



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

Appeal Number: PA/12198/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 28 March 2019

On 09 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

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

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Masood of Aden & Co.

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Bowler promulgated on 6 December 2018 dismissing on protection and human rights grounds the appeal against a decision of the Secretary of State for the Home Department refusing a protection claim.
2. I am grateful to both representatives for the helpful and constructive discussion that took place during the course of the hearing in respect of the issues and evidence in the appeal.
3. The Appellant is a citizen of Afghanistan born on 3 January 1995.

4. By way of context the starting point for consideration of the issues before the Upper Tribunal is the findings of the First-tier Tribunal Judge expressed at paragraph 60 of her decision. Having reviewed the evidence in respect of the Appellant's narrative account - including a careful consideration of elements of the evidence that might be said in some way to undermine the account - the Judge stated:

"Applying the lower standard of proof, I find that despite the matters damaging his credibility, the evidence is sufficient to conclude that:

- a. The Appellant has a brother Z who works for the PPS;*
- b. the Taliban threatened Z and his family as a result of his work for the PPS;*
- c. the Taliban shot and killed R at the end of 2015."*

In this regard 'PPS' is the Presidential Protection Service; 'R' is another brother of the Appellant's; R was killed in the Appellant's family's home region.

5. Paragraph 60 is immediately followed in the Decision by the sub-heading 'Internal relocation to Kabul'. It is to be noted that it was not expressly stated in the decision that the Judge concluded that the Appellant was at risk of persecution in his home area. However the Judge's immediate progression to a consideration of internal relocation is consistent with that having been the conclusion - whether overtly stated or not. Indeed it is common ground before that that is the only reasonable inference from the juxtaposition of the findings at paragraph 60 and the sub-heading on internal relocation.
6. At the core of the Appellant's submissions before the First-tier Tribunal was an expert's report dated 13 November 2018 prepared by Dr Antonio Giustozzi (Appellant's bundle before the First-tier Tribunal at pages 65-94). That the report was a central plank of the Appellant's case before the First-tier Tribunal is evident from the Appellant's Skeleton Argument before the First-tier Tribunal - both in the context of providing corroboration for his narrative account (Skeleton Argument, Submission 1), and in establishing entitlement to protection by reason of risk (Submission 2).
7. The challenge to the decision of the First-tier Tribunal pursued before the Upper Tribunal is in respect of the Judge's consideration of Dr Giustozzi's report.

8. Permission to appeal to the Upper Tribunal, having in the first instance been refused by First-tier Tribunal Judge Povey on 9 January 2019, was subsequently granted by Deputy Upper Tribunal Judge Taylor on 28 January 2019 in these terms:

“The judge accepted that the core of the Appellant’s account was true, in particular that he had a brother who worked for the Presidential Protection Service, that as a consequence he and his family had been threatened by the Taliban, and that another brother had been killed in 2015.

She dismissed the appeal on the basis that the Appellant could safely and reasonably relocate to Kabul.

*The grounds submit in doing so, she did not adequately consider the report of Dr Giustozzi, prepared for this case, and erroneously considered that she was being asked to depart from the conclusions in **AS (Safety of Kabul) Afghanistan [2018] UKUT 00118**.*

They are arguable.”

9. The reference therein to the ‘erroneous consideration’ that the First-tier Tribunal Judge was being asked to depart from the conclusions in **AS** appears to echo a passage in paragraph 7 of the Appellant’s grounds submitted in support of the application for permission to appeal - *“It is not being suggested that the judge should have departed from the findings in the country guidance case of **AS** ...”*
10. After discussion of the nature of the country guidance, the contents of the report of Dr Giustozzi, and the particular facts and circumstances of the Appellant’s claim, Mr Masood very fairly acknowledged that in substance the First-tier Tribunal Judge was being asked to depart from the country guidance set out in **AS**. This is manifest when the matter is seen this way: absent Dr Giustozzi’s report, if the Judge were simply to apply the country guidance in **AS** then it is acknowledged that the appeal would have been duly dismissed; the Appellant relies on aspects of the expert report to justify a conclusion different from that which would be reached following **AS**.
11. Be that as it may, for the purposes of considering the Appellant’s challenge the key paragraphs of the First-tier Tribunal’s decision are paragraphs 63-67. At paragraph 61 the Judge set out the headnote from **AS**; at paragraph 62 - with reference to the risk categories identified in the headnote - the Judge stated *“The Appellant is not a senior government or*

