



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

Appeal Number: AA/12732/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 November 2017**

**Decision & Reasons  
Promulgated  
On 8 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**N A K  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Smyth, Counsel, instructed by Kesar & Co Solicitors (Dover)

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Zahed to dismiss his appeal against refusal to grant him asylum and leave to remain on Article 3 grounds. The judge also dismissed the humanitarian protection appeal.
2. The judge allowed the appellant's appeal under Article 8 of the ECHR. The respondent has not appealed this decision. Indeed, I was told by Mr Smyth

that the appellant has been granted discretionary leave to remain in the United Kingdom until 2020.

3. The appellant is a citizen of Afghanistan born on [ ] 1997. He arrived in the UK on 25 March 2011 as an illegal entrant. He claimed asylum on 6 April 2011. This was refused on 22 June 2011 and he was granted discretionary leave as an unaccompanied asylum-seeking child until 20 June 2014. He made an in time application for further leave on 16 June 2014. This was refused on 28 September 2015.
4. The judge found the appellant to be an honest and credible witness. The appellant stated in evidence that he could not return to his home village in Baghlan Province because there was always fighting going on. Being returned to Afghanistan from Europe would put him at great risk. They would want him to attend the mosque five times a day and he would not do that and that would put him at risk.
5. The appellant stated that his brother does not want him to live with them because he has become too westernised. His brother does not like the way he looks and will not let the appellant see his children as he thinks the appellant will corrupt them.
6. The judge said that he had seen the Social Services' record that unfortunately shows that the appellant had been trying to live with his brother from the start of being under the care of Social Services but for various reasons Social Services could not make it happen. The judge found that this led to the appellant adopting his westernised culture and having a different attitude towards the Muslim religion from his brother. The judge said he had read the brother's witness statement, which corroborated the appellant's evidence, as well as the Social Services' record. In light of the evidence the judge accepted that the appellant has been westernised where he does not pray five times a day and in fact rarely goes to the mosque and where he associates with women his age.
7. The judge considered the background evidence of the appellant's home village in Baghlan Province. The evidence showed that the Taliban are in control in the appellant's home area and enforce their beliefs. The judge found that the appellant would be targeted with his western values and he found that there was a real possibility that the Taliban would forcibly recruit the appellant, who was just 20 years of age. He found, taking all the evidence into account, that the appellant has a well-founded fear of persecution in his home village.
8. The judge then considered whether, given the appellant's characteristics and his circumstances, he could avail himself of internal relocation and in particular live in Kabul. The judge stated that the Taliban does not control Kabul. The appellant is a 20 year old, intelligent, healthy male. The judge accepted that the appellant has no family in Kabul or any other part of Afghanistan and he was prepared to accept to the lower standard that his

uncle was missing and could not be traced. Thus the appellant would be a healthy single male with no family support, who is able to speak English but is also able to speak in Dari, would be returning from Europe and has a western attitude.

9. The judge found as follows:

*“24. In applying the case of **AK** and taking into account the fact that the UNHCR considers exceptions to the requirement of external support are single able-bodied men without identified specific vulnerabilities. I find that the appellant is an able-bodied intelligent young man. I note that he has picked up English quite quickly and find that the appellant will be able to find work in Kabul.*

*25. I find that the appellant has not changed his religion or is agnostic. I find that the appellant still is a Muslim but is not a devout practising Muslim. It is not that the appellant never goes to the mosque his evidence was that he goes every three to four months. I do not find that would cause him to have difficulties in Kabul. I find that the appellant will be able to avail himself of internal relocation and will be able to live and work in Kabul. I dismiss the appellant’s asylum claim.”*

10. In allowing the appellant’s appeal under article 8 ECHR, the judge found as follows:

*“29. I find that the appellant has made a life for himself here and find that he has just for the very first time found some stability in his life. I find, given that I have found that he does have a well-founded fear of persecution in his own home village and thus a genuine asylum seeker, that it would be a disproportionate interference to the legitimate aim of the public interest of immigration control in this fact specific appellant’s case. I find that taking the appellant’s whole history into account that removing him to Kabul to start life again without any family or community support where the appellant has finally obtained some stability in his life would be a breach of the United Kingdom’s obligation under Article 8. I allow his Article 8 private life appeal.”*

11. Mr Smyth submitted that the judge allowed the appellant’s Article 8 appeal for reasons that included the fact that he has no family in Kabul and that it would be disproportionate for him to begin life again in Kabul. Yet, the judge dismissed the appellant’s asylum appeal on internal relocation grounds. He submitted that internal relocation has a lower test. It is possible that the judge misunderstood that the appellant does not have to be at risk of persecution in the whole of Afghanistan. In the light of the unchallenged findings in respect of the Article 8 appeal, the appellant’s

appeal on asylum grounds can be granted on the basis that he cannot internally relocate to Kabul.

