Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/10486/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 17 February 2016	**On 19 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

[I G]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Khan, Counsel instructed by Malik & Malik, solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Monaghan promulgated on 26 November 2015, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on [ ] 1995 and is a national of Afghanistan. On 18 June 2015 the Secretary of State refused the Appellant's application for asylum.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Monaghan ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 23 December 2015 Judge Davidson gave permission to appeal stating *inter alia*

> "*The grounds are arguable when they complain that having found that the Appellant is at targeted risk from the Taliban in his home area, the Judge has failed to correctly self-direct in accordance with the case of RQ(Afghanistan) v SSHD [2008] UKAIT."*

The Hearing

6. (a) Mr Khan adopted the terms of the grounds of appeal. He took me straight to [77] of the decision. There, he told me, the Judge found that there is a real risk of serious harm to the appellant from the Taliban because of the appellant's imputed political opinion. He then took me to [86] where the Judge considered the case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC), and then found that the appellant does not establish that there is anything about the general situation in Kabul or the appellant's own circumstances which would entitle the appellant to humanitarian protection. He told me that there is an inherent contradiction between those two paragraphs.

(b) Mr Khan relied on the cases of PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089 and RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013, and told me that those country guidance cases are fully supportive of the appellant's case. He told me that, at 20 years of age, the appellant is the head of his family and, because he has been targeted by the Taliban, he cannot seek employment or find accommodation in Kabul because of the cultural need to make enquiry into his background from those who would offer either accommodation or employment.

(c) Mr Khan reminded me that between [77] and [79] the Judge accepts that the appellant gives a credible account. He argued that the nature of the threat from the Taliban is such that internal relocation is not a viable option for the appellant, and that the appellant's circumstances are such that there is not a sufficiency of protection for the appellant in Kabul.

8. Mr Bramble, for the respondent, relied on the terms of the rule 24 response, dated 20 January 2016. He told me that the focus in this case is on the Judge's findings at [76] to [79], where the Judge finds the appellant to be a credible witness. He told me that between [80] and [86] the Judge correctly enquired into any risk there may be to the appellant on return to Afghanistan

by considering the appellant's profile against the background materials and against the country guidance offered in the case of AK. He told me that at [85] the Judge found that the appellant has family members in Afghanistan who can assist him on return. He told me that that was a crucial aspect of the appellant's overall profile, which indicated that he would not be the subject of scrutiny on return to Afghanistan and that there is a network of protection for the appellant in Afghanistan. He told me that the decision as whole is a carefully reasoned decision which does not contain errors of law, material or otherwise. He urged me to dismiss the appeal and to allow the decision to stand.

Analysis

9. Permission to appeal was granted in 23 December 2015 specifically on the basis that the Judge had *"... failed to correctly self- direct in accordance with the case of RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT*." There is no mention of the case of RQ in the decision. It is clear from [86] that the Judge places reliance on the case of AK.

10. In AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) the Tribunal held that whilst when assessing a claim in the context of Article 15(c) 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 Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.

11. At [77] the Judge finds that the appellant has a well-founded fear of persecution because of his imputed political opinion, and that the agents of persecution are the Taliban. The crucial questions are, therefore, sufficiency of protection and internal relocation.

12. Between [80] and [86] the Judge grapples with the question of internal relocation and, to an extent, sufficiency of protection. At [85] the Judge finds that the appellant has family members in Afghanistan to whom he can return. At [86], placing reliance on AK, the Judge finds that the appellant is not entitled to humanitarian protection. What the Judge does not do is consider whether or not it is safe for the appellant to return to Kabul in the face of continuing threat from the Taliban. The Judge does not take guidance from the extant country guidance cases of PM and RQ.

13. In PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089 the Tribunal held (i) Those returned from the United Kingdom will not, without more, be at real risk at the airport or after arrival in Kabul. (ii) Those returned from the United Kingdom are not at real risk, without more, of being suspected by the authorities as insurgents. (iii) The past of an individual seeking accommodation or work in Kabul, or elsewhere, may be discovered and mentioned to the authorities. Similarly, the authorities may become aware of someone newly arrived in an area. That may result in a person being detained

for questioning but there is no satisfactory evidence that such questioning gives rise to a real risk of serious harm. (iv) Subject to an individual's personal circumstances, it is unlikely to be unduly harsh (or unreasonable) to expect them to relocate to Kabul if they have established a real risk of serious harm in (and restricted to) areas outside Kabul.

14. In RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013 the Tribunal held (*inter alia*) that (v) Where the risk to a particular appellant is confined to his home area, internal relocation to Kabul is in general available. It would not be unduly harsh to expect an appellant with no individual risk factors outside his home area to live in Kabul and assist in the rebuilding of his country. (vi) If an appellant establishes a wider risk, extending beyond the home area, internal relocation is not necessarily available and sufficiency of protection will depend on his individual circumstances and characteristics. In particular (a) internal relocation outside Kabul is unlikely to provide sufficiency of protection as the areas outside Kabul remain under the control of local warlords, and the population is suspicious of strangers; and (b) the safety of internal relocation to Kabul is a question of fact based on the particular history of an individual appellant and of the warlord or faction known to be seeking to harm him.

