



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/07705/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

On 19 January 2018

Decision and Reasons Promulgated

On 24 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

K K A

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott counsel instructed by Paragon Law

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. The order previously made will continue.
2. The Appellant was born on [] 1996 and is a national of Afghanistan.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is a resumed hearing. At an error of law hearing on 16 October 2017 I set aside the decision of First-tier Tribunal Judge Colyer in so far as it related to the risk on return to the Appellants home area or relocation to Kabul and the assessment under Article 8. I preserved the findings based on a concession made by the Respondent that the Appellants father died while fighting for the Taliban and also those findings made in respect of the witnesses [SS], [BC] and Mrs Pinnock all of whom were found to be credible witnesses by the Judge.

Evidence

5. The Appellant adopted the contents of his witness statement confirming that it was true. He was asked no questions in cross examination.
6. [SS] also gave evidence adopting the contents of both her previous statement and her statement dated 16 January 2018 with its exhibit which included a schedule of all of the training that she had completed as a Foster Carer.
7. She confirmed that the Appellant in her view suffers from uncertainty about his future. She stated that she was still in regular contact with him albeit he no longer lives with her and her family: he is nevertheless included in all family occasions..
8. In her view his anxiety and depression were getting worse and she expressed concern about his emotional well being if he were to return to Kabul without friends or family. She described her feeling that he would be like 'a fish out of water' and felt that he would find it difficult to survive without the level of support he had in the uK.
9. There was no cross examination.

Final Submissions

10. At the hearing I heard submissions from Mr McVitie on behalf of the Respondent that :
11. The starting point for my decision had to be the Respondents concession that the Appellants father had been killed while fighting for the Taliban.
12. In relation to the risk on return to Rodat his home area he accepted that there was now a certain level of agreement that the Taliban forcibly recruited people in the area that he lived in and they still operate there. He suggested that the real issue was whether the Appellant could relocate internally to Kabul and in respect of that he relied on what was said in the refusal letter.
13. He conceded that this would require an assessment of whether it was reasonable for a young man with mental health problems, no family and the support of the views expressed in the experts report to relocate to Kabul. The Appellants circumstances he accepted were distinguishable from those of the Appellant in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) who was a fit and healthy young man.
14. He acknowledged that the background material relied on showed that the facilities for those with mental health problems in Afghanistan were very limited with one hospital with mental health beds for the whole of Afghanistan, with 60 beds.
15. On behalf of the Appellant Mr Draycott submitted that :
16. He would rely on his (22 page) skeleton argument.
17. In relation to the risk on return to Rodat he relied on what was said by Mr Foxley. Rodat had been linked with the insurgency for decades. The Appellant's account that the Taliban would approach his family in order to recruit him after his father's death was plausible.

18. Given the Appellants age on arrival (14) and the time that he had taken to reach the UK his knowledge of Afghan society would be minimal and this would put him at risk.
19. The Appellant would therefore be at risk on return to his home area both in having to travel there through contested areas as a westernized young man and in Rodat itself the Appellant would be at risk of recruitment by insurgents or the authorities and by local militias.
20. In relation to relocation to Kabul he argued that the Appellant would be at risk on arrival in Kabul and in relation to the detail of this he relied on page 200 of Mr Foxleys report.
21. If the Appellant managed to get beyond the airport and tried to find work or accommodation references would be required. He relied on RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013 to argue that his heritage might come to light in Kabul and he could come to the risk of the authorities as the child of a Taliban fighter even if he did not do so at the airport.
22. In relation to the reasonableness of relocation he affirmed what was said by Mr Mc Vitie that the country guidance cases were based on applicants who were fit and healthy and in AA (Unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) the Appellant had an uncle living in Kabul: this Appellants case was light years from that. He had mental health issues and no family support.
23. He relied on Mr Foxleys report in relation to the issues with the mental health treatment that was available in Kabul. He also relied on the report of Dr Winton. He concluded that the Appellant could not cope, there was no medication or support and there would be a real risk of harm as the Appellant would consider himself to be in an utterly hopeless situation.
24. He argued that the risk of self harm was so serious that Article 3 was engaged.
25. He argued that Article 8 was engaged in that there would be very significant obstacles to his reintegration and that given the length of time he had lived in the

UK and the strength of his private life and family life that removal would be disproportionate.

Findings

26. I am required to look at all the evidence in the round before reaching any findings. I have done so. Although, for convenience, I have compartmentalised my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole including the expert reports, witness statements and caselaw relied on.

27. The factual matrix against which I assess the Appellants case is now largely undisputed. He is an Afghan national who is now 21 years old but who entered the UK when he was 14 years old after taking some 12 months to arrive. Therefore it is some 8 years since he has last lived in Afghanistan. It is also common ground that the Appellants father was a Taliban fighter in his home area of Rodat in Nangahar and was killed while fighting against the Afghan authorities. Mr McVitie described Rodat as a Taliban stronghold where they continue to have a strong presence.

