Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00038/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25 July 2019	**On 2 August 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

[E N]
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Slatter, Counsel
(instructed by Sohaib Fatimi Solicitors)
For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge Scott-Baker on 21 June 2019 against the decision to dismiss the Appellant's protection appeal made by First-tier Tribunal Judge Aziz in a decision and reasons promulgated on 21 March 2019.

2. The Appellant is a national of Afghanistan, born on 21 January 2005, and thus a minor. His protection claim was refused by the Respondent on 11 September 2018.

3. Judge Aziz found that the Appellant's fear of return was not objectively well founded, for a number of reasons: see [51] onwards of his determination where those reasons are set out in detail and which need not be repeated here. Thus the appeal was dismissed.

4. Permission to appeal was granted by First-tier Tribunal Judge Scott-Baker because it was considered arguable that the judge had not considered the practicalities of return of the Appellant and that his findings that adequate reception facilities were in place were insufficiently reasoned. It was also arguable that the Appellant who is a child had not had his best interests considered.

5. The Respondent filed a rule 24 notice in letter form dated 3 July 2019, opposing the onwards appeal.

6. Mr Slatter for the Appellant relied on the grounds submitted and the grant of permission to appeal. The Appellant's return was not hypothetical but actual, as the Appellant had been granted no leave to remain at all by the Respondent. There was no evidence of a removal plan. The judge's finding that the Appellant could be safely met at the airport and accompanied to his home village by his family was an entirely speculative assumption. It could not be assumed that the family would be willing to assist in receiving him. The safe return was the Respondent's responsibility. The facts had not been fully grasped by the judge and he applied the wrong authorities, perhaps misled by the CIPIN.

7. It was further submitted that even if the Appellant could be safely returned to his family, the judge's overall consideration of objective risk was flawed. The Appellant, having been kidnapped once, as the judge had accepted, would be unable to lead a normal life.

The judge had been mistaken to find that there had been no further security measures to protect the family, which was not supported by the evidence. The determination should be set aside and the appeal reheard.

8. Mr Walker for the Respondent relied on the rule 24 notice as served. The judge had addressed every point and had reached findings open to him. There was no material error of law in the First-tier Tribunal's determination and the judge's findings were sustainable. The appeal should be dismissed.

9. There was nothing which Mr Slatter wished to add by way of reply.

10. The grant of permission to appeal was in the tribunal's view an over generous one, effectively accepting that it was arguable that an experienced judge of the First-tier Tribunal had made a series of egregious, basic errors. Such allegations are routinely made, without proper reflection, drawing out meritless appeals. The grounds lodged in the present appeal amount to no more than elaborate sophistry, bordering on the misleading as seen in the attempt to revive the Article 8 ECHR appeal which was rightly conceded by the Appellant's counsel at the hearing, as the judge recorded at [64]. In reality the grounds are simply an extended verbose expression of disagreement with a full and careful decision.

11. There was no misunderstanding by the judge of the evidence, which he considered meticulously. His findings might even be considered generous. Anxious consideration was applied abundantly. The judge did not engage in speculation but drew proper inferences from his primary findings. It was, for example, entirely open to him to find that there were no additional security arrangements at the Appellant's family home, notwithstanding the historic kidnapping: that was drawn from the Appellant's own evidence.

12. The assertion that the judge erred by following the authorities about *hypothetical* removal when *actual* removal was to take place was not easy to follow. There is and can be no difference between the two. The tribunal has to consider what might happen in order to determine whether or not an appellant faces a real risk on return. There was no requirement for the Home Office to submit a removal plan for the approval of the

tribunal, since that it is an operational matter on which the tribunal could have no view once it agreed (as in the present appeal) that return could be safely effected. Judge Aziz addressed all relevant matters at [62] of his determination, as Mr Walker submitted, and gave detailed and sound reasons why the Appellant would not face a real risk and could resume life with his wealthy family.

13. In the tribunal's judgment the First-tier Tribunal Judge had reached careful and sustainable findings, in the course of a thorough, balanced determination, which securely resolved the issues and applied the correct lower standard of proof. The Appellant's best interests taking into account his minority and past experiences were plainly to rejoin his family, since he could do so safely, as the judge found. The tribunal finds that there was no error of law and the onwards appeal must be dismissed.

DECISION

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed **Dated** 25 July 2019

Deputy Upper Tribunal Judge Manuell