



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10809/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 20 June 2018

Decision & Reasons Promulgated  
On 06 July 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

HM  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bandegani, Counsel instructed by Duncan Lewis Solicitors  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan. His date of birth is 2 March 1993. He made an asylum claim. This was refused by the Secretary of State on 27<sup>th</sup> September 2016. The Appellant appealed against that decision. His appeal was dismissed by Judge of

the First-tier Tribunal Meyler in a decision promulgated on 16 May 2017, following a hearing on 8 May 2017. Permission was granted to the Appellant by Upper Tribunal Judge Perkins on 16 October 2017. The matter came before me on 20 June 2018 to determine whether Judge Meyler made an error of law.

2. The Appellant's evidence was that he is from a village near the city of Khunduz. He worked for a Chinese telecommunications company, ZTE, from July 2013 until July 2014. He worked for another telecommunications company, Mawj Atlas, from August 2014 until August 2015. As result of his employment he was targeted by the Taliban. For both companies he worked as a supervisor/team leader and was involved in transporting telecommunications equipment around the country. He was targeted by the Taliban because of his employment. After eighteen months of working in this capacity the Taliban discovered his occupation and made threats to him accusing him of spying. It was accepted that as result the Appellant moved to Kabul where he shared a flat with a friend. He stayed in Kabul for two or three months. Whilst in Kabul there was a shooting incident during which his friend was shot and the Appellant was able to escape unharmed. He fled Afghanistan with the help of his maternal uncle.

*The Findings of the First-tier Tribunal*

3. The judge heard evidence from the Appellant. Whilst the judge had misgivings about aspects of the Appellant's claim, he accepted his account about his employment and the threats he received and concluded that he would be at risk on return to his home area of Khunduz. The judge found that the Appellant was perceived as a "low level collaborator" as a result of his employment.
4. The judge went on to consider the Appellant's evidence about what happened to him in Kabul. The judge did not accept the evidence about the shooting incident. The judge noted that there was nothing from the Appellant or his friend's account to link the attack in Kabul with the threats in Kunduz save that the Appellant had no other enemies. The judge found that this did not exclude other possibilities, including that the attack may have been targeted at his friend. The judge noted that nothing was said by the assailant to link him to the Taliban. He noted that there was nothing much known about the Appellant's friend and he did not say very much about himself in his witness statement. The judge found that the Appellant might have been caught in a robbery or the incident may have been a case of mistaken identity. He may simply have been caught up in general criminal violence, according to the judge. The judge considered a letter that the Appellant submitted in support of his evidence which purported to be from the police. The letter recounted that the incident occurred in July 2016. The judge noted that this was after the Appellant left Afghanistan. The date was translated by the court interpreter as 17 or 18 August 2016 which did not assist the Appellant. The judge concluded that the letter was unreliable and undermined the Appellant's account that the incident occurred. The judge concluded that the evidence

from the Appellant's friend and photographs of his injuries added "little probative value..." when considered in the round.

5. The judge did not accept the Appellant's evidence that he was pursued to Kabul by the Taliban. The judge found at [29] that the Appellant would not be sufficiently high profile or of sufficient adverse interest to cause the Taliban "to pursue [the Appellant] all the way to Kabul". Having found that the Appellant would not be at risk from the Taliban should he relocate to Kabul, the judge went on to consider whether relocation would be unreasonable or unduly harsh.

6. The judge said as follows:

"30. I now consider whether it would be unreasonable or unduly harsh for the Appellant to return to Kabul. I take cognisance of the country information before me that in general, those who are perceived to have a low profile would be able to relocate. I find that there are no specific individual circumstances that could lead to continued targeting in the Appellant's case. The Appellant has stepped down from his position in that he no longer works for the company in question and has moved away from the Taliban stronghold in Khunduz. He would be considered to be low profile and would no longer find himself in an area under insurgents' sustained control or strong influence. I find that there would not be a real risk of harm for the Appellant in the safer areas of Afghanistan which are not under the insurgents' control such as Kabul. He is a young, healthy adult and does not need to return to the family there. There would be no reason for the Taliban to continue to target him in light of his evidence that the Taliban knew exactly what his work involved; i.e. physical transportation of equipment rather than active intelligence seeking or spying. If the Appellant chose to pursue similar work in the future in Kabul, there are certain steps to avoid further targeting, such as concealing his employment from his family, not travel with documentation that would identify them as an employee of an international organisation and deleting contact information from his phone. I find it would not be unreasonable for him to take those steps.

31. I accordingly find that although there may have been a real risk for the Appellant in his home area, he can safely relocate to Kabul. In all the circumstances, I find there is no reasonable degree of likelihood of persecution for the Appellant in Kabul and no real risk of serious harm there. I find it would not be unduly harsh for him to relocate to Kabul given that he is a young, healthy male who is resourceful and has a sound education and a good level of work experience."