15. At [77] the Judge finds that the appellant's older brother was kidnapped by the Taliban, and that the family left their home area to conceal themselves in Jalalabad, only to find that the Taliban were persisting in their efforts to find them. The appellant is originally from Shamshapour, in Nangahar province. Jalalabad is approximately 100 miles from Kabul.

16. Between [80] and [84], the Judge considers the respondent's COI report. The guidance given there is similar to the guidance given in RQ. The determinative factor is whether there are specific individual circumstances which increased the risk against the appellant or which could lead to continued targeting.

17. The case of PM makes it clear that Afghani culture demands that enquiries be made about the background of anyone entering an integrated life in Afghan society. It is beyond dispute that the appellant will be the head of his family in Afghanistan because he is the oldest male. It is not seriously disputed that, as the head of the family, the appellant would have to seek employment and accommodation. At [85] the Judge finds that the appellant has family members in Afghanistan who can assist financially and emotionally on return, but the Judge's findings do not amount to a finding that the appellant will resort to being treated as either a child or dependent of his family.

18. In R and Others v SSHD (2005) EWCA civ 982 the Court of Appeal endorsed Practice Direction 18.4 which stated (then) that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal said that it represented a failure to take a material matter into account. In OM (AA(1) wrong in law) Zimbabwe CG [2006] UKAIT 00077 the Tribunal said that country guidance stands until it

is replaced or found to be wrong in law. Where a country guidance case is replaced because of changed country conditions or because further evidence has emerged, that will not mean that it was an error of law for an immigration judge to have followed it up to that point. Where, however, a country guidance case is found to be legally flawed the reasons for so finding will have existed both before and after its notification. It is a determination inconsistent with other authority that is binding on the Tribunal. In those circumstances, which will be encountered only rarely, any determination of an appeal decided substantially on the basis of that country guidance will be legally flawed also and cannot stand.

19. Although the Judge writes a detailed decision, it is beyond dispute that the Judge does not take guidance from either PM or RQ. Neither of those cases are recent cases but they are extant country guidance. Failure to refer to country guidance is a material error of law. I therefore have to find that the decision is tainted by a material error of law and I must set the decision aside.

20. No challenge is taken by either party to the Judge's findings of fact. I therefore find that I can rely on the Judge's findings of fact and substitute my own decision.

21. The facts in this case are that the appellant has, in the past, been targeted by the Taliban and, if he returns to Afghanistan, there is a real risk that he will face persecution from the Taliban because of his imputed political opinion. The determinative question in this case is whether or not it is safe for the appellant to return to Kabul. The appellant has family members in Afghanistan. Their last known location was Jalalabad.

22. The case of RQ tells me that the availability of safe internal relocation to Kabul is a question of fact based on the particular history of this appellant & the faction known to be seeking to harm him. PM tells me that there is every chance that soon after the appellant participates in any form of ordinary public life in Kabul his background and his family history will become known and will be circulated. I have to decide whether or not the reach of the Taliban extends into Kabul. The First-tier Judge's findings of fact are that the appellant remains at risk from the Taliban.

23. In AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) the Tribunal held that whilst when assessing a claim in the context of Article 15(c) 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 Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable. But that case does not address the risk from the Taliban to a young man who has previously been identified as one of the targets.

24. In the reasons for refusal letter dated 18 June 2015 the respondent sets out her position in relation to internal relocation. She relies on the cases of PM

and RQ and provides generalised comments on the circumstances in Kabul. The reach of the Taliban is not addressed by the respondent.

25. I remind myself of the comparatively low standard of proof. The appellant's overall claim has been accepted. It is accepted that the appellant is at risk of persecution from the Taliban. The background materials indicate that although the government is in control of Kabul, even the most protected areas of Kabul are not beyond the reach of the Taliban. The Taliban have carried out recent violent attacks in the centre of Kabul. Their targets included the Parliament buildings there in June 2015.

26. The weight of reliable evidence indicates that if the appellant returned to Kabul his identity will be known. The Taliban's violent reach extends into Kabul. It has already been judicially determined that the appellant would face a real risk of persecution from the Taliban if returned to Afghanistan. In the particular circumstances of this case, I find that returning the appellant to Kabul would place him within the reach of the Taliban. I therefore find the appellant establishes a well -founded fear of persecution for a convention reason, and that for this appellant there is not a sufficiency of protection in Afghanistan. I find that for this appellant relocation to Kabul is not a viable option.

Decision

27. The determination of First Tier Tribunal Judge Monaghan promulgated on 26 November 2015 contains a material error of law. I set the decision aside. I substitute the following decision.

28. The appeal is allowed on asylum grounds.

Signed Date 18 February 2016

Deputy Upper Tribunal Judge Doyle