



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10060/2017

THE IMMIGRATION ACTS

Heard at the Cardiff Civil Justice Centre

Decision & Reasons Promulgated

On 11 September 2018

On 17 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

IA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Joseph instructed by JD Spicer Web Solicitors.
For the Respondent: Mr Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1 The appellant, a national of Afghanistan, appeals against the decision of Judge of the First tier Tribunal Loughridge dated 12 January 2018. There appellant's age was disputed but the judge held that he was born in June 1999 and was therefore 18 years old at the date of hearing. The appellant is from the Nangahar province of

Afghanistan and gave an account of being abducted, with his brother, three weeks before their departure from Afghanistan, being held captive, and being made to take part in practices known as Bacha Bazi ('Boy play'); a practice of forced dancing and sexual exploitation. The appellant was made to dance for groups of men, and was also subject to sexual assaults by an individual named Rafi.

- 2 The wife of Rafi assisted the appellant and his brother to escape from their abduction and arranged for their return to their home village, where their grandfather assisted them in leaving Afghanistan. The appellant became separated from his brother in Turkey. The appellant's journey to United Kingdom was said to have taken proximally one and a half years.
- 3 The appellant's claim for protection was refused by the respondent in a decision dated 29 September 2017. On appeal the judge accepted the credibility of the appellant's account of his past experiences in Afghanistan. However, the judge did not accept that the appellant would face any real risk of harm from Rafi or any associate in Kabul but did find that the appellant would remain at real risk of serious harm in his home area.
- 4 The judge proceeded to consider at [52] onwards whether it would be unreasonable/unduly harsh for the appellant to be expected to internally relocate to Kabul. The judge held as follows on the issue:

"As to whether relocating to Kabul would be unduly harsh I see no proper basis for reaching this conclusion. I have not been referred to any specific objective evidence or authorities which relates to adult returnees and while I acknowledge Mr. Joseph's point to the effect that an individual does not suddenly lose vulnerability simply because they strictly become an adult, it is important to bear in mind the particular characteristics of the appellant. He is a young man who has travelled across Europe for approximately 18 months, of which he spent a significant amount of time in the jungle in Calais. He may well have had assistance from an agent for part of this time but it is unlikely that he was under the close supervision for the whole period. In my view it is reasonable to draw the inference that he is a resourceful and resilient individual capable of looking after himself in a fairly hostile alien environment. In light of this it is reasonable to conclude that he would be able to establish himself in Kabul despite his lack of social/family contacts in that city. He will be able to take advantage of help from various agencies on arrival, who will point him in the right direction in terms of short-term shelter, food etc. There is no obvious reason why he would not then be able to make his way in terms of finding work and becoming self-sufficient. I accept that he has been diagnosed with moderate depression but this is unlikely to be a barrier to establishing a new life in Kabul. It will not be easy but neither will it be unduly harsh."

- 5 The judge consequently dismissed the appellant's appeal.

- 6 The appellant appeals against the judge's decision on grounds dated 25 January 2018 which are, in summary, that the judge erred in law:
- (i) in appearing to treat the fact that the appellant had travelled across Europe for up to 18 months, spending a significant amount of time in the jungle in Calais, as being determinative of his being a resourceful and resilient individual, capable of looking after himself in a fairly hostile alien environment, whereas it was argued that the ability to travel to a country of refuge has no meaningful relevance as to the appellant's ability to relocating to Kabul;
 - (ii) failing to give any or adequate consideration to matters such as how the appellant would be able to find employment, accommodation, or support to avoid destitution; although the judge referred to existence of certain agencies on arrival, the judge appeared to accept that these could only offer direction in terms of short-term shelter, food etc; the judge had failed to give any consideration as to the appellant's prospects in the long-term;
 - (iii) in failing to take into account the appellant's vulnerability arising from his experiences.
- 7 Permission to appeal was granted in a decision of Judge of the First tier Tribunal Farrelly dated 8 February 2018 on the grounds that it was arguable that the judge should have borne in mind the appellant's vulnerability, and the fact that he had been able to travel was not an adequate comparator (to his prospects when internally relocating in Afghanistan).
- 8 There is a Rule 24 response from the respondent dated 12 March 2018 resisting the appeal, arguing that the judge had been aware of the appellant's mental health diagnosis and referred to this within the decision.
- 9 I have heard from the parties in the appeal today. Mr Joseph took me in particular to certain passages of the medical evidence before the Judge.