*The Grounds Seeking Permission to Appeal*

7. The grounds seeking permission submit that the judge's approach to assessing the Appellant's evidence was inadequate. The judge failed to adequately consider the Appellant's evidence in relation to Article 15(c). He failed to consider points raised in the skeleton argument and did not take into account that the country situation in Afghanistan drastically deteriorated and relocation would be unduly harsh. There was a significant quantity of objective evidence submitted to support that the situation

in Kabul has deteriorated and is sufficiently volatile to engage Article 15(c). The judge failed to place any weight on or consider this evidence.

8. At the start of the hearing before me Mr Bandegani accepted that the appeal could not succeed under Article 15(c) applying *AK (applying Article 15(c)) Afghanistan CG [2012] UKUT 163*. Mr Bandegani relied on his skeleton argument. He argued that the judge erred in his assessment of whether relocation to Kabul was reasonable having failed to consider “all the circumstances” adopting an “individualised, holistic assessment” per *Januzi v Secretary of State for the Home Department and Ors [2006] UKHL 5* and *Secretary of State for the Home Department v AH (Sudan) and Ors (FC) [2007] UKHL 49*, and/or the First-tier Tribunal perpetrated a material error of law by failing to take into account as part of that assessment a large amount of relevant country material which demonstrated, inter alia indiscriminate violence and degraded socio-economic conditions in Kabul.
9. I raised with Mr Bandegani that the grounds on the face of them challenged the failure of the judge to determine the appeal under Article 15(c). However, Mr Bandegani was able to persuade me that the grounds are sufficiently wide enough to incorporate a challenge to the assessment of reasonableness in the context of relocation. As a matter of fact, the Respondent’s response under Rule 24 of the 2008 Procedure Rules engaged with the issue of relocation and reasonableness. Mr Melvin did not address me on the issue of whether the grounds were sufficiently comprehensive to support a challenge to the judge’s decision in respect of relocation under the Refugee Convention.

#### *Relocation*

10. I remind myself what the House of Lords said in *AH (Sudan)* at paragraph 5 in respect of internal relocation;

“In paragraph 21 of my opinion in *Januzi* I summarised the correct approach to the problem of internal relocation in terms with which all my noble and learned friends agreed:

‘The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so .... There is, as Simon Brown LJ aptly observed in *Svazas v Secretary of State for the Home Department* [2002] 1 WLR 1891, para 55a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... All must depend on a fair assessment of the relevant facts.’

Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the Rule could be more simply or clearly expressed. It is, or should be, evident that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant’s way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not

under estimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling up of living standards around the world, desirable though of course that is."

11. The relevant country guidance at the date of the promulgation of the judge's decision was *AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163*. About relocation to Kabul the Upper Tribunal stated as follows: -

"243. As regards Kabul City, we have already discussed the situation in that city and we cannot see that for the purposes of deciding either refugee eligibility or subsidiary protection eligibility (and we are only formally tasked with deciding the latter) that conditions in that city make relocation there *in general* unreasonable, whether considered under Article 15(c) or under 15(b) or 15(a). We emphasise the words 'in general' because it is plain from Article 8(2) and our domestic case law on internal relocation (see *AH (Sudan)* in particular) that in every case there needs to be an enquiry into the applicant's individual circumstances; and what those circumstances are will very often depend on the nature of specific findings made about the credibility of an Appellant in respect of such matters as whether they have family ties in Kabul. But here are our premise concerns an Appellant with no specific risk characteristics and someone found to have an uncle in Kabul; see above paras 3, 5, 154, 186 and below, paras 250-254). To summarise our conclusion, whilst when assessing a claim in which the Respondent asserts that Kabul City would be a viable internal relocation alternative, it is necessary to take into account (both in assessing 'safety' and 'reasonableness') not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many IDPs living there, these considerations will not in general make return to Kabul unsafe or unreasonable, although it will always be necessary to examine an applicant's individual circumstances."

