



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

Appeal Number: PA/06381/2019 (R)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> September 2020**

**Decision & Reasons Promulgated  
On 28<sup>th</sup> September 2020**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**LT  
(Anonymity Direction Made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss U Dirie, Counsel instructed by J McCarthy Solicitors  
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS (R)**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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.*

### Remote Hearing

1. The hearing before me on 22<sup>nd</sup> September 2020 took the form of a remote hearing using skype for business. Neither party objected. At the outset, I was informed by Miss Dirie that the appellant is aware of the hearing but does not have the facilities to join the hearing remotely. Had a request been made for a simultaneous BT conference call to be facilitated so that the appellant could hear the proceedings, I would have acceded to such a request. Miss Dirie confirmed the appellant is happy for the hearing to proceed in his absence. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

### The Background

2. The appellant is an Afghan National who arrived in the UK on 19<sup>th</sup> March 2008, aged 18, and claimed asylum. The claim for asylum was refused by the respondent on 29<sup>th</sup> April 2010 and an appeal against that decision was

dismissed by First-tier Tribunal Judge Iqbal for reasons set out in a determination promulgated on 30<sup>th</sup> June 2010. The appellant has since made further submissions to the respondent and most recently, the appellant's appeal against the respondent's decision of 21<sup>st</sup> May 2019 to refuse his claim for international protection was dismissed by First-tier Tribunal Judge Connor for reasons set out in a decision promulgated on 22<sup>nd</sup> August 2019.

3. The appellant's immigration history is set out at paragraphs [2] to [6] of the decision of Judge Connor. The matters relied upon by the appellant in support of his claim for international protection are summarised at paragraph [7(iv)] to [7(viii)] of the decision. The appellant gave evidence at the hearing of his appeal and his evidence is summarised at paragraphs [11] to [22] of the decision. Judge Connor's findings and conclusions are set out at paragraphs [45] to [75] of the decision. At paragraph [48] of the decision, Judge Connor said:

“...The Immigration Judge in the determination promulgated on 30<sup>th</sup> June 2010 dismissed the appellant's claim having found his father and brother were not members of the Taliban and were not killed at the hands of the authorities due to their membership of the Taliban. The appellant's evidence was not considered credible and the Judge found the appellant was not at risk from the Taliban or the authorities. The judge found the appellant did not have problems in his home area or in the Kunar province. As a result of those findings he did not go on to consider relocation to another area of Afghanistan.”

4. Judge Connor said at paragraph [50] that having considered the evidence she had from the appellant, she did not find him credible, and, his evidence changed in order to present a picture that would bolster his asylum claim. She rejected the appellant's claim that he had been supported by friends in the UK and had not worked. She found, at [51], that it is more likely that the appellant has been undertaking work whilst in the UK in order to support himself. She also found that the appellant had been inconsistent in his evidence regarding the work he undertook in Afghanistan previously. She noted that in the previous appeal the appellant's evidence was that he ran a video shop with his brother,

whereas in the appeal before her, he claims he did not run the video shop with his brother but only visited the shop and had not worked in Afghanistan. She also rejected the appellant's account that he does not know the whereabouts of his family in Afghanistan or has been unable to make other attempts to find his family. She found it is more likely that the appellant either has knowledge of his family's whereabouts or believes it is not in his interests to attempt to locate them. Judge Connor considered the claims made by the appellant regarding his physical and mental health. She noted the appellant has not produced any medical evidence to support his claims and placed little weight on the appellant's own evidence. At paragraph [56] of her decision Judge Connor said:

"The issue before me, in light of the findings above, is whether the appellant can return to Afghanistan. The appellant relies on EASO report from May 2018 Country Guidance: Afghanistan – Guidance Note and Common Analysis which post-dates AS in the Upper Tribunal. The EASO report sets out the level of indiscriminate violence in Nangarhar, however, the respondent in this case has already accepted that the appellant cannot return to that area. Miss Gledhill on behalf of the respondent confirms it is not the respondent's position the appellant can return to his home area in the Nangarhar region of Afghanistan. It is the respondent's position the appellant can internally relocate to Kabul."

5. Judge Connor referred to the country guidance set out in AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 and the decision of the Court of Appeal in AS (Afghanistan) v SSHD [2019] EWCA Civ 873. She noted the Court of Appeal found that the Upper Tribunal in its country guidance decision had erred in law in that its conclusion as to the percentage risk of being a victim of indiscriminate violence was not available to it, on the evidence. She noted the appeal was remitted back to the Upper Tribunal to reconsider the extent of the risk to returned asylum seekers from security incidents. She noted it was for the Upper Tribunal to consider, in light of the new UNHCR guidelines on returns, whether a more extensive basis for reconsideration was required. Judge Connor noted, at paragraph [58], that the appellant relies on the UNHCR guidelines from August 2018 which report that people fleeing Afghanistan may be at risk of persecution for reasons related to the ongoing armed conflict and that internal flight or

relocation to Kabul is not generally available. Judge Connor said at paragraph [60] of her decision:

“...The country guidance at the time of my determination is in accordance with AK namely that the level of indiscriminate violence in Kabul and Kabul City in general is not at such a high level that it represents a real risk of harm contrary to Article 15(c). However, there may be particular factors relating to an individual which might nevertheless place them at risk e.g. age, disability, gender, ill-health or perceived as a collaborator.”