12. Mr Smyth submitted that having accepted that the appellant was at risk in his home area because he has adopted a western culture and has different values, in particular towards women and religion, it was irrational for the judge to find that there was no such risk in Kabul. Mr Smyth referred to a UNHCR report on the Protection Needs of Asylum Seekers from Afghanistan. At page 104 of the report is a section entitled *j) Individuals perceived as “westernised”*. The report states:

*“AGEs [Anti-Government Elements] reportedly target individuals who are perceived to have adopted values and/or appearances associated with western countries, due to their imputed support for the government and the international community. There are reports of individuals who returned from western countries having been tortured or killed by AGEs on the grounds that they had become ‘foreigners’ or that they were spies for a western country. ...”*

13. Mr Smyth submitted that there is nothing to say that such risk is confined to Taliban-controlled areas. He said the test is whether there is a durable internal flight alternative. The judge should have considered whether the Taliban have a presence in Kabul and in light of the number of incidents that have been widely reported, he would say that the Taliban have a presence in Kabul.
14. Mr Smyth submitted that the judge accepted that the appellant has no family or connections in Afghanistan. The After Return Report highlights the fact that the most successful approach to finding work for young returnees has been through personal connections. He referred to the report by the Bureau of Investigative Journalism, which says that failed asylum seekers who are returned to Afghanistan are viewed with suspicion with no family connections or resources to fall back on. In the light of this evidence Mr Smyth submitted that the judge’s findings on internal flight relocation are unsustainable. Given that the judge found that the appellant’s human rights would be breached if he were returned to Kabul, the judge’s conclusion that it would not be unduly harsh to internally relocate to Kabul was irrational. The logical conclusion is that the appeal must be allowed.
15. Mr Kotas submitted in respect of the “westernisation” point that the grounds are a disagreement with the judge’s findings that the appellant could relocate to Kabul, which is not controlled by the Taliban. He submitted that the evidence from the UNHCR report relied on by Mr Smyth comes nowhere near to stating that anyone returned to Afghanistan/Kabul is at risk of persecution because they have become westernised.
16. Mr Kotas submitted that there are different tests for consideration of the appellant’s appeal under Article 8 and the consideration of internal flight

relocation. He relied on paragraph 7 of **Januzi v. SSHD & Ors [2006] UKHL 5** where the House of Lords as it then was held as follows:

“47. The question where the issue of internal relocation is raised can, then, be defined quite simply. As Linden JA put it in *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (1993)* 109 DLR (4th) 682, 687, it is whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words ‘unduly harsh’ set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there.”

17. Mr Kotas submitted that the appellant has made a comparative analysis of his circumstances in the UK with his circumstances in Afghanistan. In the Article 8 appeal the judge allowed it because the appellant has been in the UK for a number of years. That does not mean that he is a refugee. The judge found that there would be a breach of his private life if he were to return to Afghanistan and that meant that it would be unduly harsh for him to be returned there.
18. Mr Kotas submitted that Mr Smyth was seeking to relitigate the issue concerning the appellant’s lack of connections in Afghanistan. He said the appellant can obtain employment on his return to Kabul.

## **Findings**

19. I find that having conducted a holistic analysis of the appellant’s evidence, the judge erred in law in hiving off the appellant’s Article 8 claim as separate from his consideration of internal flight relocation. I accept that the test for Article 8 is different from the test in internal relocation. The test for internal relocation is whether it would be unduly harsh to expect the appellant to relocate to another part of Afghanistan, in this case Kabul. It is not disputed that the Taliban does not control Kabul. The Taliban does however have a presence in Kabul. Nevertheless, from the evidence in the UNHCR report and the Bureau of Investigative Journalism, for the appellant to be able to settle within Kabul he will need to draw on the connections and resources that would be available to him in Kabul.
20. The judge found at paragraph 29 in respect of the Article 8 appeal that it would be a breach of the UK’s obligation to remove the appellant to Kabul to start life again without any family or community support. The objective evidence indicates that to find employment in Kabul, the appellant will need the support of the family and the community. The judge clearly found that the appellant does not have any family in Afghanistan.

Consequently, I find that the appellant's health, youthfulness and ability to speak English will not assist him to find employment.

21. I accept Mr. Kotas' submission that the grounds in respect of the "westernisation" point are a disagreement with the judge's findings. However, in the light of **Januzi**, the appellant should be able to live a relatively normal life in Kabul without undue hardship and in light of other relevant case law, internal relocation has to be durable. I find that without the support of family and connections, the appellant will not be able to find employment and accommodation which he will need to assist him to settle down to a relatively normal life in Kabul.
22. I find that the judge failed to apply the correct test to his assessment of internal relocation. I find that his decision on internal relocation was irrational in the light of the findings he made when allowing the appellant's appeal under Article 8. I accept Mr Smyth's submission that the only conclusion is that the appellant's appeal in respect of the internal relocation issue must be allowed.

### **Notice of Decision**

The appeal is allowed

### **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: 8 December 2017

Deputy Upper Tribunal Judge Eshun