Risk on return to Rodat

28. I start by considering the risk on return to Rodat as the Appellants claim is that having previously approached his family after the death of his father to recruit him and only avoiding such forcible recruitment with the help of his grandfather he would be at risk of the same on return. The refusal letter itself accepts, based on a COIS report from 2013, that such forced recruitment occurs in areas under Taliban control, or where there is a strong Taliban presence

29. Mr McVitie quite properly did not seek with any enthusiasm to pursue the argument that the Appellant would not be at risk of forced recruitment in Rodat. I am satisfied that the concession made by the Respondent taken together with the most recent up dated report of Tom Foxley dated 12.1.2018 (AB 1 P145-240.) confirm that this risk is real. In a very detailed analysis of the country situation he focuses on the Appellants personal circumstances, a father who died fighting for the Taliban which a close knit local community would be likely to remember when

his identity was revealed and return an area where Taliban activity is significant. Having described the Appellants account as plausible (page 185) the Taliban would plausibly view the Appellant as a natural target (a young, Pashtun male who was then fatherless and without employment) and that their methods of recruitment varies according to the subject. Mr Foxley concludes that on return to Rodat , an area where the Taliban are described as 'very active' the Appellant would face the risk of being identified and challenged by insurgents or alternately local security forces who would also know of his links to the Taliban.

30. The Appellants ability to face and negotiate his way past any kind of challenge at a checkpoint has to be assessed against his lengthy absence which creates a limited social, linguistic and cultural awareness. He would stand out as a westernized person. He also has been assessed on the basis that he is someone with a range of mental health issues who has been out of the country for an extended period of time. I am satisfied that the Appellant would be at risk in Rodat.

Relocation to Kabul

31. I am required to consider the reasonableness of the Appellant relocating to Kabul based on his personal circumstances most of which are unchallenged. Mr Foxley addresses the challenges that the Appellant would face at page 205 of his report onwards. Some of those factors I have addressed in relation to Rodat and these would make him vulnerable in Kabul also: the general lack of social, cultural and linguistic awareness after an absence of 8 years together with standing out as a Westerner which leads many to view such young men as 'tainted' (page 210).

32. The Appellant has no family or even friends in Kabul and has never lived there before. This would immediately create a lack of social and emotional support that he has been so reliant on in the UK and has found with friends but also and in particular with the family of his foster carer [SS]. The importance of family in assisting in reintegration whether into an area that an Appellant has never lived and in a country from where he has been absent is hard to overemphasise. Without family support the likelihood of him being able to find work or accommodation is limited and he would be vulnerable to 'exploitation' (page 208)

33. These are issues that face any young returnee to Afghanistan who has been absent for an extended period of time but I am satisfied that the Appellants circumstances are significantly exacerbated by the fact that he has a number of mental health issues that would make him in every way more vulnerable to the challenges that relocation presents.
34. Those issues are addressed by Dr Winton in his updated report of 8.1.2018(AB1 246-289) all of which I have taken into account and whose observations are confirmed by [SS]. Dr Winton makes the following diagnoses at page 284: severe depression which is worse than the previous diagnosis of 'depression'; anxiety; subsyndromal PTSD that is he did not quite qualify for a diagnosis of PTSD but has a number of symptoms of the condition. He confirmed that he had seen evidence of self harm on the Appellant. He also confirmed the medication that the Appellant was taking: citalopram and clearly the conditions that the Appellant suffered from and the anxiety that had improved would be at risk of returning if such medication was withdrawn. .
35. I am bound to take into account the cost and availability of services in Afghanistan for those with mental health problems and these are addressed by Mr Foxley at page 221 onwards. He confirms that mental health as a problem is poorly understood in the country and carries a high risk of stigma even with family support. He opines that such vulnerability would make the Appellant more at risk of approaches by the Taliban. Mr McVitie agreed that the background material , an Afghan Ministry of Public Health website, revealed that there was only one hospital in Kabul with mental health 'beds' and while he stated that there were 60 Mr Draycott noted that of that 60 , 20 were dedicated to those with drug problems so the provision was even smaller. 'Elsewhere in the country there is virtually nothing' (page 224). Other problems include lack of personnel, no training and lack of maintenance funding and medical supplies in very short supply.
36. Having considered all of the circumstances that I set out above I am satisfied that in the Appellants circumstances it would be both unreasonable and unduly harsh for the Appellant to internally relocate to Kabul.

Conclusions on Asylum

37. I find that the Appellant has discharged the burden of proof on him to show that he has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the Appellant's removal would cause the UK to be in breach of its obligations under the Geneva Convention.

Conclusions on ECHR

38. On the facts as established in this appeal, there are substantial grounds for believing that the Appellant's removal would result in treatment in breach of ECHR.

Decision

39. The appeal is allowed on asylum grounds.

40. The appeal is allowed on human rights grounds.

41. Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.

Signed

Date 22.1.2018

Deputy Upper Tribunal Judge Birrell