



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

Appeal Number: PA/14107/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12 July 2019**

**Decision & Reasons Promulgated
On 31 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR WASEEM POPALZAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani of Counsel

For the Respondent: Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan and is now an adult. He appealed against the decision of the respondent dated 18 September 2017. His claim was heard by Judge Landes, who dismissed his appeal in a decision dated 13 December 2017. On 27 April 2018 the appellant made further submissions which were treated by the respondent as a fresh application and refused in a decision dated 6 November 2018. The appellant appealed against the decision and Judge S Aziz of the First-tier Tribunal who dismissed the appellant's claim for asylum and humanitarian protection in a decision dated 18 March 2019.

2. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 19 June 2019, stating that it is arguable that the judge has erred in law, through no fault of his own, by relying on the country guidance case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118** in coming to his decision as it is now known that the said case has been held by the Court of Appeal to have been decided in error when considering the level of violence in Kabul which may make a material difference to the outcome or the fairness of the proceedings.
3. Judge Landes found that the appellant is not credible and he did not find his account to be coherent or plausible. The judge was not satisfied even to the low standard of proof applicable that the appellant's father was killed by his uncle or even that the appellant's father is indeed dead. The judge was not satisfied that the appellant's uncle is a member of the Taliban or poses any threat to the appellant. He also did not find credible the appellant's claim that his father was working for the Americans at the time that the appellant left Afghanistan. Essentially, Judge Landes found that the appellant has been sent to the United Kingdom as an economic migrant.
4. In respect of risk on return First-tier Tribunal Judge Judge Landes said that the current country guidance case on Article 15(c), which is **AK (Article 15(c)) Afghanistan [2012] UKUT 163**, that the conditions in the appellant's home province of Nangdahar are not so severe as to mean that the appellant is in need of humanitarian protection. The judge said that he was presented with a relatively large amount of background material but it was not suggested to him either in the skeleton argument or submissions that he should depart from **AK** and no reference was made to any material in the bundle which would justify this course. Judge Landes dismissed the appellant's appeal and said that the appellant can safely return to Nandahar.
5. The First-tier Tribunal Judge Aziz in accordance with the principles set out in the case of **Devaseelan [2002] UKIAT 00702** found that that the decision of the First-tier Tribunal Judge Landes was his starting point, which is entirely correct and there was no dispute about that. The judge found that the only additional evidence which was not before the First-tier Tribunal were originals of two letters although the photocopies had been provided to Judge Landes when he deliberated on the appeal.
6. First-tier Tribunal Judge Aziz stated at paragraph 80 of his decision that in relation to the Article 15(c) risk, Judge Landes concluded that the country guidance case does not indicate that the conditions in the appellant's home province were so severe that the appellant was in need of humanitarian protection. Therefore both Judge Landes and judge Aziz did not believe the narrative of the appellant and both found that he could be returned to his home area. The issue before both judges was whether the appellant can be returned to his home area of Nangahar. There was no issue as to whether the appellant is able to relocate to Kabul.

7. However, at paragraph 81 the judge sets out the country guidance case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118** and this is where the confusion arises. Having considered that the appellant can return to his home area of Nandahar, which is a safe haven and that there is no 15(c) risk to him the judge went on to consider **AS.** (which has been overturned by the Court of Appeal).
8. The appellant's Counsel argued before me that the very fact that **AS** has been overturned means that the First-tier Tribunal Judge Aziz, materially erred in law and the decision is not safe.
9. I disagree with the submissions made by Counsel and see no force in them because it was clear from both decisions that it was found that the appellant was to return to Nandahar, where his parents and mother live and not relocate to Kabul. Judge Landes stated that the appellant has not only his parents but uncles in his home area, who would come to Kabul to meet the appellant on his return. Therefore, having found that the appellant can return to his home area, Nandahar where his parents and other family members live, there was no need to consider whether Kabul is safe or not for the appellant to relocate.
10. I also do not accept that argument because **AK (Afghanistan)** makes it clear that there is no 15(c) risk in the whole of Afghanistan and that also includes Nandahar. The issue before both First-tier Tribunal Judges was whether the appellant can return to his home area to re-join his family and not whether he can relocate to Kabul.
11. It was further submitted to me that even the time taken in transit through Kabul to Nandahar would put the appellant at risk. I do not accept this argument because it was found by the First-tier Tribunal Judge that the appellant would be met by his family in Kabul who would take the appellant to his home area.this
12. I refer to the case of **AS, EWCA 2019 Civ 873**, where paragraph 6 sets out the background law and the EU Council Directive 2004/83/EC, the Qualification Directive, which states that Article 8 of the Directive excludes from the ambit of international protection cases where the person at risk has the opportunity of moving to a location within his or her country of origin where the relevant risk does not apply, often referred to as a safe haven. Therefore, the judge's decision that the appellant can relocate to Nandahar, where there is no 15(c) risk is without material error. There was no evidence put before Judge Aziz and neither did the skeleton argument argue that the documents provided to the First-tier Tribunal Judge should persuade him to depart from the country guidance case of **AK**, which is not affected by **AS**.
13. The court of appeal in **AS** while remitting the appeal to the Upper Tribunal stated in conclusion that the remittal to the Upper Tribunal should be on

the basis that Upper Tribunal need reconsider its conclusion only on the question of the extent of the risk to returned asylum seekers from security incidents of the kind considered at paragraph 19 of its reasons. The Court of Appeal stated that the relevance of that risk to the overall issue of whether it is reasonable for asylum seekers to be expected to relocate to Kabul, is in practice a self-contained element within that assessment.

14. Therefore, even if there was an error to refer to a country guidance decision which has been overturned, it is not material for the purposes of this decision. It is clear from the decisions of both the First-tier Tribunals, Landes and Judge Aziz that the appellant was found not to be credible, his narrative not to be credible, found that his father did not work for the Americans and that the appellant came to the United Kingdom as an economic migrant and he can safely return to Nandahar where there is no 15 C risk. I therefore uphold the decision of the First-tier Tribunal and I dismiss the appellant's appeal.

Notice of Decision

The appeal is dismissed on all grounds

No anonymity direction is made.

Signed

Date 29th day of July 2019

Deputy Upper Tribunal Judge Chana

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 29th day of July 2019

Deputy Upper Tribunal Judge Chana