



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11512/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30 March 2017

Decision & Reasons Promulgated
On 8 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MN
(ANONYMITY ORDER MADE)

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION & REASONS

Representation:

For the Appellant: Ms G. Loughran, counsel instructed by Elder Rahimi
solicitors

For the Respondent: Ms Z. Ahmed, Home Office Presenting Officer

1. The Appellant is a national of Afghanistan, born in 2001. He arrived in the United Kingdom on 4.4.16 and claimed asylum. His application was refused by the Respondent in a decision dated 30.9.16 and he appealed against this decision. His appeal came before First tier Tribunal Judge Khawar for hearing on 22.11.16 and in a decision promulgated on 16.1.17 he dismissed the appeal.

2. An application for permission to appeal to the Upper Tribunal was made in time. The grounds in support of the application asserted that the Judge erred materially in law: (i) in reaching findings based on speculation rather than evidence: at [42] regarding the fact that the Appellant's uncle involved him in weapons running; (ii) in failing to have regard to relevant evidence at [45] in relation to whether or not his mother was in hiding in Kabul; (iii) in failing to consider whether it was reasonable for the Appellant to relocate to Kabul; (iv) in failing to make a finding on a matter in issue *viz* humanitarian protection and (v) in failing to consider the Appellant's best interests, given that he is a child.

3. Permission to appeal to the Upper Tribunal was granted by Judge of the First tier Tribunal Landes in a decision dated 8.2.17 in *inter alia* the following terms:

"2. It is arguable as set out in ground 1 that the judge speculated in rejecting the appellant's account in respect of his uncle's gun-running but I am unclear how it is said that this is material to the ultimate result; I infer from the judge's acceptance of the appellant's account of being beaten by the uncle and his discussion of relocation that the judge accepted in any event that the appellant would be at risk in his home area. However, it is arguable as set out at ground 3 that the judge erred in failing to consider whether it was reasonable to expect the appellant to relocate to Kabul; he simply found that the appellant would be safe in Kabul ...

3. It is arguable that the judge erred as averred at ground 4...

4. ...I do not restrict the grounds that may be argued."

Hearing

4. At the hearing I heard submissions from the parties. Ms Loughran sought to rely on her grounds of appeal. She submitted as per Ground 1, that the Judge had erred in that his findings were both speculative and material as to whether or not the Appellant's uncle was a gun runner, which is relevant to his reach to the Appellant in any place of internal relocation and the risk in respect of links to the Taliban. In respect of Ground 2, she submitted that the Judge failed to have regard to the relevant evidence as to how the Appellant's mother is living and this is relevant to whether he would have been able to find her and whether internal relocation is reasonable. She further submitted

that the fact that there was no finding as to the best interests of the Appellant is not just relevant to Article 8, but to his claim as a whole.

5. In response, Ms Ahmed drew my attention to [42] and [43] of the Judge's decision. Whilst the grounds seek to argue that the Judge is speculating it was open to him not to accept his evidence that the Appellant's uncle involved him in gun running. However, she accepted that it was "rather odd" that the Judge accepts everything else in the Appellant's account, albeit he does provide reasons for his findings. In respect of return, the Judge specifically found that the Appellant's mother is working in Kabul; she has not been found by the uncle and he gave reasons for his finding. With regards to the issue of return and the background information, the Judge referred to the refusal at [28]-[36] and endorsed the objective information relied upon by the decision maker. Ms Ahmed accepted that the Judge does not engage with the skeleton argument. She was content for me to find that the Judge had erred materially in law in his decision.

6. I indicated to the parties that I found the First tier Tribunal Judge had erred materially in law, for the reasons set out in the grounds of appeal and for the following reasons:

(i) The reason the Judge did not accept the Appellant's evidence as to gun running is because his mother reported his uncle to the police after his uncle was violent towards the Appellant, his brothers and his mother and the Judge found at [42] that, had they in fact been involved in gun running, the police would have investigated the whole family rather than release the uncle within a week, having treated the issue as domestic violence. I accept Ms Loughran's submissions, based on [7] and [8] of her grounds of appeal, that it was speculation on the Judge's part to conclude that it would follow from police involvement in a domestic incident that they would discover and/or investigate the Appellant's uncle's gun running, absent any evidence that the Afghan police force would operate in this way and that this is not how the police would operate in the UK. It was further the Appellant's evidence that his brother had been caught by the authorities but his uncle had been able to get him released and this was because of corruption and the payment of a bribe, which was corroborated by the background evidence;

(ii) In respect of Ground 2 and the Judge's finding at [45] that the Appellant's mother was not in hiding because "*she has to have contact with the outside world in order to provide her services as a baker*" I accept the point made by Ms Loughran at [11] of the grounds of appeal, that it was the Appellant's evidence that people brought their bread to his mother, she would bake it and they would collect it, thus the fact that she has contact with the outside world is not inconsistent with the Appellant's claim that she was in hiding, in that she did not go out.

