



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

Appeal Number: PA/03576/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 26 September 2019**

**Decision & Reasons Promulgated
On 9 October 2019**

Before

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MA

(ANONYMITY DIRECTION MADE)

Respondent

**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 his 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.

Representation:

For the Appellant: Mr P Singh, Senior Home Office Presenting Officer

For the Respondent: Ms M Azmi, Counsel, instructed by Central England Law Centre

DECISION AND REASONS

Introduction

1. In this decision we shall refer to the Appellant before the Upper Tribunal as “the Secretary of State” and to MA as “the Claimant”.
2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Howorth (“the judge”), promulgated on 26 June 2019, in which he allowed the Claimant’s appeal on the basis that there was a real risk of him suffering serious harm if returned to Afghanistan by virtue of indiscriminate violence, with reference to Article 15(c) of the Qualification Directive 2004/83/EC.
3. The Claimant had based his protection claim on the alleged activities of his father and the fact that these had created an adverse interest from the Taliban. It was said that the Claimant himself would be at risk by virtue of the familial connection if he were to be returned to that country. In respect of a possible relocation to Kabul, it was said that a combination of personal characteristics would make this an unreasonable option.

The judge’s decision

4. The judge found a number of core aspects of the Claimant’s case to be incredible. In particular he rejected the account of the Taliban having been interested in his father. It was also found that the Claimant’s father and brother had not been killed, as claimed, and that there was no risk from the Taliban anywhere within Afghanistan.
5. The judge did accept that photographs of the Claimant together with what are described as “girls” had been apparently seen by members of the Taliban. It was also accepted that in June 2019 the Claimant’s family home had been “bombed”.
6. Having concluded that the Claimant was not a refugee, the judge went on to consider the issue of humanitarian protection. He reiterated the absence of any risk in Kabul emanating from the Taliban and at para 25 said as follows:-

“I must take into account the particular circumstances of the Appellant including his age, nature and quality of support network or connections with Kabul/Afghanistan, physical mental health, language, education and skills. The Appellant has no connections in Kabul, is suffering from mental health problems and is receiving counselling and medication for depression.”
7. In the following paragraph the judge makes reference to the existence of the photographs of the Claimant and concludes that he “could be perceived as westernised on return”. Finally, brief reference is made to two items of country information emanating from UNHCR and the BBC News website. The judge took the view that the security situation “generally” in Afghanistan had worsened over time.

8. Ultimately, the judge found there to be a real risk, with reference to Article 15(c) of the Qualification Directive, and duly allowed the appeal.

The grounds of appeal and grant of permission

9. In her grounds of appeal, the Secretary of State asserts that the judge had been wrong to purportedly depart from the decision of the Upper Tribunal in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 and had failed to provide any or any adequate reasons in respect of the matters relied on as showing there to be a real risk to the Claimant in Kabul.
10. Permission was granted by Designated First-tier Tribunal Judge Woodcraft on 30 July 2019.

The hearing

11. Mr Singh relied on the grounds. He submitted that an aspect arising out of AS which the judge had failed to grapple with was the fact that the Upper Tribunal had reaffirmed the validity of previous country guidance relating to Article 15(c), namely AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC). Given that the judge had based his decision in this appeal on Article 15(c), it was an error not to have specifically addressed AK. In addition, the various factors relied on by the judge with reference to paras 25 and 26 of his decision were inadequately reasoned and no cogent basis had been put forward for purportedly departing from AS.
12. Mr Azmi (quite rightly in our view) accepted that the judge had not made an express finding on whether there was a risk in the Claimant's home area. To this extent he accepted that there was a lacuna in the decision (we note that this particular issue is not raised in the Secretary of State's grounds of appeal). He also accepted that AK had not been specifically mentioned by the judge. However, the various the factors taken into account in paras 25 and 26 were all relevant and the overall conclusion had been open to the judge.

Decision on error of law

13. We conclude that there are material errors of law in the judge's decision.
14. Having decided to base his decision on Article 15(c) and the apparent existence of a real risk of serious harm arising from indiscriminate violence in Kabul, it was incumbent upon the judge to deal with the relevant legal framework. This included dealing with the guidance set out in AK. AK is not referenced in the decision. Whilst it is correct that it does not expressly feature in the grounds of appeal either, it is clearly stated in AS that the guidance on Article 15(c) in AK remained valid and that validity applied as at the date of hearing before the judge. As the judge relied on AS, we are satisfied that the grounds of appeal properly encompass the submission put forward by Mr Singh. AK clearly states that absent certain relevant personal characteristics which would, in effect, stand an

individual out, there was no risk of indiscriminate violence in Afghanistan as a whole. In turn, the judge's failure to consider AK is an error.

