



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

Appeal Number: PA/12763/2018

THE IMMIGRATION ACTS

Heard at Field House

On 23 April 2019

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

Before

UPPER TRIBUNAL JUDGE WARR

Between

**ZSS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Shazia Bhatti, Duncan Lewis & Co Solicitors (Harrow Office)

For the Respondent: Mr S Kandola, Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on 6 July 1996. He appeals the decision of a First-tier Judge following a hearing on 7 December 2018 to dismiss his appeal against the decision of the Secretary of State to refuse his asylum claim on 7 August 2018.
2. The First-tier Judge summarised the appellant's claim as follows:
 - "6. The appellant said that he lived in Kunduz, an area controlled by the Taliban. His late father was a commander in the Taliban. He

and A's brother were killed fighting for the Taliban. The Taliban were therefore respectful towards him and his widowed mother. They visited on a regular basis and gave them money. They asked A to join them but did not force him to do so.

7. One day in September or October 2014, (when A was 18 years old), the Taliban governor of the area where A lived was visiting his family when anti-Taliban militia (Arbakian) attacked A's village. Therefore A fled with the Commander and stayed with the Taliban for safety. The militia destroyed A's home. After about 20 days, A's brother in law came to get A telling the Taliban that A's mother (who was living with friends) was missing him. The Taliban let him go back to see his mother, but only for a couple of days.
 8. However, A decided not to return to the Taliban. Instead his brother in law arranged for an agent to take him out of the country. He travelled to Calais via Iran and Turkey. This journey lasted about 2 years. He then remained in Calais for 2 years before he arrived in the UK hidden in a lorry on 23/01/18. He claimed asylum on 09/02/18.
 9. In his AI he said that he feared the Taliban because they might think he was a spy. In addition he feared the authorities and his neighbours in the village because they might think he was a Taliban. In his AIR he said that the Taliban had taken his brother in law and accused him 'that he made me escape.'
3. The appellant gave evidence before the First-tier Judge. He stated he had never been to Kabul and knew no-one there. His wife and brother-in-law lived in Kunduz province. They had told him that his brother-in-law had been taken by the Taliban because of the appellant. When he had lived in Afghanistan he had done agricultural work. He was fit and well and educated and literate and had no family in the UK.
 4. The judge had the benefit of an expert country report from Dr Giustozzi which he summarised as follows:
 - "a. If A were to return to the Kunduz area he would in likelihood be again the object of the Taliban's attention. He was a member of a 'Taliban martyr family'
 - b. A will not be listed as a deserter. 'It is unlikely that the Taliban will seek to punish [A] but they are likely to resume recruitment efforts if they will be able to trace him.'
 - c. A 'could to a large extent avoid the Taliban's recruitment efforts if he relocated to a city under government control like Kabul.' However the cost of living is high in Kabul and he would risk destitution.
 - d. As a failed asylum seeker he is likely to be interviewed by the authorities at the airport at Kabul. If he destroyed his passport and or left Afghanistan illegally he will be prosecuted. The authorities might assume that he worked for the Taliban because of his family connections.

