



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

**Appeal Number:** HU/16359/2017  
HU/16364/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 8<sup>th</sup> April 2019

**Decision and Reasons Promulgated**  
On 30<sup>th</sup> April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MAHMOOD KHALIL  
SABAR BIBI  
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Woodhouse (Solicitor, HS Immigration Consultants)  
For the Respondent: Miss S Cunha (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants in this appeal are nationals of Afghanistan who are currently living in Pakistan. Their application to come to the UK for settlement to join their son was refused for the reasons given in the Refusal Notice of the 10<sup>th</sup> of October 2017. Their appeals were heard by First-tier Tribunal Judge Chapman at Birmingham on the 8<sup>th</sup> of November 2018 and dismissed for the reasons given in the decision promulgated on the 12<sup>th</sup> of November 2018.
2. The Judge found that the Appellants were supported financially in Pakistan by their son, the Sponsor, who had refugee status in the UK and is now a British citizen. The Judge found that

the Appellants could relocate away from Nangahar province to Kabul where another lives and that they would not be in danger there. Alternatively the Judge found that the Appellants could continue to reside in Pakistan and that the circumstances were not such that their exclusion from the Appellant would be disproportionate.

3. The Appellants sought permission to appeal to the Upper Tribunal in grounds of the 22<sup>nd</sup> of November 2018. It was argued that the Judge erred in the assessment of the risk to the Appellants in Kabul having accepted the risk to them in Nangahar. This was based on the First Appellant's profile as former government employee who had been targeted by the Taliban and the expert evidence had been misrepresented. Secondly it was argued that the Judge was wrong to reject the evidence relating to the Appellants' circumstances in Pakistan and also in respect of the proportionality assessment. Permission was granted with it being observed that it was arguable that the Judge not have considered AS (Afghanistan) and the failure to consider the case may have adversely affected the consideration of the other evidence.
4. There was no rule 24 response from the Home Office. At the hearing the parties made submissions in line with their respective positions. These are set out in the Record of Proceedings and are referred to where relevant below.
5. At the start of the hearing it was accepted that the Appellants did not meet the Immigration Rules and it is not suggested that that was wrong. Not only do the Appellants not meet the requirements for family reunion it is also clear that the Appellants do not meet the requirements for admission as adult dependent relatives under Appendix FM. This was dealt with in paragraph 60 of the decision in which the Judge noted the absence of evidence to support their claimed difficulties. That is also relevant to the second principal basis of the appeal to the Upper Tribunal and is considered further below.
6. The first point raised by the Appellants is that they maintain that they would be at risk in Kabul by virtue of the First Appellant's profile. The Home Office submit that having resigned from his role the First Appellant no longer has a profile that would attract the interest of the Taliban in Kabul whatever the position would be in Nangahar.
7. The report of Dr Giustozzi considered the danger to collaborators in paragraphs 11 and 12. Most significantly in paragraph 12 he observed that quitting the collaborator job or activity would not be enough to avoid targeting by the Taliban. Given the discussion of the reach of the Taliban and the danger to the First Appellant in Nangahar it follows that there would be a risk to the Appellants in Kabul. The Judge appears to have overlooked the view of Dr Giustozzi referred to in paragraph 12 and that has not been dealt with in respect of the findings made regarding the efficacy of internal relocation, even with the support of a son in Kabul.
8. That does not dispose of the challenges to the appeal as the Judge had found that the Appellants could continue to live in Pakistan. The Appellants' circumstances in Pakistan were considered in paragraphs 58 to 61 of the decision. The Judge found that the evidence did not show that their circumstances were unjustifiably harsh. In this regard the observations of the Judge granting permission to appeal to the Upper Tribunal are not relevant as the country guidance relating to Afghanistan has no bearing on the discussion below.
9. In attaching little weight to the evidence of the Appellant's neighbour in paragraph 60 that was not solely by reference to the Judge's view of her independence or lack of it but also in the context of other evidence that had been submitted. That evidence did not support the claims

that had been made about the level of support required or their claimed inability to care for themselves. If the lack of independence had been the only reason given there might have been some argument but the complaint made in that respect took that part of the findings out of context and does not show an error.

10. While Dr Giustozzi referred to a possibility of constant harassment there is nothing in the evidence that suggests that the Appellants are suffering from such difficulties. As it stands Dr Giustozzi's observation remains just that and is not a statement of the circumstances of the Appellants. The evidence does not show that the Appellants cannot continue to live in Pakistan as they have now done for some time and it cannot be said that their circumstances are unduly harsh.
11. In the concluding paragraphs of the decision Judge Chapman found that the Appellants' circumstances did not justify a grant of leave under article 8 outside the rules. The Appellants rely on the case of AT and another (Article 8 ECHR – Child Refugee – Family Reunification) Eritrea [2016] UKUT 00227 (IAC). That case is somewhat different from this in that the UK based Sponsor was a minor rather than an adult and the Appellants were living in circumstances described as destitute. The circumstances in that case were very different from both the point of view of the Sponsor and the Appellants themselves and much reliance was placed on the Sponsor being a minor. In the circumstances I find that the observations based on minor refugee do not assist with this the assessment that had to be made in this appeal.
12. Whilst the Judge may have erred in respect of the Appellants' ability to live in Kabul given the observations of the expert with regard to the danger to the First Appellant from the Taliban that error is not material. When the Judge dismissed the appeal he observed that the Appellants had options, the alternative was to remain in Pakistan and the findings made in respect of that aspect of the case are sustainable and are not infected by any error.
13. With regard to the position under article 8 the case of AT is not of any real assistance. The circumstances under consideration were very different from those in this appeal and covered the unusual situation where a family had fled and a minor child had managed to get to the safety of the UK in essence revealing a gap in the Immigration Rules for the circumstances that prevailed. The evidence that related to the Appellants circumstances did not show that their position in Pakistan could be said to be unduly harsh and the Judge was entitled to find that the circumstances were not such that leave to enter the UK could be justified under article 8 outside the Immigration Rules.
14. In summary the decision, read fairly and as a whole, does not disclose any material error with regard to the assessment under article 8 of the ECHR and there is no justification for setting the decision aside.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.


I do not set aside the decision.

## Anonymity

The First-tier Tribunal did not make an anonymity direction and I make no order.

**Fee Award**

In dismissing this appeal I make no fee award.

Signed:   
Deputy Judge of the Upper Tribunal (IAC)  
Dated: 25<sup>th</sup> April 2019