



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/12067/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16 October 2018**

**Decision & Reasons Promulgated**

**On 23 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**[Z S]**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Ms R. Head of counsel instructed by AMB Advocates and Accountants Ltd

For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Afghanistan, who arrived in the United Kingdom on 16 February 2006 and applied for asylum on 20 February 2006. His application was refused and

he became appeal rights exhausted on 21 July 2006. He was removed to Afghanistan on 18 December 2011. He then left Afghanistan on 15 October 2015 and travelled to France where he claimed asylum on 19 January 2016. On 15 February 2016 the United Kingdom accepted a “take back request” made by France and the Appellant re-entered the United Kingdom on 24 June 2016 where he made further submissions.

- 2.. The Appellant’s claim for international protection was reconsidered but refused on 2 November 2017. He appealed against this decision but First-tier Tribunal Judge Waygood dismissed his appeal in a decision promulgated on 30 May 2018. The Appellant appealed against this decision and on 10 July 2018 First-tier Tribunal Judge Grant granted him permission to appeal on the grounds that First-tier Tribunal Judge Waygood may have erred in law in his assessment of risk on return and the possibility of internal relocation when set in the context of the expert evidence placed before the Tribunal.

### **ERROR OF LAW HEARING**

3. Counsel for the Appellant and the Home Office Presenting Officer both made oral submissions and I have referred to these submissions, where relevant, in my findings below. They made submissions on the issue of whether it would be unduly harsh to return the Appellant to Kabul but I indicated that I would only consider those submissions, if I did not find that First-tier Tribunal Judge Waygood had erred in law in relation to the manner in which he applied the most recent country guidance.

### **ERROR OF LAW DECISION**

4. In paragraph 174 of *AS (Safety of Kabul) Afghanistan CG* [2018] UKUT 00118 (IAC) the Upper Tribunal found that:

“The risk of a specific individual being successfully targeted depends upon their identification as a target (for example, due to past or present actions/circumstances) and the ability of the Taliban to locate and then carry out an attack on that person, as well as their will or priorities in doing so. The evidence was broadly in agreement as to the order of importance of targets for the Taliban in Afghanistan being (i) senior serving government officials and the security services, (ii) spies, and the lower level, (iii) other collaborators (including the wider security

forces, government authorities, foreign embassies, the UN, NGOs and anyone passing on information to the government about the Taliban) and deserters.

5. This showed that Upper Tribunal put spies, and not only senior government officials and the security services, at the higher end of a long list individuals who may be targeted by the Taliban. In my view it is also significant that the Tribunal accepted that an individual may be targeted for past, as well as current, actions. When considering whether the Appellant could safely relocate to Kabul First-tier Tribunal Judge Waygood failed to take these aspects of the country guidance into account.
6. The head note of *AS* also states that:

“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”.
7. The converse of this finding must be that senior government or security services officials and spies are at real risk of persecution from the Taliban in Kabul.
8. The appeal was markedly different from many asylum appeals as there was a significant amount of evidence which corroborated the Appellant’s account of past persecution. First-tier Tribunal Judge Waygood gave detailed consideration to this evidence and at paragraph 128 of his decision he accepted “the evidence of Dr. Giustozzi that the documents provided by the Appellant were genuine through the work that has been conducted by his close colleague on the ground in Afghanistan to verify them”. These documents included a driving licence stating that it was valid for driving cars and lorries. The driving licence had been submitted to confirm the Appellant’s identity and, in paragraph 99 of his decision, the First-tier Tribunal Judge accepted that the licence gave the Appellant’s name and those of his father and grandfather.
9. There was also a letter from the Baghlan Provincial Council, which confirmed that the Appellant had worked as a translator from and into English for the Council. This had been authenticated by the researcher, Mr. Mangal, when visiting the head of the Provincial Council

on behalf of Dr. Giustozzi. The Head of the Council also stated that he was aware that the Appellant had been threatened by the Taliban a number of times, both in writing and verbally.

