



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02667/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 22 May 2017

Promulgated

Prepared 22 May 2017

On 6 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

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(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Andrew Eaton, Counsel instructed by Elder Rahimi Solicitors

For the Respondent: Mr P Singh, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Afghanistan, date of birth attributed as 1 January 1999, appealed against the Respondent's decision of 1 June 2016 to refuse an asylum and protection claim. The matter came before First-tier Tribunal Judge Courtney (the Judge) who, on 13 February 2017, dismissed his appeal.

2. On 22 May 2017, I decided for reasons given that the judge has made an error of law in her assessment of the issue of internal relocation to Kabul.
3. I therefore heard submissions from Mr Eaton and Mr Singh on the issue of internal relocation. There was no interpreter in Dari booked for the hearing and it was therefore not possible to hear the Appellant giving evidence. Mr Eaton indicated that the Appellant had confirmed to him that since the time of the hearing before the judge he had had no contact with any family in Iran or in Afghanistan. Mr Singh indicated that he was content for this remaking to be done in the Upper Tribunal by me and without evidence being heard.
4. A relevant issue which I look at separately arose in connection with the age of the Appellant. Mr Singh submitted that the Appellant's date of birth was the product of an exercise whereby the Appellant indicated his approximate age and the earlier date of 1 January of the year, when he was born, was taken as that date. Mr Eaton argued that whenever the Appellant's birthday was, which is not known, the fact was that at some stage, within the date of the hearing before the judge, in January 2017 at its best the Appellant was some twenty days or so over the age of 18. Mr Eaton argued that if it was not that month and that date of his birthday the Appellant either was and remains or is of the age of under 18: Even taken at its highest and he is now 18 years of age there is no bright line in terms of assessing age and the fact that someone has got to their 18th birthday does not simply mean risk falls away.
5. In considering this matter, I have taken into account and applied EU (Afghanistan) and Others v SSHD [2013] EWCA Civ 32. I also take into account KA Afghanistan [2012] EWCA Civ 1014, not least because there again it has been confirmed that there is no temporal bright line across which risk to and the needs of the child suddenly disappear. On any view, the Appellant is a young man.
6. It was also unchallenged that the Appellant's family came from the Tagab district of Kapisa province in Afghanistan and at an early age, too young for him to remember, he was taken to Iran with his family where they lived

for many years. In 2016, his father and family decided to return to Afghanistan but within a few months, certainly no more than a year, they had fled back to Iran and his father paid for the Appellant's travel to the United Kingdom. The Appellant was as he explained in contact with his family in Iran from time to time and but that the telephone line is not particularly clear. He had no other friends, relatives or contacts in Iran or Afghanistan.

7. The Appellant identified his fear of the Taliban in Afghanistan. In a statement originally, dated 6 July 2016, but signed by him on 20 January 2017, the Appellant indicated that he had a continuing fear of returning to the home village in the province of Kapisa. Currently he is not able currently to speak to his parents who he thinks are still in Iran: The phone number he has is not working and he has not managed to speak to them of recent times.
8. The Appellant's case therefore was considered by Judge Courtney who accepted there was an increase in the recruitment and deployment of child fighters due to expanded Taliban operations against the Afghan national forces and that the Taliban had created training centres in various madrassas. The Appellant's account of being given lessons in suicide missions at the mosque was found to be plausible and the judge considered there was a serious possibility that the Appellant's father, concerned for his safety, had told him to stop attending such classes. The Judge accepted that the Taliban had visited the family home in order to encourage the Appellant to resume his studies.
9. The judge accepted that the Taliban posed risks but concluded that they were only confined to the Appellant in his home area and that there was no reason to think that the Taliban would seek to track him down within Kabul city, even if he was to relocate in a community where his identity and history would be probed. The judge therefore decided that if the Appellant felt himself vulnerable to forced recruitment then in order to avoid that he could relocate away from the home village to Kabul.

10. Thus it was that with those findings the issue arose as to relocation to Kabul. There is no dispute that no tracing exercise was carried out by the Respondent. Similarly, there is no evidence to show that the Appellant's maternal uncles, who live in different parts of Afghanistan, but not in Kabul, would be in a position to either go to Kabul and collect him or take him under their wings, collectively or individually. Similarly, there is no evidence that the Appellant has any family within Kabul city or surrounding area or province.
11. The judge accepted that the Afghan government forces are not able to protect individuals, including the Appellant from being targeted by non-state actors in their home area, due to limited capacity and the ongoing conflict. The judge therefore considered whether it was reasonable for the Appellant to relocate internally to Kabul and that involved a consideration of safety and reasonableness. The judge was taken to relevant authorities, including KA Afghanistan and AA (unattended children) Afghanistan CG [2012] and of course AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163. I note in the context of risk from indiscriminate violence contemplated and considered in AK that in general there will not be a risk on return to Kabul on the basis of it being unsafe or unreasonable. However in AA, dealing with unattended children, [2012] UKUT 00016 the head note makes a distinction between children who are living with a family and those who are not. The distinction between the two emphasises that unattached children returned to Afghanistan, depending on their individual circumstances and the location to which they are returned, may be exposed to risk of harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and lack of adequate arrangements for child protection. Such risks will have to be taken into account when addressing the question of whether the return is in the children's best interests.
12. In this context, I take into account that as a fact the Appellant may still be a child but I deal with him as recently becoming an adult. It seems to me that is the only course that can really follow, unless there was contrary evidence of another date of birth which had some prospects of being

established. This is not the case here. But the important point raised is that the Appellant, whether he is in Kabul or in the home area, would be without any contact with his family so there is no family or network protection available to him from other relatives. There is no evidence to suggest that there is or that anyone has the necessary power to provide protection to him. I take into account his age as a young adult, the fact that he has largely spent his time away from Afghanistan living in Iran or in the United Kingdom, and that he has never really grown up with Afghan culture or a context of experience from living in Afghanistan. I have no evidence before me from which to conclude that his family could travel to Kabul to meet him and nothing to suggest any other family members would be either willing or indeed able to do so, if they exist.