6. At paragraph [61] of her decision, Judge Connor noted that as at the time of the hearing of the appeal before her and her determination, the country guidance remains as she had stated, “... *albeit I have also considered the UNHCR guidelines and the July 2019 CPIN*”. At paragraphs [62] to [64] of her decision, Judge Connor said:

“62. I have therefore considered whether there are any particular factors which raise the risk profile of this appellant. In accordance with my findings and the determination of Immigration Judge Iqbal, the appellant is a person with no or low profile who is unlikely to be of interest to the Taliban. In AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 the Upper Tribunal held (and a finding which was not remitted by the Court of Appeal for further consideration) that a person who was 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.

63. The appellant is a single man aged 29. In accordance with the above I have found he does not have any physical or mental health issues. In accordance with the findings of Immigration Judge Iqbal, he is not at risk from the Taliban or the authorities. He speaks Pushto and some Dari and now has some English. To have been able to support himself in the UK he has shown the personality, capacity and intelligence to manage independently and there is no reason why he cannot do so in Kabul.

64. The appellant has maintained he has no support network in Kabul. However, I have set out my findings in relation to the appellant’s efforts to locate his family in Afghanistan. Further, he has been part of the Afghanistan community and the Mosque in the UK for some 11 years and given his ability to find help and support in the UK, it is not credible he could not find assistance if he were to return to Kabul. Further, whilst not a persuasive factor, there is still the consideration of the assistance available to voluntary returnees in Kabul which the appellant is capable of availing himself and which may assist to counter any particular vulnerability of an individual on return.”

7. At paragraph [65], Judge Connor addressed the claim made by the appellant that he will be perceived as being ‘westernised’ having lived in the UK for over 10 years. She rejected the claim that the appellant having been in the UK has a risk profile, on the basis of ‘westernisation’. Judge Connor concluded at paragraph [66] that the appellant does not have any particular characteristics which mean he would have an increased risk profile or that would make him more vulnerable on return to Afghanistan. At paragraph [67] she said:

“For the reasons I stated above, I do not accept the appellant has discharged the burden upon him to demonstrate he has a well-founded fear of persecution to qualify for asylum, or that he is at real risk of serious harm if returned to Afghanistan as internal relocation is available to Kabul. I do not therefore accept that the appellant qualifies for humanitarian protection.”

#### The appeal before me

8. The appellant claims Judge Connor erred in her approach to internal relocation because the position adopted by the UNHCR in its 2018 Eligibility Guidelines is materially different to the position they previously adopted, and which were considered by the Upper Tribunal in the Country Guidance decision in AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118. The appellant claims the judge did not engage with UNHCR’s 2018 eligibility guidelines and the EASO report, and had she done so, the outcome of the appeal may have been different.
9. Permission to appeal was granted by Upper Tribunal Judge Blum on 16<sup>th</sup> December 2019. He noted:

“The judge’s decision is well structured and well-reasoned. Although the Court of Appeal remitted AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) on a relatively narrow basis, it would not have done so had it been satisfied that the Upper Tribunal’s error would not have made any material difference. The Court of Appeal additionally indicated that the Upper Tribunal may wish to consider the UNHCR Eligibility Guidelines 2018 when assessing the reasonableness of internal relocation to Kabul more generally. It is arguable that the judge may have erred in failing to depart from extant Country

Guidance in circumstances where there may have been some doubt as to the reliability of that country guidance.”

10. Upper Tribunal Judge Blum directed that the error of law appeal in the Upper Tribunal is to be stayed until promulgation of the Upper Tribunal’s further decision in AS. AS (Safety of Kabul) (CG) [2020] UKUT 130, has now been promulgated by the Upper Tribunal and the matter is listed before me to determine whether the decision of Judge Connor is vitiated by a material error of law. The parties agreed at the outset that Judge Connor found that it would not be unduly harsh for the appellant to internally relocate to Kabul and the issue before me is whether there is a material error of law in her decision, in light of what has since been said in AS (Safety of Kabul) (CG) [2020] UKUT 130.
  
