



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

Appeal Number: PA030262016

THE IMMIGRATION ACTS

**Heard at Field House
On 11 May 2017**

**Decision & Reasons
Promulgated
On 22 May 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MASTER JT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith of Counsel instructed by South West London Law Centre
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Afghanistan. On 20 September 2016 First-tier Tribunal Judge (FtTJ) Farmer dismissed his appeal. On 9 January 2017 Deputy Upper Tribunal Judge (DUTJ) Macdonald set aside Judge Farmer's decision for two reasons: first the judge failed to assess hypothetical risk

on return to the appellant as at the date of hearing; second, the judge failed to make adequate findings both as regards risk in the appellant's home area and on whether he could safely and reasonably relocate to Kabul. Judge Macdonald expressly preserved the FtTJ's primary findings of facts and positive credibility findings.

2. At the hearing Mr Bramble conceded that the respondent was not in a position to oppose the appellant's appeal. Both parties agreed that:
 - (i) the appellant was a minor at the date of hearing before the FtTJ and remained so at the date of hearing before me. The appellant's date of birth was either 1 January 2000 or 1 January 2001;
 - (ii) there were no adequate reception arrangements for minors on return to Kabul unless they had family support;
 - (iii) on the basis of the latest evidence regarding the appellant's efforts to trace his family through the International Red Cross, his case could not be assessed as one in which he would have family support available;
 - (iv) on the authority of AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) and LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005 the appellant qualified as a refugee.
3. Ms Smith urged that I not only endorse the agreement reached between the parties but I also find that the appellant faced a real risk of persecution and serious harm in his home area and could not safely or reasonably relocate in Kabul. She urged in particular that I did not specify in my decision that the appellant's entitlement to refugee status should be regarded as being wholly contingent on his being a minor.
4. I have concluded that I do not strictly need to make any findings in relation to the appellant's risk in his home area, as on the basis of the agreed facts I must allow the appeal. However, I would observe that, given the fact that the appellant's account of risk in his home area was accepted by the FtTJ, coupled with the latest background country information relating to the situation in the appellant's home area (Baghlan Province), the appellant would in my judgment face a real risk of persecution and serious harm in his home area. I do not, however, consider I am in a position to make a specific finding on whether the appellant would continue to face a real risk of persecution or serious harm if returned to Kabul. To make such a finding I would need to hear further evidence and submissions and since I must allow this appeal anyway, I deem that unnecessary.
5. Continuing my observations further, even if I were to conclude that the appellant would be able to relocate to Kabul in safety, it is clear that it would not be reasonable to expect him to relocate to that city, given he would be returned as a minor without family support.

For the above reasons:

(As found by DUTJ Macdonald) the decision of the FtTJ was wrong in law and has been set aside:

The decision I re-make is to allow the appellant's appeal on asylum grounds.

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

Date: 18 May 2017

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, stylized 'S' at the end.

Dr H H Storey
Judge of the Upper Tribunal