



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: PA/13505/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Reasons Promulgated  
On 01 October 2018  
October 2018**

**Decision &  
On 31**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL JUDGE CHANA**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR R.Z  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Candola, Home Office Presenting Officer

For the Respondent: Ms H Foot of Counsel

**DECISION AND REASONS**

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a citizen of Afghanistan born on 1 January 1995. I shall however for sake of convenience refer to the parties as they were referred to, at the First-tier Tribunal.

2. The appellant appealed against the decision of First-tier Tribunal Judge Ruth dated 25 June 2018 from the decision of the respondent refusing his application for asylum and humanitarian protection in the United Kingdom.
3. Permission to appeal was granted by a Judge of the first-tier Tribunal Kelly on 13 July 2018 stating that it is arguable that the Judge having found at paragraph 60 that the appellant faces no risk of harm from the Taliban in Kabul, would be unable to benefit from the process for formal reconciliation with the Afghan authorities.

### **First-Tier Tribunal's Findings**

4. The First-tier Tribunal's findings were as follows which I summarise. The appellant's claim is that he was born and grew up in Kundus province where he lived with his parents, four brothers and two sisters. The appellant's father had been a farmer but also worked as an intelligence operative for the Taliban and was known in the local area as Mullah Nasrullah. After the Taliban were defeated his father fled to the southern provinces and the appellant and his family members moved in with an uncle in a different part of Kundus province and lived with him, his wife and children.
5. The appellant helped him on the farm and had no problems until 2008. In the first part of 2008 the appellant was informed that his four brothers had been kidnapped and he believed it was by the Taliban and the kidnappers asked for the appellant, saying that they would not spare him because he was his father's son. One of his brother's body was found strangled with a wire. After the funeral the appellant was driven to an unknown city where he remained for around two weeks and then travelled for two months with a neighbour until he came to the United Kingdom.
6. The respondent alludes to many discrepancies in the appellant's evidence which shows that he is not a witness of truth but his representative, asks that I consider these discrepancies within the context of his youth as he was only 12 years old at the time.
7. The material and central discrepancy which arose is whether the appellant had ever previously mentioned the men who attacked his family home were from the Taliban. The appellant maintained although he did not know for certain, but he believes they were from the Taliban because of his father's involvement in that organisation and an argument between his mother and father as to whether the appellant and his siblings should similarly become involved with the Taliban.
8. The Judge considered Dr Guistoizzi's expert report and the overall evidence and found that the appellant has consistently maintained that although he does not know who the alleged attackers were, he believed them to be from the Taliban, because there had been a long-standing disagreement between his parents as to whether he and his siblings should follow their father's involvement with the Taliban. The appellant was 13 years of age when he arrived in the United Kingdom and therefore it not expected that he would have a perfect understanding of the events and provide a

perfectly consistent description as his age. In fact, having read the interview record and his initial statement each of his subsequent statements reveals that the appellant's account as being appropriately coherent, consistent and detailed, despite his age at the time, at each point.

9. The appellant's evidence is accepted that unknown armed men raided his family home in 2008, killed his brother and that his three remaining brothers have since disappeared. He believes that the raid was carried out by members of the Taliban, whereas Dr Guistoizzi in his reports considers it may have been carried out by anti-Taliban militia aligned with the authorities, taking revenge because of the appellant's father's role in the Taliban. It is however not necessary to resolve this question as to whether it was the Taliban or militia because the respondent clearly states that the areas controlled by armed militias, the Afghan State will be unable to provide effective protection and that in other districts the authorities will generally be unable to offer an effective protection.
10. Taking into account all the evidence and the respondent's own view about effective protection in contested areas there remains a real risk to the appellant of being targeted by armed groups in his home area whether it is by the Taliban or by government linked militias. Therefore, the appellant faces risk of harm of sufficient seriousness to amount to persecution, including a risk of death.
11. In respect of possible relocation to Kabul, the Judge considered the country guidance case of **AS**. The Judge found that the appellant will be of low-level interest to the Taliban in Kabul as he will not be at real risk from the Taliban in Kabul.
12. The Judge stated that the expert report of Dr Guistoizzi states that if the appellant was to be detained by the Afghan authorities because of his family links to the Taliban, he would be at high risk of various forms of abuses at the hands of the security services. The Judge concluded that the appellant has discharged the burden upon him to demonstrate a real risk of lack of safety in Kabul.

### **The Grounds of Appeal**

13. The grounds of appeal state the following which I summarise. The Judge found that the appellant being a son of a Taliban commander would be at risk from the Afghan authorities if he was to relocate to Kabul. The Judge placed a lot of reliance on to expert report of Dr Guistoizzi, a recognised expert on Afghanistan. The background evidence states that even though they are confirmed incidences of arbitrary arrest and detention alongside numerous appearances attributed to Afghan security forces with an overall lack of accountability, it does not mention that family members of the Taliban are routinely targeted by the authorities. Therefore, it is unclear on what basis the Judge made such a finding.
14. The Judge found that the appellant could not benefit from the reconciliation process of the Afghan authorities, but the expert report

states the appellant could greatly reduce the risk from the authorities if he acceded to formal reconciliation with them, but that would then expose him to risk from the Taliban. In light of this it is unclear how the Judge was able to come to this conclusion. The expert states that the appellant could still reconcile with the government, but to do so that he should formally admit that he was involved in the insurgency and would then be exposed to the risk of being targeted as a defector". The Judge found that the country guidance case of **PM** is more than a decade old, so this should have been applied to the appellant as it is still a country guidance case.