11. Miss Dirie submits Judge Connor failed to engage with the UNHCR Eligibility Guidelines of July 2018 and the European Asylum Support Office (“EASO”) report that had been relied upon by the appellant, when she considered whether internal relocation to Kabul would be unduly harsh. She submits the Upper Tribunal has now confirmed, in headnote (iv) of its decision that 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 it would be unreasonable or unduly harsh for a single adult male to relocate to Kabul. When pressed, she accepted that at paragraphs [63] and [64] of her decision, Judge Connor had in fact considered many of the factors identified. Miss Dirie submits that what Judge Connor did not refer to, is the appellant’s age when he left Afghanistan. She drew attention to paragraphs [251] of the Country Guidance as it now is, in which the Tribunal stated:

“The Panel in the 2018 UT decision identified that a returnee’s age, including the age at which he left Afghanistan, is relevant to reasonableness. We agree. Returnees of any age without a network will face significant challenges establishing themselves in Kabul. A person

who left Afghanistan at a young age may, depending on individual circumstances, be less able than someone who spent their formative years in Afghanistan to navigate the challenges of the city by, for example, finding work and accommodation.

12. Miss Dirie submits the appellant left Afghanistan at the age of 18 and had not spent the formative years of his life in Afghanistan. On any view, she submits, he was still a very young adult when he left Afghanistan and that would impact upon his ability to find employment, accommodation and to navigate the city. These are all matters, she submits, Judge Connor did not address in her decision.

### Discussion

13. At paragraphs [7(viii)] and [58] of her decision, Judge Connor noted the appellant had referred to the UNHCR's August 2018 Eligibility Guidelines. She noted that the UNHCR guidelines provide that relocation to Kabul is not generally available and there is a deteriorating security and humanitarian situation in Kabul. She noted that report was not available to the Upper Tribunal when it reached its decision in AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118. At paragraph [61] of her decision, Judge Connor stated:

“...As at the time of the hearing of this appeal and my determination, the country guidance remains as I have stated above albeit I have also considered the UNHCR guidelines and the July 2019 CPIN.”

14. It was in that context that Judge Connor went on at paragraphs [62] to [64] of her decision to consider whether there are any particular factors that raise the risk profile of the appellant.
15. I accept, as Mr Howells submits that in AS (Safety of Kabul) (CG) [2020] UKUT 130, the Upper Tribunal considered a wealth of evidence regarding the Article 15(c) risk, including the 2018 UNHCR Guidelines, the 2019 UNHCR Submissions, the 2019 COI UNHCR Report, and EASO's Legal Analysis and Recommendations. The Upper Tribunal carefully considered the UNHCR evidence and agreed with the critique of the SSHD's counsel as



set out in paragraphs [188] to [193] of the decision. The Upper Tribunal also addressed EASO's Legal Analysis and Recommendations at paragraphs [193] to [198] of its decision.

16. As Mr Howells submits, at paragraph [210], the Upper Tribunal acknowledged it had reached a conclusion that is different to that expressed by UNHCR in the 2019 UNHCR submissions where (in contrast to the 2018 UNCHR Guidelines and 2019 UNHCR COI Report) it is stated in terms that UNHCR believes Kabul is not an internal flight alternative.
17. I accept the submission made by Mr Howells, that Judge Connor considered the evidence before the Tribunal and carefully considered the profile of the appellant at paragraphs [62] to [64] of her decision. The appellant is, on the unchallenged findings made, a single man now aged 29 with no physical or mental health issues. He is not at risk from the Taliban or the authorities in Afghanistan and he is able to speak Pushto, some Dari, and now English. He has been able to support himself in the UK and has demonstrated the personality, capacity and intelligence to manage independently. Judge Connor found, at [54], that it is more likely the appellant either has knowledge of his family's whereabouts or believes it is not in his interests to locate them.
18. I reject the submission made by Miss Dirie that in reaching her decision, Judge Connor failed to have any proper or adequate regard to the appellant's age when he left Afghanistan. Judge Connor recorded at paragraph [1] of her decision that the appellant was born on 1<sup>st</sup> January 1990 and at paragraph [2], that the appellant claimed to have arrived in the UK on 19<sup>th</sup> of March 2008. She was therefore plainly aware that the applicant was aged 18 at the time of his arrival in the UK. She had noted in her decision that the appellant has been in the UK for 11 years, and that he is now a single man aged 29. Judge Connor had considered at paragraph [52], the conflicting evidence given by the appellant regarding his previous work in Afghanistan. It is clear in my judgement that in

reaching her decision, Judge Connor considered the age at which the appellant left Afghanistan, and the support that may be available to him. The appellant was 18 when he left Afghanistan and although there is no bright line as to when an individual reaches adulthood, it is clear in my judgement that the appellant spent the formative years of his life in Afghanistan. In reaching her decision, Judge Connor carefully considered the appellant's individual circumstances and whether he would have support, and be able to navigate the challenges of Kabul.

19. In my judgement the conclusion reached by Judge Connor that internal relocation to Kabul is available to the appellant is a conclusion that was open to the Judge on the evidence and findings made. There is in my judgement, no material error of law in the decision.
20. It follows that I dismiss the appeal.

### **Decision**

21. The appeal is dismissed. The decision of First-tier Tribunal Judge Connor promulgated on 22<sup>nd</sup> August 2019 shall stand.

Signed **V. Mandalia**  
September 2020  
**Upper Tribunal Judge Mandalia**

Date: 24<sup>th</sup>