- e. The Arbakai are a 'rather unruly armed force only loosely controlled by the authorities.' A might be at risk from them if he returned to his home area."
5. Having correctly addressed himself on the law and Regulations the judge referred to the country information and **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118**. Having considered all the documentary evidence including the expert report the judge concluded that he should follow the guidance set out in **AS**.
6. The judge made the following credibility findings:
 - "46. There is no dispute that A is a citizen of Afghanistan. For reasons given below, applying the low standard of proof applicable in this case, I accept that A lived in Kunduz, an area controlled by the Taliban. I also accept that his late father was a commander in the Taliban and that the father and A's brother were killed fighting for the Taliban. His account about this is plausible, has remained reasonably consistent and accords with the general country information (and expert report) about the situation in A's home province.
 47. I also accept that the Taliban were respectful towards A and his widowed mother because they were seen as a 'martyr family' and that the Taliban asked A to join them but did not force him to do so. His account about this is plausible, has remained reasonably consistent and accords with the general country information (and expert report) about the behaviour of the Taliban in such circumstances.
 48. Applying the requisite standard of proof I also accept that in September or October 2014, (when A was 18 years old) anti-Taliban militia (Arbakian) attacked A's village and A was offered sanctuary by the Taliban Commander and stayed with the Taliban for about 20 days. I also accept that when A's brother in law came to get A telling the Taliban that A's mother was missing him, the Taliban let him go back to see his mother. His account about this is plausible and has remained reasonably consistent.
 49. For similar reasons I also accept that A's brother in law arranged for an agent to take A out of the country and he made the long journey to the UK as he claims."
7. The judge considered the risk on return firstly in the appellant's home area where he did not accept that the appellant would be at risk from neighbours or the Arbakai militia. The militia had attacked the whole village and not just his family home. In addition they knew of the appellant's family's involvement with the Taliban and had never targeted him personally and would know that he had escaped from the Taliban and had left the country to avoid fighting with them. It was unlikely that the anti-Taliban militia would have an adverse interest in the appellant. However the judge did accept that the appellant might be at some risk in his home area from the Taliban now as they might feel aggrieved that he had failed to stay with them and instead abused their hospitality by

running away. There was a risk they would now seek to recruit him if he returned to his home area or otherwise punish him.

8. The judge then considered the risk on return to Kabul and concluded as follows:

- “55. However for reasons given below I conclude that it would be reasonable to expect him to return and re-locate to live in Kabul. First, I do not consider that he would be at any risk in Kabul from his neighbours or the Arbakai militia. As outlined above, I conclude that they have no adverse interest in him anywhere. Even if they did, there is inadequate evidence that they would have the motive or means to track him down in Kabul. As the expert report makes clear, the Arbakai are a ‘rather unruly armed force only loosely controlled by the authorities.’ There is no evidence that the Arbakai militia operate in Kabul or have any links to persons there.
56. Secondly, I do not consider that he would be at any risk in Kabul from the Taliban. The A’s expert opined that A ‘could to a large extent avoid the Taliban’s recruitment efforts if he relocated to a city under government control like Kabul.’
57. I also take into account the guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) that 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. I conclude that it has not been established that the Taliban consider A to be a senior government or security services official, or a spy.
58. Moreover in her submissions to me, Ms Bhatti accepted that ‘it is unlikely that the Taliban will pursue him in Kabul’ I agree. She contended that his risk was from the authorities in Kabul.
59. For reasons given below I do not accept that A is at risk of persecution from the authorities in Kabul. First, A is not a member of the Taliban and has never worked for them. I do not accept that even if the authorities did make enquiries about him that they would be given information that he was a member of the Taliban. There is inadequate evidence to establish that the authorities in Kabul would want to or be able to obtain information from A’s neighbours in his home village or the Arbakai militia who are described by A’s expert as a ‘rather unruly armed force only loosely controlled by the authorities.’
60. Even if the authorities did make contact with these persons, for reasons given above I conclude that they do not have an adverse interest in him and are likely to tell the authorities what A says is the truth, i.e. that that he escaped from the Taliban and left the country to avoid fighting with them.
61. It may be that (as A’s expert contends) that as a failed asylum seeker A might be interviewed by the authorities at the airport at Kabul and if he destroyed his passport and or left Afghanistan illegally he will be prosecuted. However, even if that might happen I conclude that it has not been established that such a

prosecution would be based on a law which is discriminatory or is being disproportionately applied for Geneva Convention reasons. Moreover it has not been established that such a prosecution would lead to imprisonment. Even if it did, I accept that findings in the Country Information and Guidance Afghanistan: Prison conditions Version 1.0 September 2015 at 2.4.1 that 'In general prison conditions in Afghanistan are not so systematically inhuman and degrading or life-threatening as to meet the threshold of Article 3 of the ECHR.'