10. The Appellant had adduced photographs and documents relating to his car, which was a Toyota Corolla. There was also a police report, dated 2 February 2015, which confirmed that a Toyota Corolla car had been destroyed by a magnetic mine. One piece of the available evidence obscured the last letter of the car's number plate but when Mr. Mangal visited the relevant authorities to confirm this attack, they accepted that the magnetic bomb had been placed on the Appellant's car. This was also confirmed by the Baghlan Provincial Council. Mr. Mangal had also visited Baghlan Provincial Hospital to authenticate its report that the Appellant had been treated for injuries to his left foot and hand sustained during a suicide attack on 20 May 2013. The hospital records also confirmed that the Appellant had been working for the Provincial Council at the time of the attack. There was also a medical report by Dr. Izquierdo-Martin, which stated that scars on the Appellant's body were highly consistent with being injured by shrapnel from a bomb explosion in 2013 and in paragraph 123 of his decision First-tier Tribunal Judge Waygood accepted on the lower standard of proof that the Appellant had been injured in a suicide attack in May 2013. In paragraph 128 of his decision he also accepted that the Appellant had also been injured on 9 March 2013 when a bomb was placed under his car.
11. In paragraph 128 of his decision First-tier Tribunal Judge Waygood also stated that "overall I accept to the lower standard that the Appellant was the subject of an attempt on his life in March 2013 and that he was injured in May 2013".
12. Most significantly, Mr. Mangal had also spoken with Mowlavi Khudi Dad Gujar, the Taliban's Head of Intelligence for Baghlan, who confirmed that the "night letter" sent to the Appellant was genuine and that the Taliban considered that the Appellant was spying for foreigners. The "night letter" itself stated that reports had been received from the intelligence of the Baghlan Mujahideens Council that the Appellant had been working as a translator for the Christian infidels and also that he was spying on behalf of the Baghlan Provincial Council and the Christian infidels. It went on to refer to him having been sentence to death.
13. The evidence produced by the Appellant was noteworthy because not only were the documents authenticated by Mr. Mowlam and Dr. Guistozzi, their movements were also

confirmed by other evidence and the manner in which the documents travelled from Afghanistan to the United Kingdom were also documented. This led to First-tier Tribunal Judge Waygood stating at paragraph 117 of his decision that he accepted the validity of the verification exercise that has been carried out in relation to these documents and that to the lower standard of proof [they] are shown to be genuine”.

14. In my view the authentication process was also significant for a further reason. The two violent attacks on the Appellant took place in 2013. The Home Office Presenting Officer submitted that, as the Appellant did not leave Afghanistan until October 2015 and continued to work for Baghlan Provincial Council until 2015, this indicated that he ceased to be at risk from the Taliban in 2013. However, the evidence given by the Appellant, as recorded in paragraph 47 of First-tier Tribunal Judge Waygood’s decision, was that he continued to receive threatening phone calls from the Taliban after the suicide attack in May 2013. In addition, when Mr. Mangal contact with the Taliban’s Head of Intelligence for Baghlan Province on the seventh or eighth of May 2017, he confirmed that he was told that the letter was genuine and that the intelligence chiefs of 34 provinces had been informed about the inclusion of the Appellant on the Taliban’s blacklist. In addition, the mere fact that “foreigners” were asking them to confirm threats made to the Appellant is also likely to have increased the impression that he had spied for foreigners and increased the interest likely to be paid to him by the Taliban.
15. Furthermore, the Appellant’s own evidence, as noted by First-tier Tribunal Judge Waygood in paragraph 58 of his decision, was that after the two incidents the Appellant avoided being out in public as much as possible and he had protected himself with the help of the Provincial Council. At that point, the Afghan Government was in control of Baghlan Province and the Appellant could reasonably expect to obtain protection from the Council and, in paragraph 47 of his decision, First-tier Tribunal Judge Waygood recorded after the suicide bombing in May 2013, that the Appellant had been assured by the in-coming head of the Provincial Council that he would receive his support.
16. As counsel for the Appellant also noted it was also the Appellant’s evidence that it was when the Taliban captured Kunduz Province which was next to Baghlan Province that the Appellant decided that he could no longer risk remaining in Afghanistan.

17. Despite all of this evidence First-tier Tribunal Judge Waygood went on to find in paragraph 136 that the Appellant had failed to demonstrate that he was a person of such a high profile as to be at risk in Kabul. In reaching this finding the First-tier Tribunal Judge failed to take into account that the headnote of *AK* makes it clear that someone who has been identified as a spy also falls within a category which attracts international protection, even if in general it is safe to return to return individuals to Kabul.
18. He also failed into account the fact that there was authenticated evidence from Baghlan Provincial Council which indicated that the Appellant had been targeted by the Taliban by letter and orally. In addition, there was authenticated evidence from the police that a magnetic mine had been placed under his car. There was also medical evidence from Afghanistan and from the United Kingdom that he had suffered serious injuries as a result of shrapnel caused by a suicide bomber.
19. As a consequence, it is arguable that First-tier Tribunal Judge Waygood erred in law in so far as he failed to give sufficient weight to the evidence which indicated that the Taliban believed that the Appellant had been spying on them and that this was still their view. He had also failed to apply the country guidance contained in *AS (Kabul)* which was that those who had spied against the Taliban were at serious risk in Kabul.
20. Having found that his ground of appeal was made out, it was not necessary for me to consider the Appellant's second ground of claim, which was that First-tier Tribunal Judge Waygood's findings in paragraph 148 of his decision in relation to whether it would be unduly harsh to expect the Appellant to relocate to Kabul was unsustainable

## **Decision**

- (1) The appeal is allowed.

- (2) The positive findings made by First-tier Tribunal Judge Waygood in relation to the evidence adduced by the Appellant made in paragraphs 103 to 104, 106 - 123, 128 and 134 of his decision are retained but his findings in paragraphs 129 and 148 - 152 are set aside.
- (3) The appeal is retained in the Upper Tribunal in order to be remade in accordance with *AK*.