Discussion

- 10 I find that there are material errors of law in the judge's decision. Before the judge was a report of consultant psychiatrist Dr. Moghraby dated 5 January 2018 in which the psychiatrist sets out the following matters (emphasis added):
- (i) Under the heading 'Background Information' at paragraph 3.3.3 the psychiatrist records that:

"The appellant had reported that he had been kidnapped on his way back from the mosque with his brother and taken to a house where he was repeatedly raped and made to dance until the wife of the alleged

rapist helped him and his brother to escape back to his grandfather. At this point he was told that he needed to escape as he would be killed and was sent off on a journey which eventually led him to the United Kingdom. He was separated from his brother half way to his journey **at the threat of gunfire.**"

- (ii) At paragraph 4.10 of the report psychiatrist records the appellant's description that his journey to the UK had been 'awful', and there is a reference in paragraph 4.33 of the report to the appellant having slept in the snow en route to the United Kingdom. At paragraph 4.20 when asked by doctor about the things the appellant thought about, the appellant recounted being shot at in Turkey.
- (iii) Under the heading 'Opinion and Conclusions' at part 6 of the report, the doctor states:

"6.1 (The appellant) is a nearly 16-year-old young Afghani boy [he was found to be 18 in fact] who is currently in the process of seeking asylum. He presents with low mood, frequent tearfulness, initial insomnia and hypersomnia, hopelessness with some difficulties in focussing and some degree of restlessness. He is also described flashbacks with associated emotional arousal and increased tension in himself without associated avoidance. He has described a fear of large groups of men. He has not engaged in illicit substance misuse.

6.2 His presentation is in the context of difficult experiences in terms of his transit across from Afghanistan and he described traumatic experiences both whilst in Afghanistan and since."

6.3 According to my assessment, I believe he fulfils threshold criteria for a diagnosis of, according to the International classification of diseases version 10 (ICD 10, WHO 1992).

- (iv) Although the doctor recorded that the appellant experienced some flashbacks as well as some other symptoms, he did not believe that these met the threshold for a formal diagnosis of post traumatic stress disorder. It was stated however that these symptoms were distressing and precipitated and perpetuate his depressive disorder. He is relatively insightful into his condition and he has not really sought help for managing any of the symptoms.
- (v) The report also contains the following passages:

"6.5 I believe his mental state as I described above will have been significantly precipitated, if not caused by the dramatic events that he has experienced. I believe that there are few other explanations.

...

6.7 Although anxiety and depression as syndromes can be relatively common (population prevalence studies are very from 10 to 25%), he has a more severe type of disorder and given his age is less likely to have experienced the symptoms without any other precipitants.

...

6.13 However, if his condition is left untreated, it is likely to deteriorate further which will have an impact on his ability to function. Functional impairment is very common with depressive or dysthymic illnesses. It is important therefore that he accesses treatment.

6.14 These depressive illnesses can often take chronic, remitting and relapsing courses which can be best ameliorated through treatment which would include either cognitive behavioural therapy is medication.

6.15 I believe that a lack of community support has exacerbated his condition further. It is important that he is provided with support, especially to access education, at the very least to be conversant in the language which would facilitate him being able to gain employment and have a better sense of himself.

...

6.26 After removal it is important that he would have access to community mental health support which as far as I know is nonexistent except in large urban areas and even then there is very little by way of specialist support. I am not clear if he would have access to medication or indeed therapy should the need arise.

...

6.37 I therefore believe that his current mental state i.e. depressive mood, would it be a barrier for him to access mental health services."

