



**Upper Tribunal
Immigration and Asylum Chamber)**

Appeal Number: PA/07336/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 25th May 2017

**Decision & Reasons
Promulgated**

On 14th June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**NH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Cole, Solicitor

For the Respondent: Mr MDiwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of Judge Moxon, promulgated on the 15th December 2016, in which he dismissed the appeal of NH against the respondent's refusal of his Protection Claim. NH, who I shall refer to hereafter as 'the appellant', is an Afghan national who was born on the [] 1986.

2. The essence of the appellant's claim is that in 2006 he began working in partnership with another as a self-employed tailor in two successive camps run by coalition forces in Afghanistan. However, he ceased doing so in about July 2014 following threatening telephone calls from the Taleban. In about October 2014, the Taleban called at his home in Kabul, whilst he was absent, and told his father that they intended to kill him. He therefore immediately moved to Jalalabad. On the 3rd June 2015, he was challenged by a person in the street as to whether he was 'NH'. Fearing that this meant that his whereabouts had been discovered by the Taleban, he left Afghanistan a week later. He claimed asylum on the 8th January 2016, having been arrested for entering the United Kingdom illegally.
3. Judge Moxon accepted (as did the respondent) that the appellant had worked as a tailor for coalition forces in two of their camps but he did not believe that he had been threatened by the Taleban, whether "as alleged or at all". He further found that because his work in the camps was "kept secret", the Taleban did not currently know or suspect that he had ever done such work [paragraph 40]. Those findings are not challenged in this appeal. However, permission to appeal has been granted by Upper Tribunal Judge Coker on the arguable ground that Judge Moxon "ought to have considered not only whether the appellant had previously attracted adverse attention but whether there was a real risk that he would attract such adverse attention if returned to Afghanistan. The decision in *MSM (journalists; political opinion; risk) Somalia* [2015] UKUT 413 (IAC) was cited by Judge Coker as providing possible support for this ground of appeal.
4. I am grateful to the representatives for their assistance at the hearing and I am especially grateful to Mr Cole for the additional assistance that he has provided by way of further written submissions and relevant case law following the conclusion of the hearing. I should perhaps make it clear that the possibility of Mr Cole making further written submissions was canvassed at the hearing whereupon Mr Dwnzycz indicated that he would not wish to take advantage of the opportunity to respond.
5. As I made clear at the hearing, I am satisfied that it was an error of law for Judge Moxon not to have considered whether the appellant would be at risk of persecution by the Taleban solely due to his trade as a tailor. The remaining issue, to which Mr Cole's helpful written submissions are addressed, is whether that error is such that I ought to exercise discretion in setting aside Judge Moxon's decision to dismiss the appeal by substituting a decision to allow it.
6. The essence of Mr Cole's argument is that it is reasonably likely that the appellant would return to the only means of earning his living that he has ever known in Afghanistan and that this would eventually bring him to the adverse attention of the Taleban. He further argues that such adverse attention would be the result of the appellant being imputed with the political opinions of coalition forces with whom he would be perceived as collaborating. He cannot therefore be expected to exercise discretion in

the practice of his trade given that this would deprive him of the very protection that the Refugee Convention is designed to provide. I reject that argument for the following reasons.

7. Whilst I accept that it is reasonably likely that the appellant would return to his former occupation as a tailor upon return to Afghanistan, I am not satisfied that he would be at risk of persecution by the Taleban due to this fact alone. It is abundantly clear to me that any risk of the appellant being imputed with an adverse political opinion by the Taleban would not be the result of him plying his trade as a tailor, but arises instead from the possibility of him once more supplying uniforms to members of the coalition forces. He could thus avoid persecution, without sacrificing his chosen occupation, simply by setting up a tailoring business that serves an exclusively civilian clientele. I am satisfied of this because my attention was not drawn to any evidence that suggests the appellant would face significant difficulties in setting up such a business in any location other than one of the camps occupied by coalition forces. The issue is thus one of internal relocation rather than forced abandonment of a protected right. The position is therefore different from that in *MSM (Somalia)*, wherein it was suggested that the appellant could avoid persecution by changing his occupation from journalist to teacher, or in *Minister for Immigration and Border Protection v SZSCA* [2013] FCAFC 155, wherein it was suggested that the appellant might avoid being persecuted by changing his occupation from lorry driver to that of jeweller. By contrast with the position in those cases, the appellant's chosen occupation as a tailor is not - to adopt the language of counsel appearing for UNHR before the Upper Tribunal in *MSM (Somalia)* - "indissociable from his actual or imputed political opinion".
8. I therefore conclude that Judge Moxon's failure to consider whether the appellant would be at risk of persecution solely by reason of him resuming his chosen occupation as a tailor was immaterial to the outcome of the appeal in the First-tier Tribunal. It follows that this appeal should be dismissed.

Notice of Decision

The appeal is dismissed.

Anonymity is directed

Signed

Date: 6th June 2017

Judge Kelly

Deputy Judge of the Upper Tribunal