(iii) I further find that there is merit in Ground 3 of the grounds of appeal in that the Judge did not consider whether it would be reasonable for the Appellant to relocate to Kabul, without facing undue hardship, particularly bearing in mind that he would be joining a household headed by his mother;

(iv) The Judge further erred in failing to go on to consider, in the alternative, whether humanitarian protection was merited by reason of indiscriminate violence in Kabul due to the security and humanitarian conditions there *cf.* Ground 4;

(v) With regard to Ground 5, despite the fact that the Appellant remains a minor, there was erroneously no consideration by the Judge of his statutory duty pursuant to section 55 of the Borders, Citizenship & Immigration Act 2009 as to whether removal of the Appellant would be in his best interests *cf.* *AA Afghanistan* [2012] UKAIT 00016 (IAC) at [32]-[33] and *ST (Sri Lanka)* [2013] UKAIT 00292 (IAC) at [16].

7. I indicated to the parties that I would re-make the decision in light of the Judge's findings of fact, except that relating to the issue of whether or not the Appellant had been involved by his uncle in gun running, which was infected by error of law. The parties were content to proceed and I gave Ms Ahmed time to consider the Appellant's bundle, which had previously been served in support of the appeal before the First tier Tribunal.

8. The Appellant's statements were deemed to be adopted and the Appellant was not called to give evidence. The issue that I was required to determine was whether or not it would be unduly harsh for the Appellant to relocate within Afghanistan, given that the First tier Tribunal Judge accepted there would be a risk to him on return to his home area of Parwan.

9. I firstly heard submissions from Ms Ahmed, who submitted that, in respect of credibility, she sought to rely on the refusal decision, which accepted the fact that the Appellant was mistreated by his uncle but did not accept that his mother reported the uncle to the authorities. Whilst credibility was raised in the refusal decision she appreciated that the findings of First tier Tribunal Judge had been preserved except the one issue at [41]-[43].

10. Ms Ahmed further sought to rely upon the decision in *AA Afghanistan* [2012] UKAIT 00016 (IAC) at [89]. The Appellant is in contact with his mother, she has some financial income and his uncle does not seem to have located the mother, which are relevant factors the Respondent seeks to rely upon. She submitted that it cannot be shown that there is a risk on return to the Appellant, given that his mother is living in Kabul without current threats. She drew my attention to [28]-[36] of the refusal decision, which sets out the background information the Respondent is relying upon. She submitted that Article 15C of the Qualification Directive needed to be considered in light of the judgment in *Elgafaji v Staatssecretaris van Justitie* (Directive 2004/83/EC)

Case C-465/07. Ms Ahmed relied upon [28]-[36] of the refusal decision regarding internal relocation.

11. Ms Loughran sought to rely upon her skeleton argument dated 21.11.16, prepared for the First tier Tribunal hearing. She submitted that, in respect of the Appellant's credibility, this had been accepted by the First tier Tribunal Judge and his findings had been preserved except for the issue as to whether or not the Appellant's uncle had been involved in gun-running. She submitted that the Appellant's account was commensurate with his age.

The provenance of the link between the Taliban and the Appellant's uncle is at page 9 of his witness statement at [16] that his mother and brothers told him that his uncle was receiving guns from the Taliban. Ms Loughran submitted that the Appellant would be at risk in his home area, given the fact he was at risk from his uncle before *cf* paragraph 339K of the Immigration Rules. She drew my attention to the Country Information & Guidance in respect of Women fearing gender based violence dated February 2016 and updated in December 2016, at [2.44]-[2.45] which provides that the police are unwilling and/or unable to provide protection against victims of Domestic Violence. She submitted that this would apply equally to the Appellant as a child. [3.1.3] of the Country Information & Guidance on the security situation applies equally to gender violence, which is at [8.3]. and [8.4] of the new guidance, which is almost identical. At [8.3.2] domestic violence is not classified as a crime under the penal code and this would apply equally to a child if not more so. Ms Loughran submitted that clearly the Appellant would be at risk from his uncle in his home area and there would be no sufficiency of protection.

12. In respect of internal relocation, Ms Loughran submitted that this would not be reasonable. The Appellant's mother was living on her own with the Appellant's three sisters. The Home Office guidance makes clear that single and unaccompanied women are at risk. The Appellant's mother would effectively be his protector. Even if there was no risk from the Appellant's uncle in Kabul, there would be huge restrictions on the way the Appellant's mother can conduct herself. It would be unreasonable for the Appellant to live in Kabul with his mother in these conditions and given the levels of indiscriminate violence. In respect of the decision in *AA (Afghanistan)* (op cit) there was a distinction between attended and unattended children and the fact that the Appellant would be attended by a lone unaccompanied woman mean that he is unattended *cf*. [33].

13. I allowed the appeal on asylum grounds and announced my decision at the hearing. I now give my reasons.

Decision

14. I find, in light of the Judge's preserved findings of fact, that the Appellant has a well-founded fear of persecution in his home area of Parwan,

at the hands of his uncle. I further find that the Appellant's account of his uncle being involved in gun running at the behest of the Taliban to be credible, given the consistency in his account at his asylum interview, in his witness statement and in his oral evidence before the First tier Tribunal. It is also plausible that the Appellant's uncle avoided problems with the police by the payment of bribes and was able to secure the release of the Appellant's brother by this method, in light of the background evidence attesting to the corruption of police.