62. In addition, A has spent so little time in the UK, I conclude that he would not be perceived as having been 'westernised' and would not be at risk of persecution on that account.
63. I therefore conclude that A would be returning to Kabul as a young man who is not at risk of persecution in Kabul from the authorities or the Taliban or anyone else. He said in oral evidence that he has experience of agricultural work in Afghanistan and was fit and well and was educated and literate.
64. In those circumstances, fully considering the particular characteristics of A and applying the reasoning in the case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC), I conclude that it would not be unreasonable or unduly harsh for a single adult male in good health (such as A) to relocate to Kabul even if he does not have any specific connections or support network in Kabul."

Accordingly the judge dismissed the appellant's protection appeal and noted that the appellant's representative had submitted there were no arguable grounds under Article 8 with which he agreed.

9. There was an application for permission to appeal and permission was granted on 22 March 2019 by the First-tier Tribunal on the following point:

"The appellant says the Judge failed to take into account that the appellant said the local militia attacked with the national army in the interview and focused on the appellant saying in interview it was the Arbakiyan who attacked his home. The appellant's position was thus that he was at risk anywhere in Afghanistan. This is arguable in light of the reply to question 35 of the interview."
10. In question 35 the appellant had been asked "What do you fear in AFG". The appellant had said "My father was with the Taliban, after he was killed Taliban keep coming to our home, once the Taliban were in our home then Abarki, the local militia, attacked with the national army, attacked the village. ..."
11. At the hearing Miss Bhatti relied on the grounds. She submitted that the judge had not taken into account the fact that the national army was involved in the attack and this would pose a risk for the appellant in Kabul. She referred to the expert report.
12. Mr Kandola referred me to the witness statement made by the appellant before the First-tier Tribunal which had clarified what he had said at

interview. He had stated in paragraph 4 of the witness statement that there was a lot of confusion when his house had been attacked and in paragraph 6 of his statement he had said "In relation to paragraph 35 of the refusal letter, it was the Arbakiyan which is the local police who raided and destroyed my home".

13. Mr Kandola submitted that there had been no error of law in the judge's approach. In any event the judge had been entitled to find that the appellant would not be at risk of persecution from the authorities in Kabul for the reasons he had given in paragraph 59 of the decision.
14. Miss Bhatti submitted that it was not clear when the judge had referred to the authorities in Kabul what was meant. Was it the militia army or the police? She submitted that the judge's conclusions were not in line with the expert report who had stated at the conclusion of the report that the appellant would primarily be at risk from the authorities. The expert noted that arrests were often carried out on the basis of the slimmest of evidence. It was not clear why the authorities should have no interest in the appellant.
15. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision if there was a material error of law.
16. In my view permission to appeal and indeed the application for permission was based on a false premise as Mr Kandola points out. The witness statement for the appellant made it clear what he had intended to state in answer to question 35 at the interview - the house had been raided by the local police. There had been confusion at the time of the attack. The judge's decision was properly based on the totality of the evidence including the appellant's witness statement. Further, I do not accept that there was any confusion in the judge's consideration of the risk on return to Kabul. His findings of fact in relation to the appellant were correct. Miss Bhatti had submitted to the judge as recorded in paragraph 58 of the decision that the risk was from the authorities in Kabul and the judge had properly dealt with that risk and had been fully alive to the points made by the expert which he had set out in paragraph 19 of his decision.
17. The judge was entitled to conclude that the appellant would be returning to Kabul as a young man who was not at risk of persecution from the authorities or the Taliban or indeed anyone else.
18. I find no material error of law in the judge's decision. Accordingly the appeal is dismissed. The decision of the First-tier Judge to dismiss the appeal on all grounds stands.
19. It is appropriate to make an anonymity order in this case.

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.

TO THE RESPONDENT

FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed

Date 3 May 2019

G Warr. Judge of the Upper Tribunal