### **The hearing**

15. At the hearing I heard submissions from both parties as to whether there is an error of law in the decision of the First-tier Tribunal Judge. Mr Candola said that the appellant has provided evidence to show that the Taliban does punish children of adversaries but the question is whether he would be identified as the son of his father on his return to Afghanistan. Therefore, the appellant faces no risk from the Taliban but the question to be determined was whether he faces risk from the Afghan authorities given that the events occurred some 10 years ago. He asks that the appeal be allowed.
16. Mr Foot adopted his grounds of appeal and said that the appellant remains at risk from Afghan security agencies who operate outside of the Taliban and if they think that the appellant would be useful for them they will arrest him. Any reconciliation would be ignored by the authorities. The appellant does face risk from the Afghan authorities.

### **Discussion and findings as to whether there is an error of law**

17. I have considered the decision of the First-tier Tribunal with care. The Judge considered all the evidence carefully and accepted the appellant's claim that his father was a commander of the Taliban. He also accepted that the appellant would be at risk in his home area of Kundus. The Judge's findings were made on the evidence before him and there is no indication that he fell into material error as to the law or the facts.
18. The Judge found that the discrepancies in the appellant evidence highlighted by the respondent can be explained and considered on the basis that he was a child when the events occurred. The Judge found that, in any event, the appellant had been consistent and also gave coherent and believable evidence. There is no challenge to these findings of fact by the Judge.
19. The challenge is whether the Judge was entitled to find that the appellant cannot relocate to Kabul given his profile as a son of a Taliban commander. The Judge relying on the expert report and the country guidance case of **AS** found that the appellant is not in any danger from the Taliban in Kabul as he would be considered a low-level target for them. This was a proper finding on the facts and background evidence and it has not been challenged.

20. However, the Judge found that the appellant would be at risk from the Afghan authorities in Kabul as he was the son of a Taliban commander and for that finding he relied on the expert evidence. He said that this point was not directly addressed in the recent country guidance of **AS** but he considered the country guidance case of **PM and others Kabul - (Hisbi-i- Islami) Afghanistan CG [2007] UKAIT 00089** which noted was promulgated over 10 years ago. The Judge relied on the report of Dr Guistoizzi which stated at paragraph 11 that there is evidence of the targeting of family members of members of the Taliban by the Afghan authorities, including the increase in the rounding up of suspected insurgents and the practice of arresting relatives to force other relatives to hand themselves in. The expert stated that the appellant would be targeted due to his profile. The expert was also of the opinion that once the appellant settles down into Kabul, his presence and identity would become known this would put him at risk. The Judge was entitled to rely on the evidence of a renowned expert of Afghanistan.
21. The Judge then referred to the country guidance case of **PM** which stated that a person returning from the United Kingdom after a long absence from Afghanistan, who had previously been with the Hezbi-i-Islami, would not be seen by the authorities as sufficiently linked to the insurgency to be of interest to them in 2007. The judge noted that **PM** does not directly address the situation of a person such as this appellant. The Judge relied on further and more recent evidence by Dr Gustozzi for his finding that there is a reasonable likelihood that the appellant would be at real risk if he could not safely re-establish himself in Kabul because of his family links to the Taliban as the son of a Taliban commander. The Judge found that the appellant has discharged his burden of proof and had demonstrated a real lack of safety in Kabul. There is no material error of law in this reasoning.
22. The respondent makes the point that the expert stated that the appellant is very likely to be a person who could effectively benefit from the formal reconciliation process of the Afghan government. The Judge however took into account the expert reports in which the opinion was expressed that the numbers of those detained by the Afghan authorities on suspicion has significantly risen since the first report standing at around 27,500 people suggesting the situation is worsening for those under such suspicion. The Judge relied on the expert report which stated that those detained by the authorities are at serious risk of mistreatment including beatings on the soles of their feet, legs and shoulders, suspension, electric shocks and sexual violence. The expert opined that if the appellant were to be detained by the Afghan authorities because of his family links with the Taliban, he would be at high risk of those forms of abuse at the hands of the security forces. Therefore, the Judge found that even if the appellant was not at risk from the Taliban in Kabul, he would be at risk from the Afghan authorities and gave cogent and credible reasons for his conclusion.
23. I find that there is no material error of law in the decision of the First-tier Tribunal for it should be set aside. There is no material error in the

decision and I find that the grounds of appeal reveal no more than a disagreement with the Judge's conclusion on the evidence before him. The First-tier Tribunal's decision stands.

**Decision**

The Secretary of State's appeal is dismissed

Signed by

A Deputy Judge of the Upper Tribunal  
Ms S Chana

Dated this 22<sup>nd</sup> day of October 2018