



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

Appeal Number: AA/08486/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Sent to parties on:
Newport On 8 May 2017 On 8 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

**B A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Casely, Counsel

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan. His application for asylum was refused by the Respondent on 19 September 2014. He appealed against this decision under section 82 (1) of the Nationality, Immigration and Asylum Act 2002 (NIAA). His first appeal was dismissed by the First-tier Tribunal. Upper

Tribunal Judge Martin found an error of law in the decision of the First-tier Tribunal and remitted it for a fresh hearing. His remitted appeal was dismissed on asylum and human rights grounds by First-tier Tribunal Judge O'Rourke in a decision promulgated on 19 August 2016. Permission to appeal against that decision was granted on renewal by Upper Tribunal Judge Grubb.

- 2.** Judge O'Rourke accepted that the Appellant would be at risk in his home area. The grounds of appeal challenge the First-tier Tribunal's findings on internal relocation and the Article 8 decision. Upper Tribunal Judge Grubb granted permission on all grounds, finding that it was arguable that the Judge failed properly to consider the medical, expert and background evidence concerning the Appellant's circumstances, and any risk to him as a "Westernized" person if returned to Kabul. Further, he found that it was arguably speculation that the Appellant's family in Afghanistan could assist him there. He further found that the Judge's finding in respect of paragraph 276ADE appeared to be based upon his finding in respect of internal relocation and that, therefore, there were not therefore very significant difficulties in the Appellant's reintegration into Afghanistan. This finding was therefore contingent upon the finding challenged in the grounds in relation to relocation being upheld.
- 3.** At the hearing Ms Casey expanded on the Appellant's grounds of appeal. Mr Diwnycz conceded that the decision of the First-tier Tribunal displayed a lack of adequate reasoning on the majority of points.
- 4.** In light of the Respondent's concession and having had regard to the evidence before the First-tier Tribunal I find that there was a material error of law in the decision. In considering the question of internal relocation, the First-tier Tribunal found at paragraphs 30 (v) (a) and (c) that the Appellant was suffering some mental trauma and depression but that this stemmed from the failure of his asylum application and the possibility of return to Afghanistan, not past events. He found that although much had been made of his lack of maturity he was able to journey to the UK on his own and establish a life here and would have 'considerable resilience'. He found that he would, on return to Afghanistan, be capable of looking after himself.
- 5.** The Appellant's grounds challenge these findings firstly, at ground 1, on the basis that there was a failure to take account of relevant evidence with regard to the Appellant's mental ill-health and poor coping skills and secondly at ground 3 that inadequate reasons had been given for the dismissal of Dr Battersby's expert report. It is asserted that the evidence of GARAS, a refugee support organisation, and his social worker as to his mental vulnerability, distress, immaturity and poor coping skills contradicted the First-tier Tribunal's findings about the Appellant's resilience and the First-tier Tribunal, it is argued, was required to give reasons for rejecting this evidence. It is also asserted that the First-tier Tribunal substituted its own, non-qualified assessment of the Appellant's mental health for the professional opinion of Dr Battersby who had carried out a critical and

objective analysis of the symptoms and diagnosed the Appellant with complex PTSD and concluded that the most likely causation of his mental health problems was from the events that he described.

- 6.** There was a substantial evidence from the Appellant's foster carer and social workers at A15 to 21 of his bundle that the Appellant had insufficient mental resilience, maturity or independence skills to live unsupported and that he was functioning in a manner consistent with a teenage child of an age considerably below his actual age. The evidence of his former social worker was that he was struggling to maintain his wellbeing, self-confidence and sleep and eating regime. In light of this evidence, I find that the First-tier Tribunal's finding that the Appellant had considerable resilience was not adequately reasoned. Whilst the Appellant may have been able to find his way to the UK on his own with an agent the Tribunal was obliged to engage with this evidence and explain why he did not accept those conclusions.
- 7.** Further, Dr Battersby had diagnosed the Appellant with complex PTSD and concluded that she was unable to elicit any other events in his history that would account for a presentation of complex PTSD (AB25). The First-tier Tribunal accepted that the Appellant might be suffering from some mental trauma and depression but found that this stemmed from the failure of his asylum application and the possibility of return to Afghanistan. He then speculated that the Appellant may have exaggerated or wrongly attributed them in order to achieve the desired outcome.
- 8.** Although credibility is a matter for the Tribunal, Judges should not indulge in speculation about as to alternative causation of psychological injuries as they are not medically qualified. Further, in dealing with the medical report and the Appellant's depression in the context of internal relocation, the First-tier Tribunal Judge directed himself that "in any event, **KH** indicates that the withdrawal of medical treatment was not a very exceptional ground such as to engage Article 3". This test was irrelevant to the consideration of reasonableness and the direction indicates that too high a threshold was applied. In the circumstances I find that the reasoning in relation to the medical evidence disclosed errors of law.
- 9.** Further, the First-tier Tribunal had before it the country expert's report of Mr Foxley who concluded that the Appellant was likely to face significant difficulties in Kabul for a number of reasons. The First-tier Tribunal Judge did not address the expert's reasoned conclusions in paragraph 30 of the decision where his reasoning regarding internal relocation is set out. In view of the failure to address this report, I find the First-tier Tribunal failed to engage with material evidence and the reasoning therefore was also inadequate.
- 10.** In the circumstances therefore I find that the findings of the First-tier Tribunal in relation to internal flight cannot stand, and it also follows that since these findings feed into the Article 8 assessment, that this also is

infected by a material error of law. The findings in relation to the risk in the Appellant's home area stand.

- 11.** Both representatives agreed that this was a matter that should be remitted to the First-tier Tribunal due to the extent of the fact-finding required.

Notice of decision

The First-tier Tribunal's decision to dismiss the Appellant's appeal on asylum and human rights grounds involved the making of a material error of law.

I set the decision aside and the appeal will be determined *de novo* having regard to paragraph 7.2 of the Senior President's Practice Statements due to the nature and extent of fact finding required by a Judge other than Judge O'Rourke. The finding that the Appellant is at risk in his home area is preserved.

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 his 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: 7 JUNE 2017

Deputy Upper Tribunal Judge L J Murray