#### *Error of Law*

12. The Appellant did not respond to the standard directions of the UT issued to the parties. There was no application under Rule 15 of the 2008 Procedure Rules to produce further evidence. There was no further evidence produced at the hearing before me. Mr Bandegani indicated that should I find a material error, there should be a re-hearing because of the passage of time. Since the promulgation of the decision of Judge Meyler the Upper Tribunal has promulgated *AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118*. Whilst this decision does not affect the guidance in *AK* in relation to Article 15(c), it gives guidance in relation to internal relocation to Kabul. In my view, the judge erred. The judge erred in so far as he did not properly consider the background evidence submitted by the Appellant about the deterioration of conditions in Kabul when assessing the reasonableness of relocation. The issue is whether that error is material.
13. The Appellant's bundle (AB2) was before the judge. In the skeleton argument before the First-tier Tribunal the Country Policy and Information Note (Afghanistan: Fear of

anti- government elements, December 2016) was specifically referred to in support of the Taliban having extensive reach. Reliance was placed on AK by the Appellant at the hearing before the First-tier Tribunal whilst it was argued that the security situation had deteriorated in Afghanistan supported by the country information. Reference was made to the Country Information and Guidance Afghanistan (Security and humanitarian situation version 3.0 July 2016) to establish that there had been recent attacks in Kabul. The judge's attention was drawn to a roadside bomb blast in Kabul on 13 March 2017 (p 155 of AB2), a suicide bomb on 1 March 2017 which left 16 dead and 40 injured (p157 of AB2) and a suicide attack on 20 April 2016 (p163 of AB2) in Kabul killing 64 and wounding 347. There was an article from Amnesty International (p87 AB2) of 27 April 2017 stating that Afghanistan remains unsafe for refugees to be returned and that since the withdrawal of military forces at the end of 2014 the security situation has worsened; Kabul having suffered the highest levels of civilian casualties. The thrust of the background evidence before the judge leads to an inevitable conclusion that the situation in Afghanistan (and Kabul) had deteriorated. I am satisfied that it is not clear from the decision that the judge considered reasonableness in this context.

14. At the time of the hearing, AK was the relevant Country Guidance in respect of Article 15 (c) and relocation under the Refugee Convention. What was required was an inquiry into the Appellant's specific circumstances in the light of the deterioration in the country conditions to determine whether relocation would be reasonable. The position was that relocation was generally reasonable. There was no challenge in the grounds to the findings of the judge that the Appellant was young, healthy, resourceful with a sound education and a good level of work experience. Relocation was, as it is now, generally safe and reasonable (AK). The background evidence relied on did not establish that the deterioration in conditions rendered relocation of this Appellant unreasonable.
15. Mr Bandegani raised mental health issues in submissions before me. He submitted that this was a factor to consider when assessing the reasonableness of relocation in the context of the deterioration in conditions. This was not an issue raised in the grounds before me. He referred me photocopies of boxes of Citalopram, a drug commonly prescribed for depression (p135-141 AB1). This was evidence that the Appellant was prescribed the drug in November 2016, 16 January 2017 and 27 March 2017. There was before the judge a character reference from Lea Fanara (AB p129) dated 30 April 2017. She was a support worker and facilitated the resettlement and integration of refugees. She stated that she had noticed that the "current state of uncertainty" following months of difficulty had caused the Appellant to feel depressed and anxious about the future. There was an undated letter from Leanne McDonald who was a friend and described herself as a health psychologist. She met the Appellant in 2016 and stated that he suffered from psychological trauma because of circumstances at home and his journey to the UK. He appeared outwardly very resilient and strong. He had frequent periods where he felt very low and he suffered from severe anxiety and depression. She also stated that he has suffered suicidal ideation and panic attacks because of the decision on his asylum claim. There is nothing in this evidence that

would suggest that she was giving an opinion as an expert as opposed to a concerned friend. This was the totality of the evidence now relied on to establish that the Appellant had a mental health condition.

16. There was no reference to the Appellant's mental health in the grounds before the FtT, the Appellant's witness statement, Counsel's skeleton argument before the FtT, Counsel's skeleton argument before me and the grounds before the UT. There was no evidence explaining why he was prescribed Citalopram and there was no medical report. There was no evidence before the judge which would establish that the Appellant had a mental health condition for which he was receiving treatment at the date of the hearing on 8 May 2017 capable of undermining the judge's decision. It is not asserted in the grounds that the judge failed to consider evidence relating to the Appellant's mental health. In any event, the evidence was insufficient to establish that he had a mental health condition that would materially interfere with his ability to adjust to the conditions in Kabul (notwithstanding the deteriorating conditions) so as to render relocation unreasonable. There was no evidence he would not be able to obtain medication, if the position was that this was necessary. On the evidence before the judge he was manifestly entitled to conclude that the Appellant was healthy and to consider reasonableness in this context.
17. The evidence before the judge was that the Appellant was employable. He has an employment record and skills to which the judge was entitled to attach weight. The Appellant relocated to Kabul before coming to the UK. This was also a matter to which the judge was entitled to attach weight. No doubt the judge considered that he had connections to Kabul, having lived there previously albeit for a short period. It can be reasonably inferred that he has at least a basic support network from his time there that can be re-activated. There was no evidence of linguistic hurdles. It is a fact that the Appellant has family in Afghanistan.
18. There was no material error in the judge's decision. In the event, that it fell to be remade on the evidence that was before the FtT (there was no application made under Rule 15), applying AS<sup>1</sup>, it is inevitable that the appeal would be dismissed. I appreciate