### **THE RE-MADE SUBSTANTIAL DECISION**

1. There is no dispute that the Appellant is an Afghan national who previously lived in Baghlan Province.
2. I also adopt the findings of fact made by First-tier Tribunal Judge Waygood, and referred to above in my error of law decision, that:
  1. There is substantial evidence to confirm that between 2012 and 2015 the Appellant was working as a translator into English for the Baghlan Provincial Council.
  2. There is also substantial evidence to corroborate the fact that the Taliban believe that, whilst the Appellant was working for the Baghlan Provincial Council, he also spied on them on behalf of the Council and for foreigners/infidels and that, as a consequence, they sentenced him to death and put him on their blacklist.
  3. There is evidence to corroborate the fact that in March 2013 a magnetic bomb was placed on the Appellant's his car, which destroyed it, and that in May 2013 the Appellant was hospitalised after being one of a number of people injured in a suicide attack, which killed the man who was then the Chief Provincial Councillor in Baghlan Province.
3. For the reasons given above in my error of law decision, I find that:

1. The Appellant remained working for the Baghlan Provincial Council between 2013 and 2015 because he was taking his own security measures and had also been assured of support from the Council.
2. At this time, the Afghan government was in charge in Baghlan Province and that it was only when the neighbouring province of Kunduz fell to the Taliban that the Appellant believed that it was no longer safe to remain in Afghanistan.
4. It is not disputed that the Taliban are non-state agents for the purposes of the Refugee Convention and that the basis of the Appellant's fear of them falls is for a Refugee Convention reason, namely that of imputed political opinion. The evidence confirms that the threats made to the Appellant arose from the fact that he was working for the Baghlan Provincial Council and that the Taliban was believed that he was spying for the Council and for "infidels".
5. In paragraph 134 of his decision, which I adopt, First-tier Tribunal Judge Waygood concluded that "there would be no sufficiency of protection per se for the Appellant in Afghanistan". He based this on paragraph 13 of *AS (Safety of Kabul)* where it was noted that "the Respondent does not rely on there being a sufficiency of protection for the Appellant from the Taliban in Afghanistan, or in particular in areas where he is accepted to be at risk. The Respondent acknowledges that however willing the Afghan authorities are, they would usually be unable to offer effective protection".
6. In paragraph 174 of *AS (Safety of Kabul)* the Upper Tribunal found that spies fell within the second category of those targeted by the Taliban and that in the head note of that case the Upper Tribunal concluded that a spy would be at real risk of persecution in Afghanistan.



7. This conclusion was confirmed by Dr. Giustozz in in his expert report, dated 9 May 2017. In particular, he stated in paragraph 8 of his report, that “in terms of the Taliban’s capacity within Afghanistan, the Taliban have the means to track down individuals”. In paragraph 11, he also stated that “the Taliban’s intelligence operations have grown increasingly sophisticated and their ability to track down individuals is very sophisticated”. At paragraph 17 he added that “...there are two parallel Taliban structures in Kabul, with different tasks. The Haqqani network focuses on complex attacks against foreign installations and government offices, whilst the other groups of Taliban present in Kabul (primarily Quetta Shua) focus on targeted killing of individuals cooperating with Afghan government and foreigners”.
8. Dr. Guistozzi did accept that the Appellant could reduce the risk to his safety by relocating in Central Kabul but there was no evidence to suggest that this would be an option for the Appellant. He would be a returnee with no property or employment. Furthermore, returning to his previous employment as an interpreter would increase his risk and the perception on the part of the Taliban that he continues to be a spy. There was also no evidence that his sister and brother-in-law lived in Central Kabul or had the means to rent property and support the Appellant to live in Central Kabul.
9. In the case of AS there was no evidence to suggest that the appellant had been placed on a blacklist by the Taliban. In contrast, there was corroborated evidence that the Appellant in this case had been placed on the blacklist. The enquiries undertaken by Mr. Mangal have also drawn attention to the fact that the Appellant is gathering evidence about his experiences in Baghlan Province and has the necessary resources to do so. In my view, this will have increased the risk that he is seen to be still connected with “foreigners” and may continue to operate as a spy.
10. I have reminded myself that the Appellant falls within a category of persons who are at serious risk of persecution if return to Kabul as found in

the most recent country guidance case. I have also reminded myself that, when considering the Appellant's fear that the Taliban would locate and target him in Kabul, I must apply the requisite low standard of proof. Having applied this standard of proof, and taken into account the substantial amount of corroborated evidence in this appeal, I find that there is a serious possibility that the Appellant would be located and harmed by the Taliban in Kabul. Therefore, there is not a viable internal relocation open to the Appellant.

## **Decision**

**(1) The Appellant's appeal is allowed.**

# Nadine Finch

Signed

Date 18 October 2018

Upper Tribunal Judge Finch