13. Thus, with no experience of living alone in Afghanistan at all and none effectively in a role dealing with people or seeking to stave off adverse attentions, it seems to me, whether or not the Appellant is 18 or something less, makes no real difference to the point. He is on this basis a young man who has hardly lived in Afghanistan and who has really no roots there. Mr Singh argued that the lack of communication between the Appellant and his parents is or could be attributable to the fact that his father has paid many thousands of dollars to ship him to the United Kingdom and hoped on the basis of him having a better life: On that basis that he would not cooperate or assist in the Appellant's return.
14. It seems to me that that is certainly a possibility but one which does not seem to me to be likely. It does seem to me that there is a point in the Appellant's favour in that he did not come to the United Kingdom and say from the outset he did not have contact with his family. He did not present himself, on that basis, as many have, rather he said that he had contact, it was reasonably regular at the outset, it has just been diminishing and is now gone. I do not find that he had exaggerated that element of his isolation as a result of coming to the United Kingdom. It may well be that part of his father's considerations was to give his son a better life but that does not avoid the elements of risk that the Appellant was found to face in the home area.

15. In these circumstances, Mr Eaton does not exaggerate the case in terms of saying that the Appellant is very immature and looks younger than his years or in other words is by his nature going to face adverse interests. Inevitably, in my view, if someone has come to the United Kingdom and has spent time here, in addition to the lengthy time he has spent away from Afghanistan, then the reality is that he will be of interest and as is clear on the background evidence susceptible to adverse attention if removed to Kabul.
16. The Refugee Support Network (RSN) report 2016 identifies a significant number of such persons who have been removed to Afghanistan since 2007 yet limited monitoring of the effects of return and their experiences has been conducted. Their own monitoring exercise included a series of 153 interviews carried out in Kabul over a period of eighteen months. Some of the returnees had made contact with their families in Kabul and others not so. It was generally said that insecurity had been found to be a serious problem in the life of young returnees in coping with the difficult situation including security incidents, threats to children, targeting of them and targeting because of their status as a returnee. The majority of the young returnees largely were unable to continue their education in Afghanistan and such education as they had obtained in the UK had not significantly led to further education opportunities in Afghanistan.
17. The difficulties of finding sustainable work, let alone accommodation, presents continuing problems but it does not seem to me in the light of AK that those of themselves would be a basis why a person could not return to Afghanistan. The Mukbarak et Al report (AB2 p325) notes the health problems associated with the stresses of return and the living conditions in IDP camps, or such like, are also referred to as being of concern. The RSN report provides a great number of sources to particular elements of it and I was taken to the following points on reintegration. In relation to reintegration notes

“For young people without family remaining in Afghanistan, the decision about where to live was often based on the location of less

stable networks. One returnee, who returned to Afghanistan with no connections other than those he met on the return flight, said that “I am staying in Jalalabad. I came here with some of the other returnees who came with me in the same plane.”

18. The problems of where to live were present not just where there was family present in Kabul but also where there was not. Even those who had a relative or someone to care for them nevertheless encountered problems of meeting their basic financial needs following return to Afghanistan. The majority of young people were using all they had to pay for food, shelter and other necessities and sometimes failing to make ends meet. Incidents were reported of returnees who faced difficulties because, in the eyes of the Taliban and local residents alike, those who had gone to Europe and had now come back represented the threat of spying (AB2 pp233, 234, 242, 253 and 257). The RSN conclusion was that without strong personal networks and connections, finding sustainable work would have been almost impossible for the young returnees monitored, and setting up a business only a potential viable option for the small minority with access to money and resources. Lack of work has made it difficult for the majority of young returnees to establish a life for themselves post return in addition to the difficulty faced by internally displaced people (IDP). It is well known that there are a significant number of IDP camps with very substantial populations. It showed that families struggle to survive and difficulties of finding employment and regular employment are so great because there is the obvious capacity for exploitation. It is also clear that further education and learning enough to lift oneself out of the difficulties is not a real option.
19. It is also clear that in the IDP camps there are considerable problems of hygiene and sanitation and IDP camps or slums pose significant risks to young and old alike. It seems to me that the circumstances of the Appellant set out above indicate that the generality of the country guidance case AK stands but that for young persons, just as for children, there are real problems about return and what they may find to survive upon and be looked after.

20. The Appellant's bundles contain a substantial number of reports over recent years. I have particularly taken into account the Human Rights Watch Reports of 2017, other material of that date and the UK Foreign and Commonwealth Office documentation of February 2017.
21. It is clear to me that returning the Appellant unaccompanied to Kabul poses the real risk of it being unduly harsh. On the findings of fact and the background evidence I do not find internal relocation is a reasonable or acceptable option for this Appellant. I find the Appellant has discharged the burden of proof to that low standard identified in Karanakaran [2000] EWCA Civ 20 that there is no one in Kabul to receive him and no network or family or distant family to support him. I therefore find also that there must be a real risk in the circumstances of him having problems finding a home and accommodation, let alone employment, and there is the real risk of poverty, destitution, abuse and exploitation. Similarly there is the real risk of inhuman or degrading treatment contrary to Article 3 ECHR.

ANONYMITY ORDER

Anonymity order continued.

DECISION

The Original Tribunal made an error of law and the decision cannot stand. The following decision is substituted.

The appeal is allowed under the Refugee Convention.

FEE AWARD

No fee has been paid. No fee award is appropriate.

Signed

Date 30 May 2017

Deputy Upper Tribunal Judge Davey