15. The judge identified a number of personal characteristics which, if relevant and adequately reasoned, may potentially render the failure to have referred to AK immaterial on the ground that an alternative conclusion that residing in Kabul would be unduly harsh may have been open to him. However, we conclude that there are errors in respect of the personal characteristics identified and relied on.
16. The judge relies on the photographs of the Claimant and the possible perception as being "westernised". There are two difficulties with this issue. First, although the photographs had apparently been seen by the Taliban (and only them) and this had caused an adverse interest, the judge has then gone on to expressly state that there was no risk to the Claimant from the Taliban anywhere within Afghanistan. There is an inconsistency on the face of the decision. Second, AS specifically rejects the issue of perceived westernisation as being a risk factor (see para 187). The judge may on one view have purported to depart from the guidance in AS (which we note had already by that time been remitted by the Court of Appeal to the Upper Tribunal, albeit on a narrow ground), but at no stage does he set out or apply the relevant test for such a departure as expressed in, amongst other authorities, SG (Iraq) [2012] EWCA Civ 940. On either view, there is an error here.
17. The two items of country information cited in para 26 do not apparently deal with Kabul and there is, in our view, inadequate reasoning as to why that evidence (and that alone) justified a departure from country guidance.
18. The judge has also relied on the absence of any connections of the Claimant in Kabul itself. However, on the judge's findings, all members of the Claimant's family still resided in Afghanistan. The judge fails to provide any reasons as to the effect of this fact in terms of any potential support from the family, notwithstanding that they did not themselves reside in the capital. Further, we know from AS (and the country information underpinning it) that the absence of a social network would not in the normal run of events be a significant factor making internal relocation to Kabul an unreasonable option, let alone form part of a basis of a real risk of indiscriminate violence.
19. In respect of the Claimant's mental health, the only evidence that we can see that may have been before the judge was a letter from an organisation called Elysian Field dated 14 June 2017:

"In a general meeting with [MA]'s lead professional, staff made them aware of the concerns regarding [MA]'s mental well-being. Staff were advised to book [MA] a doctor's appointment. Staff then booked this appointment and supported [MA] to attend on the 7th June. [MA] has been referred for counselling at the Refugee Centre in Coventry by

the doctor. [MA] has also been started on a course of Sertraline 50gm once a day for depression. This is to be reviewed every 2 weeks.”

20. With respect to the author of the letter, it is brief in nature and did not emanate from a medical professional. It was also some two years old at the time of the hearing before the judge. He did not refer to this item of evidence at all, and in our view there is a lack of adequate reasons as to why, on the basis of this evidence alone, any mental health problems as at the date of hearing would have created a material personal characteristics for the purposes of showing a real risk, or indeed of rendering internal relocation unreasonable.
21. On a cumulative basis, the errors identified above are material, with the result that the judge’s decision should be set aside.

Disposal

22. Given the nature of the errors and the need for relatively extensive fact-finding (including whether there is in fact a risk to the Claimant in his home area), we have decided that the appropriate form of disposal is to remit this appeal to the First-tier Tribunal. Whilst there have been adverse credibility findings against the Claimant, it would be artificial and potentially a hindrance to the First-tier Tribunal if we were to preserve any of the findings made by the judge. Therefore, the appeal will be reheard afresh with no preserved findings.

Notice of Decision

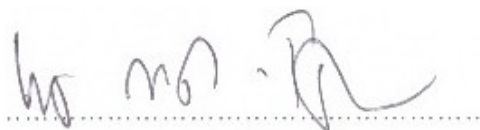
The decision of the First-tier Tribunal contains errors of law and is set aside.

The appeal is remitted to the First-tier Tribunal.

Directions to the First-tier Tribunal

- (1) The remitted hearing shall not be heard by First-tier Tribunal Judge Howorth;
- (2) There are no preserved findings of fact;
- (3) There will be a need for a Pashtu interpreter;
- (4) There is a 4-hour time estimate for the remitted hearing.

Signed



Date: 30 September 2019

Upper Tribunal Judge Norton-Taylor