security services official, or a spy". Paragraphs 63-67 are then in these terms:

- "63. Dr Giustozzi is one of the experts referred to extensively in the **AS** case. In that case the judgement refers to the fact that Dr Giustozzi was of the view that unless references were sought specifically from that appellant's home village, no one would know that appellant's whereabouts and then there would be very little chance that the Taliban would even know he was in Afghanistan. Taliban informers in Kabul would not necessarily know that the appellant was wanted (even if he was on the "blacklist" referred to [by] Dr Giustozzi). The Upper Tribunal expressed concern about the blacklist but found that even if a blacklist did exist in the way described by Dr Giustozzi, his evidence as to who has access to it and how it is used places a lower level person of interest at very negligible risk (so low as to not amount to a real risk) even if they are named on it because it would require an increasingly unlikely series of events to unfold.
64. Now Dr Giustozzi states in the expert report for the Appellant dealing with the Appellant's fear of return and ability to relocate that the Appellant's fears are justified because the Taliban seek collaborators and their family members even in Kabul. However, he has not addressed the conclusions in **AS** about the level of that risk. I therefore do not find his report to be cogent enough evidence to justify departing from the guidance in **AS**.
65. In addition, in **AS** Dr Giustozzi's evidence was that a person does not need any references or network to obtain unskilled labouring work. As a result the Upper Tribunal stated at paragraph 207:
- 'Whilst we accept the evidence that for more formal and/or expensive accommodation or to obtain more skilled employment (particularly for those jobs requiring, for example, trustworthiness, i.e. accountants or those handling large sums of money) is likely to require references from someone within a support network, we prefer the evidence of Dr Giustozzi that this is not essential to obtain accommodation or employment in every case (underlining added). He was able to give specific examples of situations where such a reference or support network would or would not be essential with justification for why that was so depending on the context, particularly of the type of employment sought.'*
66. In contrast, Dr Giustozzi says in this case that the Appellant could be relatively easily tracked down around Afghanistan including in Kabul unless he hides indefinitely without seeking employment. He explains this is because of the need to look for

a source of livelihood and accommodation “which will make it impossible for him to hide in order to avoid detection”.

67. *Dr Giustozzi has not explained his change in view expressed in the report prepared for the Appellant. As a result I find the evidence in that report to lack the cogency to depart from the conclusions in the **AS** case.”*

12. It may be seen that there are essentially two elements to the Judge’s consideration at paragraphs 63-67: consideration as to the means by which a person might be pursued by the Taliban, and the concomitant level of risk (paragraphs 63 and 64); and the slightly different consideration – albeit inter-related because it impacts upon the risk of ‘detection’ – in respect of the necessity or otherwise of passing over personal information in order to secure accommodation and/or employment (paragraphs 65-67).
13. In this latter regard, during the course of argument nothing was identified to me in Dr Giustozzi’s report – and I am otherwise unable to identify anything for myself – that offers the sort of explanation that the Judge considered was required to understand the basis upon which Dr Giustozzi had seemingly changed his opinion as to what was or was not required in order to access accommodation and employment in Kabul. In such circumstances it seems to me clear that paragraph 67 of the Judge’s decision is adequately reasoned and is not vulnerable to criticism as being in any way in error of law.
14. Necessarily this meant that the focus of argument was particularly on paragraphs 63 and 64.
15. The Judge’s comments at paragraph 63 as to the substance of the Upper Tribunal’s consideration of issues of risk appear to reflect what is said at paragraph 183 of **AS** following on from the analysis at paragraphs 173 *et seq.*. The first sentence of paragraph 64 in context appears to be a reference to paragraphs 6-13 of Dr Giustozzi’s report. Those paragraphs are in these terms:

“6. In order to gather additional information about the targeting of relatives of government officials and security forces officers, I have tasked my research team to carry out an interview with an officer of the National Directorate of Security. Officer [A] serves at the counter terrorism and detection department of NDS in Kabul and was interviewed on 10 November 2018.

7. Officer [A] stated that

The Taliban are regularly abducting and torturing relatives of security forces members and then force them to put pressure on their relatives in the security forces leave their jobs.

The NDS has recorded 1,893 such cases only last year. 446 relatives of members of the security forces were killed or abducted (79). This year the numbers are going up and the total number so far is already higher than in 2017: 3,168 case of abuse of relatives and 939 cases of murder and abduction. This all confirms that face to face threats are commonly used by the Taliban. Threat letters and telephone calls are used where the Taliban operate underground.

- 8. Cases of this kind even happen in Kabul city. In 2018 so far 182 cases of violence against members of the security forces and their relatives took place, of which 54 resulted in the death of the target, mostly in districts 4, 16, 8, 12, 14, 20, 22, 9, 7 and 17. This is a considerable increase over the previous year, when 135 cases of violence were recorded and 35 resulted in a death.*
- 9. In other cities under government control, such as Herat, cases of violence against relatives of members of the security forces are also common. This year out of 867 cases of violence in the city, 308 were against relatives of members of the Afghan security forces. In Mazar-i Sharif, there were 78 cases of violence against relatives of members of the Afghan security forces, of which 28 were murders.*
- 10. The Taliban also target relatives of civilian officials: from January 2018 to November 2018, the NDS recorded 3,254 cases of violence of this type. These violent attacks occur in Kabul city too. One murder of a relative occurred just before the interview took place, in Bagrami district of Kabul. Apart from abduction and torture, that is not possible in Kabul city, the Taliban carry out acid attacks, magnetic bomb attacks and murders with pistols, equipped with silencers.*
- 11. Usually the Taliban prefer to target the sons of government officers and officials. Last year even some case of infants being killed took place. Should targeting sons not be possible, then the Taliban will target other relatives, such as brothers, fathers, nephews, occasionally even daughters, sisters and wives.*
- 12. According to Officer [A], it is not only relatives of high profile officials who are targeted, as the numbers themselves suggest. In 2018 the approximate breakdown of the Taliban's victims according to Officer [A] was the following: 40% members of the*

security forces and their relatives; 30% members of civilian government and their relatives, 20% staff of private companies and 10% interpreters, NGO staff, UN and NGO employees.

13. *As for Kabul city the same breakdown is: 50% members of the security forces and their relatives; 30% members of civilian government and their relatives, 20% staff of private companies, interpreters, NGO staff, UN and NGO employees."*

16. Paragraph 8 of the report in particular addresses the situation in Kabul.
17. I pause to note that the figures given do not distinguish between whether the victims of violence were members of the security forces or the relatives of members of the security forces - a combined figure is given for the two categories. To that extent the evidence is of limited value in establishing the number of relatives who are targeted in Kabul as distinct from the number of members of the security forces.
18. The passages from the report that I have cited are clearly based on information gathered by Dr Giustozzi through his contacts as recently as November 2018 - and therefore after the decision in **AS**, and only very shortly before the hearing before the First-tier Tribunal.
19. The same cannot really be said of the vast majority of the rest of the report. For example, the next section of the report - headed 'Taliban reach' - is set out with numerous footnotes as to sources which for the main part date from 2007, 2008, 2009, 2011, 2014, 2015 and 2016; the closing few sentences of this section of the report refer to incident reported in June 2017, January 2018 and April 2018. Similarly much of the evidence in relation to availability of protection dates back to a time before the decision in **AS** - as indeed do the footnotes in the section under the heading of relocation. This is not to undermine the expertise of the author, or to criticise methodology: it is appropriate that a recent historical narrative is provided both for general context and to permit the identification of trends, or otherwise to relate developments. Rather it is to highlight that for the main part the report does not obviously represent any advance on the materials before the Tribunal in **AS**.
20. Accordingly, inasmuch as there might be any material in this report that might justify a departure from the contents of the country guidance in **AS** it seems specifically that it must be in relation to the paragraphs I have quoted above based on the enquiries made in November 2018.