---

<sup>1</sup> The head note in AS reflected in the main body of the decision reads;

*"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*

that I have not heard submissions on the applicability of AS. Mr Bandegani informed me that he was instructed to represent the Appellant at the error of law stage only. He sought an adjournment to submit further evidence (without identifying this). He explained that it was necessary because of the passage of time and it was fair to allow the Appellant the opportunity of a re-hearing to address AS. The decision was promulgated over a year ago; however, the Appellant has not submitted further evidence. I accept that AS is not material in respect of whether judge erred and I have not considered it in this context. It is not material to my decision in respect of the lawfulness of Judge Meyler's decision. However, it is difficult to see how this appeal could succeed applying AS and it could not on the evidence before the FtT. The position remains that relocation is generally reasonable for a single male in good health. The UT in AS made findings at [189] – [235]. They can be summarised as follows:

1. The volatility and fluidity of armed conflict in Afghanistan is likely to be less in Kabul compared to smaller urban centres and rural areas. The nature of security incidents in Kabul follow a relatively consistent pattern, with the focus on suicide and complex incidents rather than air strikes and ground engagement which is more common in other parts of Afghanistan. The latter include wider civilian casualties than the specific target of the attack and potential significant collateral damage to lives and property.
2. Civilian casualties in Kabul increase year on year and are at record levels since 2009 when UNAMA started gathering data. The intensity of conflict in Kabul is increasing. The security incidents in Kabul are spread around rather than being concentrated in a particular area of areas and include as targets individuals, government and international buildings as well as

---

*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.*

*Previous Country Guidance*

- (vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*
- (viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision".*



civilian areas and affect everyday life. There has been deterioration in the security situation in Kabul, particularly since the withdrawal of international security forces in 2014. There is a negative effect of the security incidents felt generally on the residents of Kabul. Security incidents are not at such a high level to make internal relocation to Kabul unsafe. The security situation affects that the entire population and not a particular geographical area or group of residents. There is no increased risk to those returned over and above that faced by the population of Kabul city as a whole.

3. Single able-bodied men and married couples of working age without identified specific vulnerabilities may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the necessities of life and that under effective Government control. More formal /expensive accommodation and more skilled employment are likely to require references from someone within a support network but it is not essential to obtain accommodation or employment in every case. A person with a strong family or other support network in Kabul (or potentially in Afghanistan) would be in a stronger position on return to Kabul particularly if that support network included wealthy or influential individuals with good connections themselves. The relevance and usefulness of a support network is likely to be somewhere on a spectrum depending on variable factors and the issue is not limited to Kabul. Kabul is such a place where a support network is not essential and that internal relocation is generally reasonable without one for a single male in good health. The availability of a support network may counter a vulnerability of an individual on return.
4. A single male would not be unable to find some sort of accommodation which is comparable to that available for most of the population in Kabul even without support from a network in the city.
5. There is a basic package of healthcare in Afghanistan around a third of the population have inadequate access to it with significant barriers and inequality of access. The position is better in Kabul. There is little to suggest that a returnee in good health is any worse off or has any less access to healthcare than most of the population in Kabul.
6. Stable, higher quality better paid employment is difficult to obtain in Kabul without appropriately placed connections. There is availability of lower skilled jobs which do not require specific skills, experience or connections and a single man could survive much better on low or unskilled jobs or irregular work.
7. It has not been established that there is any real risk that a single man will feel compelled to join an armed gang for economic survival in Kabul. There are livelihood opportunities available for single men in good health on

return to Kabul such that there is no real likelihood that they will be forced in to a life of crime, subjected to exploitative work or join an armed AGE

8. There is a basic level of support “parachute package” which includes the cover of temporary accommodation travel expenses and either cash on return or support in-kind for those with a plan to establish them in Kabul. This makes a material even if marginal difference to the reasonableness of return to Kabul for a healthy single male.
9. It is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. A case by case consideration of whether it is reasonable for a person is required and the following are specific factors that may be relevant to bear in mind
  - a. Age
  - b. Nature and quality connections to Kabul and/or Afghanistan
  - c. Physical and mental health
  - d. Language, education and vocational and skill

#### *Conclusions*

19. The judge did not factor into the assessment of reasonableness the background evidence relied on by the Appellant concerning the deterioration of conditions in Kabul into the assessment of reasonableness. However, the error was not material considering the law as it stood at the time of the promulgation of the decision. The judge erred. The error is not material. The decision to dismiss the appeal is maintained.

#### **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

*Joanna McWilliam*

Date 4 July 2018

Upper Tribunal Judge McWilliam