



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

Appeal Number: PA/02056/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower Decision & Reasons
Birmingham On 16th June 2017 Promulgated On 26th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford of Counsel instructed by Sultan Lloyd Solicitors

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

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against a decision of Judge Graham of the First-tier Tribunal (the FtT) promulgated on 22nd July 2016.
2. The Appellant is a male Afghan citizen who arrived in the United Kingdom illegally on 27th April 2015 and claimed asylum. He gave his date of birth

as 25th September 2002, but following an age assessment carried out by Staffordshire County Council on 28th April 2015, he was assessed as having been born on 6th June 2001.

3. The Appellant's asylum and human rights claim was made on the basis that he lived with his family in Baghlan Province in Afghanistan, and he was approached at the mosque by the Taliban, and he and other boys were spoken to about jihad, and shown how to operate guns and detonate a suicide vest.
4. The Appellant's father complained, and was threatened with death. The family left their village, but the Appellant's father was taken away by the Taliban.
5. The Appellant was helped to leave Afghanistan, and travelled to the United Kingdom with the assistance of agents. The Appellant has not been in contact with his family in Afghanistan since his arrival in this country. He feared being returned to Afghanistan because he would be taken or recruited by the Taliban, and could be forced to become a suicide bomber.
6. On 12th October 2015 the Respondent decided that the Appellant was not entitled to a grant of asylum or humanitarian protection, and that to remove him from the United Kingdom would not breach any of his human rights protected by the 1950 European Convention on Human Rights (the 1950 Convention).
7. The Appellant appealed, and his appeal was heard by the FtT on 10th June 2016. The FtT heard evidence from the Appellant and found his account to be credible. The FtT accepted therefore that the Appellant would be at risk if returned to his home area in Baghlan Province which is an area where there is a high degree of Taliban activity. However the FtT noted that the Appellant had been granted discretionary leave to remain in the United Kingdom as an unaccompanied asylum seeking child, and he had been given such leave until 12th April 2018. The FtT found that the Appellant would not be returned to Afghanistan until he became an adult and his leave had expired. The FtT assessed risk on return, on the basis that the Appellant would be an adult and found that he had a reasonable option of internal relocation to another area within Afghanistan, such as Kabul. He would be returned as a young healthy adult, and would not be at risk in Kabul, where he would receive a sufficiency of protection. The appeal was dismissed on all grounds.
8. The Appellant applied for permission to appeal. There was no challenge to the credibility findings made by the FtT, which were favourable to the Appellant's case, but the challenge related to the FtT finding that the Appellant had a reasonable internal relocation. It was contended that the FtT was wrong in law in assessing the internal relocation option on the basis that the Appellant would not be returned until he was 18 years of age. It was submitted that the risk should have been considered as at the date of hearing, when the Appellant was a minor. The FtT should have

considered whether there was a reasonable internal relocation option to Kabul on the basis that the Appellant was an unaccompanied child, who would have no family support in Kabul.

9. Permission to appeal was initially refused, but subsequently granted by Vice President Ockelton of the Upper Tribunal.
10. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, in which it was accepted that the FtT had materially erred in law by failing to determine risk on return at the date of hearing.
11. Directions were issued that there should be a hearing before the Upper Tribunal.

The Upper Tribunal Hearing

12. The Appellant did not attend but was represented by Mr Bedford who explained that his absence was caused by undertaking examinations at school. I found that it was appropriate to proceed in the Appellant's absence because I was asked to do so and Mr Mills conceded that the FtT decision should be set aside, and the Appellant's appeal should be allowed.
13. Mr Mills clarified that the Respondent accepted that the FtT had erred in law by not considering risk on return at the date of hearing. Credibility findings made by the FtT had not been challenged, and on the basis of those findings Mr Mills conceded, with reference to AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) that the Appellant would be at risk if returned to his home area, and there was no reasonable option of internal relocation to Kabul, where he would be returned as a child without family support.
14. In view of the concession made on behalf of the Respondent, I did not need to hear further from Mr Bedford. I announced at the hearing that the decision of the FtT was set aside, and the Appellant's appeal was allowed, and written reasons for my conclusion would be issued.

My Conclusions and Reasons

15. I set aside the decision of the FtT because, as conceded by the Respondent, the FtT should have considered risk on return at the date of hearing, and not assessed what the risk would be in the future, when the Appellant had reached 18 years of age. As there was no challenge to the credibility findings, those findings were preserved.
16. I re-make the decision by allowing the Appellant's appeal for the following reasons.
17. The burden of proof is on the Appellant, and the standard of proof is a balance of probabilities. I summarise below the FtT findings.

18. The FtT found the Appellant to be a minor. This was accepted by the Respondent. It was accepted that the Respondent had been unable to trace the Appellant's family in Afghanistan, and the Appellant had not had contact with his family since arriving in the United Kingdom.
19. The FtT found the Appellant to have been born and resided in Baghlan Province. The FtT did not make any adverse inference from the Appellant's failure to claim asylum while travelling to the United Kingdom, because of his age, and the fact that he was under the control of agents.
20. The FtT was satisfied that the Appellant had given a consistent account of his problems in Afghanistan. Objective evidence indicated that there was a high degree of Taliban activity in Baghlan Province. The FtT was satisfied that the Appellant was recruited by the Taliban as a potential suicide bomber.
21. The FtT found that the Appellant faced a risk upon return from the Taliban if he returned to his home area.
22. The above findings having been preserved, my task was to assess whether the Appellant had a reasonable option of internal relocation to another area within Afghanistan. Kabul City was the suggested internal relocation option.
23. I have to assess whether the Appellant as a 16 year old child could safely and reasonably return to Kabul City without family support. It was conceded on behalf of the Respondent that he could not. Mr Mills referred to AA (Afghanistan) CG and I set out below the second paragraph of the head note to that decision;
 - (2) However, the background evidence demonstrates that unattached children returned to Afghanistan, depending upon their individual circumstances and the location to which they are returned may be exposed to risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. Such risks will have to be taken into account when addressing the question of whether a return is in the child's best interests, a primary consideration when determining a claim to humanitarian protection.
24. There is considerable background and objective evidence contained within the Appellant's bundles, including two reports prepared by Lisa Schuster, but in view of the Respondent's concession, I find it is not necessary to set out an analysis of that background evidence.
25. The appeal is allowed because it was found by the FtT that the Appellant would be at risk if returned to his home area, that finding was not challenged by the Respondent, and the Respondent concedes that there is no reasonable internal relocation option.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds, and with reference to Articles 2 and 3 of the 1950 Convention.

Anonymity

I make an anonymity order pursuant to 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. This direction is made because the Appellant is a minor, who has claimed international protection.

Signed

Date: 19th June 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee has been paid or is payable. There is no fee award.

Signed

Date: 19th June 2017

Deputy Upper Tribunal Judge M A Hall