



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

Appeal Number: PA/06756/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17 June 2019**

**Decision & Reasons Promulgated
On 05 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR S F
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Stuart-King, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant, a male citizen of Afghanistan who claimed to have been born on 11 January 2001, appealed to the First-tier Tribunal against the decision of the respondent dated 4 July 2017 to refuse the appellant's asylum claim. In a Decision and Reasons, promulgated on 10 April 2019, Judge of the First-tier Tribunal Greasley dismissed the appellant's appeal. The appellant appeals with permission on the grounds that:

Ground 1

- (1) The judge erred in his assessment of the appellant's age;
- (2) The judge erred in assessing risk on return.

Error of Law Discussion

2. It was argued, in both the grounds and in oral submissions before me, that the judge erred in reaching the age assessment he did that the appellant was likely to be someone who was aged 22 at the appeal hearing and not someone who had just turned 18 years of age.
3. It was the argument on behalf of the appellant that the judge erred in making findings without reference to any of the evidence. However, it was accepted by both parties before the First-tier Tribunal and not disputed before me that the judge did not have any age assessment report before him to assist him (which the judge noted at [36]). The judge had already noted at [21] that neither party was in possession of any age assessment and both representatives were agreeable to the judge considering the appeal together with all the other available evidence and considering the age assessment accordingly.
4. The judge correctly directed himself, including at [33] to [36], as to how to properly consider the evidence and I agree with Ms Everett that it was difficult to see what else the judge could have done. I do not agree that the judge's findings were made without reference to any of the evidence or that they were based solely on appearance; the judge specifically directed himself in the earlier paragraphs that it was important to consider all of the evidence cumulatively and this included the appellant's evidence and that of his brother. The judge set out at [36] that he took into consideration all the oral and documentary evidence including the oral evidence of the appellant, both in-chief and in cross-examination. Having considered all the evidence it was open to the judge to find as he did that the appellant was more likely to be 22 rather than just turned 18.
5. In any event, even if the judge was wrong, which I am not satisfied has been demonstrated, at [44] the judge went on to make an alternative finding that if the appellant had been born as he claimed on 11 January 2001 and was now therefore just turned 18, the judge still concluded on the basis of all the evidence that he had not provided a consistent or credible account of events in Afghanistan or his family's circumstances. There was no material error under ground 1.
6. In relation to ground 2 it was argued on behalf of the appellant that the judge's assessment of risk on return was flawed. The grounds were based on the appellant's vulnerability and the fact that such vulnerability did not cease when an individual becomes an adult (**RG (Automatic deport - Section 33(2)(a) exception) Nepal [2010] UKUT 273**). The grounds were based primarily on an individual's vulnerability given the appellant's

relatively young age. However, Judge Greasley took into consideration and assessed the appellant's evidence including making appropriate allowances for the fact that even though he was now an adult he was still a young man and was still a young man when he first made his asylum claim. It was clear therefore that Judge Greasley had in mind that young age when considering return to Afghanistan.

7. There is no error in the judge's findings including that it was not accepted that the appellant had no family members in Afghanistan who could assist him on return and the judge specifically rejected the appellant's claims not to have any family support or other family network and found that he had not provided a truthful account of his family circumstances.
8. I disagree with Ms Stuart-King that it was incumbent on the judge to set out exactly which family members the appellant had available to him when it was the judge's clear findings that he had a family who could assist him on return.
9. Although not in the grounds, Ms Stuart-King relied on the recent Court of Appeal decision in **AS (Afghanistan) [2019] EWCA Civ 873** which remitted the country guidance in **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** including to consider whether that assessment required a consideration of its country guidance including in light of the 2018 UNHCR guidelines that "given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the city".
10. The guidance in **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** is summarised as follows in the headnote:

"Risk on return to Kabul from the Taliban

(i) 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.

Internal relocation to Kabul

(ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

(iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with

Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

- (iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.*
- (v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.*

Previous Country Guidance

- (vi) The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*
- (viii) The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision."*

- 11.** The Court of Appeal remitted the country guidance on limited grounds; permission was granted on only two grounds, refusing permission on the three remaining grounds challenging the Tribunal's reasoning on the living conditions that returned asylum-seekers could expect to enjoy on return to Kabul. The Court of Appeal dismissed the second ground before it as to whether the Tribunal had misunderstood/misapplied the principle that the conditions a returned refugee will face should be considered in the context of the prevailing country conditions. The appeal was allowed by the Court of Appeal on ground 1 in relation to an error in the Tribunal's finding as to the scale of the risk of injury to which residents of Kabul were exposed from 'security incidents', the Tribunal having erroneously recorded the risk of casualties as being 0.01% rather than 0.1% of the population (of Kabul province, of 4.5 million). As identified in the Court of Appeal decision, the correct evidence still indicated that 99.9% of the population of Kabul province would not be casualties.
- 12.** It is in the context of that background information and level of risk that the judge reached the sustainable findings he did in respect of the return of this appellant as a failed asylum seeker.

- 13.** I agree with Ms Everett that in this particular case the judge had found the appellant not to be credible and had found that he had family in Afghanistan that he could return to. Given that the appellant has been found to be an adult (and indeed would be regardless of the age assessment) I accept that there is no material error in the judge's assessment of the risk on return at the date of decision and that despite the ongoing difficulties including in Kabul, this appellant, who had shown considerable resourcefulness in travelling to the United Kingdom, with the added protection of family support and no health issues, could be safely returned to Afghanistan.
- 14.** As Ms Everett highlighted, it was not the finding in the Court of Appeal that it was unduly harsh for all returnees to Kabul at the present time. I am of the view that the fact that the Court of Appeal have indicated that it is for the Upper Tribunal to decide, in light of the UNHCR 2018 guidelines which recommend that internal flight to Kabul is generally not available, whether a more extensive reconsideration of the country guidance in **AS** is now required, does not mean that the First-tier Tribunal fell into error in this appeal.
- 15.** It was not the case that the judge's findings were limited to reliance on the country guidance. The judge carefully considered all of the evidence before him including the background country information and the CPIN on Afghanistan which highlighted the risk factors which should be considered, including the particular profile of the individual person. The judge reminded himself (at [43]) that each case must be considered on its facts. Contrary to the original grounds, the judge adequately considered all the factors relevant to return to Kabul. The judge's findings that this appellant does not have a profile and did not fall into any of the risk categories are sustainable.
- 16.** The judge assessed this particular appellant as not at risk including on the basis of all the relevant country information evidence. The fact that subsequent to that decision the Upper Tribunal has been asked to revisit the country guidance, which may entail a wider review than the narrow basis on which it was remitted, does not disclose an error in the judge's decision at the date of decision.

Notice of Decision

- 17.** The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

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.

Signed

Date: 28 June 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed

Date: 28 June 2019

Deputy Upper Tribunal Judge Hutchinson