21. As noted above, it seems to me it is adequately clear that the First-tier Tribunal Judge had these paragraphs in mind at paragraph 64 in the sentence starting “*Now Dr Giustozzi states...*”.

22. Dr Giustozzi took all of these matters forward into the concluding passages of his report, which are stated in the following terms:

“29. In conclusion [the Appellant] would be at risk from the Taliban because of his brother’s job in the PPS. The risk would be greatest in Chak, because there the Taliban are largely in control and [the Appellant] would almost be certain to be targeted by them as indicated by NDS source above. The Taliban do target relatives of wanted individuals even in Kabul in significant numbers.

30. In summary [the Appellant]’s fears are justified because the Taliban do seek and target collaborators and their family members, even in Kabul. In my opinion [the Appellant]’s brother is certainly considered a collaborator as he has continued to work for PPS. Because of the large number of collaborators the Taliban compile target lists of all those they can identify and locate. [The Appellant] would have to live in constant fear of being tracked down. His brother’s position will certainly put his life at great risk. It is my opinion that regardless of whether [the Appellant] was previously targeted or not he will remain at risk of being identified and located by the Taliban due to his brother’s position. He will therefore remain at risk of being targeted by Taliban sooner or later. The fact that his brother is out of reach of the Taliban (as he lives in palace and has protection) only provides an incentive for the Taliban to go after close relatives like [the Appellant] in order to send a wider message to those working with the government ‘the collaborators’.”

23. The references at paragraph 30 of the report to the Taliban compiling target lists is an echo of the evidence given by Dr Giustozzi in respect of ‘blacklists’ that was considered in some detail by the Upper Tribunal in **AS**, and to which the First-tier Tribunal Judge herein made reference at paragraph 63.

24. The First-tier Tribunal Judge’s approach to these aspects of the expert report of Dr Giustozzi is that set out in the concluding sentences of paragraph 64, which I repeat:

*“However, [Dr Giustozzi] has not addressed the conclusions in **AS** about the level of that risk. I therefore do not find his report to be*

*cogent enough evidence to justify departing from the guidance in **AS**.”*

25. In my judgement that observation, that evaluation of Dr Giustozzi’s evidence, was entirely open to the Judge on the materials before him. It cannot be disputed that the report identifies *some* risk, but the ultimate question is whether the level of risk is such as to reach the – albeit – low threshold required in protection cases: was it a negligible risk, or a real risk? It seems to me that it was open to the Judge to conclude that the evidence did not address what was said about level of risk in **AS**, and did not otherwise provide a sufficient factual basis cogent enough to justify departing from the country guidance. The citation of statistics – which as I have noted above do not distinguish between security force members and relatives of security force members – even if showing an increase in the combined figure over the last 10 months or so, did not require to be accepted as cogent evidence to upset the conclusion in **AS** that risk did not reach the ‘protection’ threshold.
26. Accordingly I conclude that there was no error of approach in the decision of the First-tier Tribunal Judge, and reject the Appellant’s challenge.

Notice of Decision

27. The decision of the First-tier Tribunal Judge contained no error of law and accordingly stands.
28. The Appellant’s appeal remains dismissed

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 their 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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 4 **April 2019**

Deputy Upper Tribunal Judge I A Lewis