- 11 The appellant's challenge includes the argument that the judge failed to have adequate regard to the appellant's vulnerability. The above medical evidence is, I find, material to the assessment of the appellant's vulnerability, and I find that the judge has erred in failing to have adequate regard to that evidence.
- 12 Firstly, although the appellant clearly survived his 18 month journey from Afghanistan to United Kingdom, his having done so does not necessarily support the proposition that he is therefore resourceful and resilient. The appellant was diagnosed as having a major depressive disorder of moderate severity, and flashback symptoms which precipitated and perpetuated his depressive disorder. He had described to the doctor traumatic experiences in Afghanistan, and being shot at and

sleeping in snow during his journey after leaving Afghanistan. The doctor observed that the appellant's presentation was given "in the context of difficult experiences in terms of his transit across from Afghanistan and he described traumatic experiences both whilst in Afghanistan and since" (6.3), and the doctor believed that the appellant's mental state will have been significantly precipitated, if not caused by the dramatic events that he has experienced." (6.5).

- 13 The appellant's journey to United Kingdom is therefore, I agree, relevant to the assessment of the appellant's potential vulnerability on return to Kabul. However, far from the appellant's completion of that journey demonstrating a pre-existing resourcefulness or resilience, or having resulted in his developing such characteristics, the medical evidence suggests that the experience was in fact actually damaging to the appellant, and contributed to his major depressive episode and his experiencing symptoms of flashbacks. The judge does not appear to take the medical evidence properly into account. Alternatively, in light of the medical evidence which demonstrated that the journey was actually damaging to him, the fact that the appellant survived his journey to the United Kingdom does not rationally support the proposition that he is therefore resourceful and resilient.
- 14 Further, I find, in light of the medical evidence as quoted above, the judge erred in law in failing to give reasons which are adequate in law for concluding that the appellant's 'moderate depression' (in fact, major depressive episode with moderate severity) is unlikely to be a barrier to establishing a new life in Kabul. Such a finding is difficult to understand, given that the appellant's recorded symptoms include lowness in mood, frequent tearfulness, hopelessness, difficulties in focussing and fear of large groups of men. To be encumbered by these symptoms must logically impede the appellant's ability to compete for employment and housing in the difficult circumstances which prevail Kabul. Further reasoning was required.
- 15 It is clear that the judge treated the appellant having completed his journey to the United Kingdom as a weighty factor in the judge's consequent assessment of the appellant's ability to internally relocate to Kabul. I find that the judge's assessment on internal relocation is unsustainable, for the reasons set out above.
- 16 I set aside the judge's decision.

Remaking

- 17 Since the judge's decision, there has been further country guidance, in case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) (28.3.18), the head note which provides:

"Risk on return to Kabul from the Taliban

- (i) A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.

Internal relocation to Kabul

- (ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.
- (iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.
- (iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.
- (v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.

..."

18 I heard submissions from the parties regarding whether or not the appellant could internally relocate in Afghanistan to Kabul. Naturally, the submissions focussed on the judge's acceptance of the appellant's past account, the medical evidence, and the various passages within AS Afghanistan. I am grateful to the parties were taking me through the relevant passages.

19 I find that it would be unreasonable and/or unduly harsh to expect the appellant to internally relocate from Nangahar province to Kabul. In so finding, I take into account the following considerations.

