



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02533/2016

**THE IMMIGRATION ACTS**

Heard at City Centre Tower, Birmingham  
On 26<sup>th</sup> April 2017

Decision & Reasons Promulgated  
On 23<sup>rd</sup> May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

J S  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Draycott, Counsel, instructed by Paragon Law  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Afghanistan whose date of birth was disputed. He entered the UK illegally on 23<sup>rd</sup> September 2015 and applied for Asylum. That application was refused for the reasons given in the Respondent's Asylum Decision

dated 26<sup>th</sup> February 2016. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Gribble (the Judge) sitting at Birmingham on 19<sup>th</sup> September 2016. She decided to dismiss the appeal for the reasons given in her Decision dated 10<sup>th</sup> October 2016. The Appellant sought leave to appeal that decision, and on 23<sup>rd</sup> January 2017 such permission was granted limited to Grounds A, B, D and F of the Grounds of Application.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Appellant's case was that he came from a village which had been constantly raided by the Taliban and Government troops. On one occasion the Appellant had been kicked in the stomach. Eventually the Appellant had left home in order to avoid being recruited by the Taliban.
4. The Judge dismissed the appeal on asylum, humanitarian protection, and Articles 2 and 3 ECHR grounds because although she accepted the Appellant's background account, the Judge was not satisfied that some specific details of the Appellant's account were credible. The Judge found that the Appellant did not fear persecution for a Convention reason, being his imputed political opinion, and that the Appellant could safely return to his own village in the Province of Khost. In the alternative, the Judge further found that it would be safe and not unreasonable for the Appellant to relocate to Kabul.
5. At the hearing before me, Mr Draycott argued that the Judge had erred in law by coming to these conclusions. Mr Draycott referred to the Grounds of Application upon which leave was granted and argued that the Judge had erred by failing to engage with her finding that the Appellant had been persecuted in the past. According to Article 4(4) of the Qualification Directive, as a result of past persecution the burden of proof shifted onto the Respondent to show that it was safe for the Appellant to return to his home village. This is in accordance with the decision in **Abdulla and Others v Bundesrepublik Deutschland [2011] QB 46 CJEU**. This error was material because the country information indicated that the risk of further persecution would follow the Appellant to Kabul.
6. Mr Draycott went on to submit the Judge also erred in law by not taking into account that the Respondent did not dispute that there was a general risk of forced recruitment in the Province of Khost. Further, the Judge had erred in finding that the Appellant did not fear persecution for a Convention reason. It was clear that the Appellant was a member of a particular social group.
7. In response, Mr Mills referred to the Rule 24 reply and argued that there were no such errors of law. Although the Judge had found the Appellant's background account to be credible, she had not come to a conclusion that the Appellant had suffered persecution in the past. She had not found that the Appellant had been targeted by the Taliban or Government forces but only that the Appellant had been

caught in the crossfire when living in a violent area. However, Mr Mills accepted that Khost was not a safe area to which the Appellant could be returned. This was immaterial because the Judge had made a finding that it was safe and not unduly harsh for the Appellant to return to Kabul. The Appellant's expert witness said that the Appellant would not be of interest to the Taliban or Government forces in Kabul and although it might be difficult for him to live there, it was a relocation alternative.

8. At the hearing I reserved my decision which I now give.
9. I find no material error of law in the decision of the Judge which I therefore do not set aside. The Judge clearly erred in law in finding that the Appellant did not fear persecution for a Convention reason, and it may be the case further erred when considering the risk to the Appellant on return to Khost for the reasons argued by Mr Draycott. However, these are not material errors because the Judge found that it would be both safe and reasonable for the Appellant to return and relocate to Kabul. The only criticism Mr Draycott made of this decision was to say that the Judge had not considered whether the mistreatment the Appellant had received in Khost would follow him to Kabul and put him at risk there. I find no error in this respect. The Judge only accepted the Appellant's background account which as Mr Mills said amounted to the Appellant not being a target of the Taliban or Government forces, but of being a member of a family caught up in the general violence which at the time was taking place in Khost. There was no evidence before the Judge that the Appellant would be at risk in Kabul on account of this situation. Indeed, Mr Foxley, the Appellant's own expert witness, gave evidence to the contrary as the Judge recorded at paragraph 35 of her Decision. The Judge's decision is in accordance with the Country Guidance provided by **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**.
10. For these reasons I find no material error of law in the decision of the Judge.

### **Notice of Decision**

11. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

### **Anonymity**

12. The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Tribunal.

**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 their 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

Dated 22nd May 2017

Deputy Upper Tribunal Judge Renton