounds of appeal are ones that amount to mere disagreement with the judicial findings properly made.

## **Decision**

The appellant's appeal to the Upper Tribunal is dismissed because the decision and reasons statement of First-tier Tribunal Judge Green does not contain legal error.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal