



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

Appeal Number: PA/11918/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 July 2019**

**Decision & Reasons  
Promulgated  
On 2 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**NR  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Gajjar, instructed by SMA Solicitors

For the Respondent: Mr Bramble, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is an Afghan national who was born on 24 April 1993. He appeals against a decision which was issued by First-tier Tribunal Judge Rothwell on 15 March 2019, dismissing his appeal against the respondent's refusal to grant him international protection.

*Background*

2. The appellant claimed asylum on the basis that he was in fear of the Taliban. He stated that he had lived in Kabul since he was around six years old and that he had worked in haulage, for a construction company there. He drove a lorry in and around Kabul, and held a special permit which would allow him to drive into the Ministry of the Interior ("Mol"). In June 2015, the appellant's lorry was stopped by the Taliban as he was driving from Logar Province to Kabul. He was blindfolded and brought in front of senior Taliban members. These men told the appellant that he was required to assist them with a plan to explode a bomb inside the Ministry of the Interior. They stated that explosives would be loaded onto his lorry on a date in the future and that he would be required to drive it into the Mol. It was not clear to him whether this would be a suicide mission. Threats were made, however, and the appellant agreed to co-operate so that he could be allowed to leave. Having done so, he drove to the nearest police base and reported what had happened. The appellant gave his account and was allowed to proceed onwards to Kabul. He was not allowed to enter the Mol, however, and his security pass was taken from him. On reporting this to his employer, he was told that he could no longer work for them because he was of interest to the Taliban. The appellant decided that he was not safe in Afghanistan and made his way to the UK to claim asylum, which took some time due to difficulties along the way.
3. The appellant was interviewed by the respondent. During that interview, he added that two drivers from his company had been killed and burned by the Taliban and that he had been contacted by the Taliban, stating that he would be killed by them because he had disobeyed their instructions.
4. The appellant's claim was refused by the respondent in a refusal letter dated 2 November 2017. The respondent did not accept that the appellant had been a truck driver; that he had been targeted by the Taliban; or that he would be at risk from them on return. In the alternative, the respondent suggested that the appellant could relocate internally, to Kabul, so as to obviate any risk from the Taliban. This was the first of a number of wrong turns in this case; the appellant is from Kabul and it cannot sensibly be suggested that he can relocate to his home area.

#### *Appellate History*

5. The appeal came before Judge Dineen, sitting at Hatton Cross on 15 December 2017. He heard oral evidence from the appellant and he considered a large number of documents, amongst which were an expert report on the risk to the appellant in Afghanistan and letters from his company and his mosque in Afghanistan, stating that the Taliban continued to visit their

premises and to ask for the appellant by name. Having considered the evidence in the round, Judge Dineen concluded that the appellant had given an account which was reasonably likely to be true and that he would be at risk from the Taliban on return to Kabul. Judge Dineen's decision was issued on 22 June 2018, more than six months after he had heard the appeal.

6. The respondent sought permission to appeal against Judge Dineen's decision, stating that AS (Afghanistan) CG [2018] UKUT 118 had been issued between the date of the hearing before Judge Dineen and the date on which he issued his decision and that he ought to have reconvened the hearing in order to consider the effect of that decision, particularly in relation to the question of whether the appellant could "internally relocate to Kabul to avoid the Taliban". This was the second wrong turn in this case; as I have said above, the appellant is from Kabul and no question of internal relocation to his home area could logically arise.
7. Permission to appeal was granted by the FtT, however, on the basis that the judge had arguably erred in law in failing to apply a country guidance decision which had been issued between the date of hearing and the date of promulgation.
8. The appeal came before a Deputy Upper Tribunal Judge on 14 September 2018. The appellant was represented by Mr Gajjar at that hearing, as he was before me. Mr Gajjar submitted that there was no error of law in Judge Dineen's decision. The Deputy Judge concluded as follows:

"[6] The judge failed entirely to consider whether internal relocation to Kabul was an option available to the appellant. The judge made a material error by not considering the country guidance case in respect of possible relocation to Kabul even if he found the appellant credible."
9. The Deputy Judge then remitted the appeal to be heard by another judge at Hatton Cross, preserving the findings made by Judge Dineen as to his credibility, and directing that the issue was whether "relocation to Kabul" is a viable option for this appellant.

#### *The Decision Under Challenge*

10. So it was that the appeal came before Judge Rothwell on 27 February 2019. On any view, her task was a difficult one. Confronted with an appellant who had lived and worked in Kabul, and had been sought there by the Taliban, she was required by the DUTJ's decision to consider whether he could internally relocate to Kabul. She heard further evidence from the appellant and she received further documentary material from him. The Presenting Officer submitted that the appellant would not be at risk in Kabul because he was not, in the words of the first

paragraph of the headnote in AS (Afghanistan) a senior figure in the government, a spy or a security operative. For the appellant, counsel (not Mr Gajjar) submitted that the appellant was from Kabul and had been targeted there. There had been no error of law in Judge Dineen's decision and the question of relocation did not arise.

11. Having considered the evidence and set out the country guidance in AS (Afghanistan), Judge Rothwell concluded as follows:

"[34] I am bound by the country guidance decision in the case of AS. The Tribunal assessed the expert evidence of Dr Giustozzi and the ability of the Taliban to track down individuals via informers including agents within the Government within Afghanistan and within Kabul. The case addresses the particular risk in Kabul and not just the issue of internal relocation there. The Tribunal assessed that a person would not be at risk unless they were "A person who is of lower level interest for the Taliban (ie not a senior government or security services official or a spy) and the appellant does not fall within any of these categories.

[35] I have seen the letters from the appellant's ex-employers and I agree that they are vague as to when the Taliban came asking about the appellant, given that the incident occurred as long ago as in 2015 and according to the appellant the incident with the lorry drivers occurred shortly after his problems.

[36] Therefore applying the case of AS, as I am bound to do, I find that the appellant would not be at risk of serious harm on return to Afghanistan and I do not find that the appellant is a refugee."

12. The grounds of appeal which were presented to the FtT, and thereafter to Upper Tribunal Judge McWilliam on renewal, lacked focus. A challenge was presented to the paragraphs of Judge Rothwell's decision which I have set out above but the mainstay of the grounds referred to parts of the headnote to AS (Afghanistan) which were simply irrelevant to the issues. In granting permission to appeal, however, Judge Mc William sorted the wheat from the chaff when she stated that it was arguable that relocation to Kabul could not have been the issue when the appellant is from that city.

### *Submissions*

13. Mr Gajjar submitted before me that the judge had erred in failing to factor the preserved findings made by Judge Dineen into account in reaching the conclusion she did at [35]. It had been accepted by Judge Dineen that the appellant had been sought by the Taliban in Kabul and the further evidence before Judge Rothwell was to be considered in light of that acceptance. The judge had failed to do so and had reached an illogical conclusion

when she decided that the appellant would not be at risk in Kabul.

14. Mr Bramble had initially been minded to submit that the grounds of appeal simply failed to identify the point now made by Mr Gajjar, and that he should not be permitted to augment those grounds without formal application. On considering the grounds carefully, however, Mr Bramble accepted that the submissions made by Mr Gajjar fell within the scope of [4] of the grounds of appeal. As to the merits of Mr Gajjar's submissions, Mr Bramble accepted that Judge Rothwell had erred in law in the manner claimed.
15. It was consequently agreed by the representatives that Judge Rothwell's decision could not stand and that the proper course, in light of what has gone before, was for the Upper Tribunal to remake the decision on the appeal. I asked Mr Bramble whether he sought a further hearing, and therefore an opportunity to cross-examine the appellant about the assertion that the Taliban have continued to seek him in Kabul. In light of the favourable findings reached by Judge Dineen, Mr Bramble did not seek to do so. That was plainly the proper course.

*Disposal*

16. I therefore remake the decision in this appeal, and I do so on the basis of the findings made by Judge Dineen. It was accepted in his decision that the appellant had been asked by the Taliban to take part in an attempt to explode a lorry full of explosive in the Mol. It was accepted that he had taken the matter immediately to the authorities and that threats had been made against him by the Taliban as a result. It was accepted that the Taliban subsequently went to his place of work and his mosque in order to locate him, and it was accepted that two other lorry drivers at his place of work had been killed and their bodies burned in their lorries. Letters from the mosque and the appellant's company were before Judge Dineen, confirming the Taliban's ongoing visits to those places in Kabul.
17. Further letters from the mosque and the place of work were before Judge Rothwell. I do not consider those letters to be vague when they are considered in the context of what has gone before. They confirm the ongoing adverse interest in the appellant on the part of the Taliban and they confirm an ongoing ability to visit his places of work and worship.
18. Like Judge Rothwell, I note the headnote of AS (Afghanistan) and particularly the first paragraph of the same. I do not consider the guidance to be prescriptive in relation to the categories of people who might be sought by the Taliban. The country guidance requires a decision to be made as to whether a

person is of lower level interest, since it is only those at a higher level of priority which the Taliban can and will target in Kabul. I consider the Taliban to have shown by their actions that this particular appellant is a higher priority. On the facts of this case that is perhaps unsurprising, since the appellant not only contravened their instructions; he reported their plan to the police immediately and may, in doing so, have endangered the senior Taliban figures with whom he met on the road from Logar Province. It is reasonably likely, therefore, that he is not considered to be of low-level interest, and that he continues to be sought by the Taliabn in Kabul, notwithstanding their limited presence and capability in that city.

19. In the circumstances, I consider that the appellant would be at risk on return to Kabul. It was not submitted by Mr Bramble that there would be a sufficiency of protection in that city, or that the appellant would be able to relocate to another part of Afghanistan. Given the proliferation of the Taliban in other parts of the country, any such submission would have been surprising. The appeal will accordingly be allowed on the basis that the appellant's removal would be contrary to the Refugee Convention.
20. I record for the sake of completeness that Mr Gajjar sought to preserve the appellant's position in relation to Article 15(c) of the Qualification Directive. In light of my conclusion that the appellant is a refugee, however, I do not resolve that question.

### **Notice of Decision**

The decision of the First-tier Tribunal (Judge Rothwell) is set aside. I remake the decision on the appeal, and allow the appeal on the ground that the appellant is a refugee whose removal from the UK would be contrary to the 1951 Convention.

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.



MARK BLUNDELL

Judge of the Upper Tribunal (IAC)

26 July 2019