- (i) The head note of AS Afghanistan advances the proposition that it will not in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul, even if he does not have any specific connections or support network in that city. The appellant is clearly not in good mental health.
- (ii) Although Mr Howells referred me to [227] of AS Afghanistan regarding the availability of different forms of assistance for returnees arriving in Kabul, the Upper Tribunal also observes in that paragraph that such assistance is described by some as a 'parachute package'. Even if, as the Upper Tribunal found, the receipt of such a package may place a returnee from the United Kingdom in a better position than many other returnees, for example from Iran, the Tribunal noted that such package may only last a person 4 to 6 weeks, or less, and although the package may make a material difference, such a difference would only be marginal to the reasonableness of return to Kabul for a single healthy male; and again, I reiterate, that that does not adequately describe the present appellant.
- (iii) At [234], the Upper Tribunal noted that their conclusions referred to single males in good health, being the primary group of people under consideration in the appeal. It was accepted that the Tribunal had not been provided with any specific evidence of the likely impact of poor physical or mental health on the safety or reasonableness of internal relocation to Kabul but the Tribunal considered it reasonable to infer that this could be relevant to the issue and the specific situation of the individual would need to be carefully considered.
- (iv) I find, as per the head note in AS Afghanistan that the age of the appellant is relevant. At [231], the Tribunal observed that there was a greater risk to and vulnerability of minors in Afghanistan, and that there was no bright line rule between the age of 18 when such issues fall away, but that such factors are likely to gradually diminish. The appellant is currently 19 years old, and his vulnerability to exploitation when he was last in Afghanistan is manifest: he was abducted and subjected to sexual exploitation. I find that he remains vulnerable, as a young man of 19, to further sexual exploitation in the future, although that risk may gradually diminish over time.
- (v) Further, at [232] in AS Afghanistan it was deemed relevant to consider the age of the returnee when they originally left Afghanistan, as the older a person is when they leave, the more likely they are to be familiar with employment opportunities and living independently. I note that the appellant would have been aged around 16 when he left Afghanistan and had not lived independently.
- (vi) At [232(ii)], the Tribunal identifies as a relevant consideration the nature and quality of the returnee's connections to Kabul and/or Afghanistan. The

appellant has no connections to Kabul. He has connections to his home area, but he remains at real risk of serious harm there.

- (vii) At [232(iv)], the Tribunal identifies the returnee's language, education and vocational and skills as relevant considerations. The appellant's account of his life prior to leaving Afghanistan, which was 'largely true' [48], was that his parents had died some years before his abduction, and he remained living with his grandfather. He stated that he had had no formal education, but had attended a Madrassa. There is no reference in his evidence to ever having gained paid employment in any capacity before he left Afghanistan. The appellant thus had no appreciable educational or vocational skills which he gained in Afghanistan and utilise upon return. The appellant may well have been in some form of education in the United Kingdom, but the respondent does not argue before me that the appellant has gained any particular qualifications which would stand him in good stead to gain employment in Afghanistan.
- (viii) Mr Joseph points out that the psychiatrist was of the view that the appellant's mental health problems were themselves a barrier to him in accessing mental health services. He also draws to my attention paragraph 2.6.5 in the report "EASO Country of Origin Information Report, Afghanistan: Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", at page 55 of the appellant's bundle:

"According to the 2016 study by Samuel Hall 'the alarming mental health situation of the Afghan youth should not be considered as a secondary individual health issue anymore, but as an actual threat to any possible social, economic and political development in the country'. The study found that:

youth with no migration background present much healthier profiles on average, while return migrants and especially IDPs find themselves the most vulnerable. A large majority (70 %) of young Kabulis have experienced traumatic experiences (one or multiple shocks that include not only personal traumas, but also criminal or terrorist related issues). According to the Health Index developed in this study, IDPs remain more than a third more likely than youth with no migration background to be deprived from basic access to healthcare, and deportees more than 50 % more likely. Deportees are by far the worst off."

- (ix) There is a low probability, I find, that the appellant will gain access to the community mental health support that he needs on return.

20 In all the circumstances, I am of the view that the appellant is likely to fare decidedly worse in Kabul than the presumed healthy adult male as considered in AS

Afghanistan. He is unlikely to find adequate employment or accommodation to avoid destitution.

- 21 I find that the appellant's proposed internal relocation to Kabul would be unreasonable unduly harsh.
- 22 The judge's decision involved the making of a material error of law.

I set aside the decision.

I remake the decision by allowing the appellant's appeal on refugee grounds.

Signed:

Date: 13.9.18



Deputy Upper Tribunal Judge O'Ryan

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

This appeal concerns a protection claim of a vulnerable individual. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 13.9.18



Deputy Upper Tribunal Judge O'Ryan