15. The issue then is whether it would be reasonable to expect the Appellant to internally relocate within Afghanistan. In her skeleton argument, Ms Loughran set out a number of heads of claim *viz* (i) he would be suspected of supporting the Taliban, given that he was involved in delivering weapons on behalf of his uncle, who received weapons from the Taliban and he cannot be expected to lie about this *cf. HJ (Iran) [2011] 1 AC 596* at [21]-[22] and in light of UNHCR's opinion that "*civilians suspected of supporting AGEs may be in need of international refugee protection on the grounds of (imputed) political opinion;*" (ii) he would be at risk as an unattended young person *cf. AA Afghanistan [2012] UKAIT 00016 (IAC)* at [93](ii) given that his mother, as a lone woman/head of household cannot provide him with protection, thus he should be treated as an unattended child or at risk as a child with no male support network. She submitted that it would plainly not be reasonable for the Appellant to internally relocate given his young age [16]; the absence of a male support network; the high levels of violence in Kabul and the humanitarian situation there. Ms Loughran submitted, in the alternative, that there would be a serious and individual threat to his life or person by reason of indiscriminate violence. Ms Ahmed's position was that it would not be unreasonable for the Appellant to relocate to Kabul given that his mother is there, the Appellant is in contact with her and she has some income and has not been located by his uncle.

16. Whilst it cannot be ruled out that the Appellant's uncle would be able to trace him to Kabul, through his connections with the Taliban, there is no evidence that he would have the ability so to do and I consider that the risk in this respect is remote and not established, even applying the lower standard of proof. I also take into account that the Appellant's uncle has not, as yet, located his mother and sisters since they relocated to Kabul.

17. Whilst it is the case that the Upper Tribunal in *AA Afghanistan [2012] UKAIT 00016 (IAC)* draw a distinction between accompanied and unaccompanied children, the presumption based on the facts before them, is that accompanied children would have a family to return to in the conventional sense ie a father and mother plus siblings. Whilst the issue of single female headed households was not considered in that case, the Respondent accepts that it would be unduly harsh to expect a single female or single female headed household to internally relocate *cf. Country Policy & Information note regarding women fearing gender based violence, December*

2016 at 2.53, 2.54 & 6.31-6.35 which refers to the difficulties encountered by single women and cultural prohibitions on women working outside the home or going out unaccompanied, which I find is consistent with the Appellant's account of the manner in which his mother is obliged to live in Kabul. The Respondent's Country Information & Guidance on the security and humanitarian situation, July 2016 provides *inter alia*:

“3.1.4 Whilst return or relocation to Kabul is not considered, in general, to be unsafe or unreasonable, decision makers must take account of the city's current humanitarian and security situation. It is unreasonable to expect lone women and female heads of household to relocate internally in the city.”

18. Consequently, if it is unreasonable to expect a lone woman or female head of household to relocate internally in Kabul, it cannot be reasonable to expect the Appellant, who is still a child, to relocate internally to Kabul in order to join a single female headed household. The situation would be different if he were an adult, but he is not and the date of assessment is the date of hearing. Whilst I take into account the fact that the Appellant could be reunited with his mother and sisters, the purpose of internal relocation is to find a place of safety, where protection is available. It is clear from the background evidence that the Appellant's mother would be unable to provide him with protection because she is in need of protection herself and the Afghan State in its current position is unable to provide it.

19. It is also the case from the judgment of their Lordships in *Januzi* [2006] UKHL 5 that socio-economic factors, the conditions in the proposed place of relocation and whether “*the quality of the internal protection fails to meet basic norms of civil, political and socio-economic human rights*” are material considerations in deciding whether it would be unduly harsh to expect an Appellant to internally relocate. The background evidence contained within the Appellant's bundle and the Respondent's country information guidance make clear that there has been a deterioration in the security situation: see eg section 6 of the Country Information & Guidance on the security and humanitarian situation, July 2016. Consideration is given to the specific impact on women and children and 6.3.1. provides *inter alia*:

6.3.1. Having examined the third report of the UN Secretary-General on children and armed conflict in Afghanistan (Reporting period 1 September 2010 to 31 December 2014), the UN Security Council's Working Group on Children and Armed Conflict expressed its grave concern over the ‘deteriorating situation of children affected by the conflict in Afghanistan, particularly the significant increase in child casualties, the continuing recruitment and use of children in violation of applicable international law, as well as attacks on hospitals, schools and the military use of schools, particularly affecting girls' education, by all parties to the conflict.’ Covering the period from January to December 2015, the Report of the UN Secretary-General on children

and armed conflict noted that ‘Children were disproportionately affected by the intensifying conflict in Afghanistan...’

20. I have concluded, in light of the evidence and on the particular facts, that it would be unreasonable and unduly harsh to expect the Appellant to relocate to Kabul or within Afghanistan generally.

21. I find an error of law in the decision of First tier Tribunal Judge Khawar. I substitute a decision allowing the appeal on the basis that the Appellant has a well-founded fear of persecution in Afghanistan and is thus entitled to refugee status.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

1 May 2017