



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

Appeal Number: PA/07377/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 10th August 2020**

**Decision & Reasons Promulgated
On 18th August 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**Z K S
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to directions sent on 29 May 2020, indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside, without a hearing. Written submissions in accordance with those directions have been received by both parties with no objections being raised as to the procedure of determination without a hearing proposed.
2. In circumstances where no objections were made to the issues being determined without a hearing and where the parties have made written submissions; it is in the interests of justice to proceed to determine the error of law issues on the papers in light of the written submission available and the full appeal file.

3. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Osbourne promulgated on 5 December 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 22 July 2019 was dismissed.
4. The Appellant is a national of Afghanistan, born on 1 January 1999, who claims to have arrived in the United Kingdom clandestinely in March 2018, having left Afghanistan in March or April 2017 (on his claim, although it was found to have been earlier given that he was fingerprinted in Hungary in 2015). He claimed asylum on 3 October 2018, following which he underwent a screening and substantive interview. The Appellant's asylum claim was on the basis of risk of persecution on return to Afghanistan from the Taliban, having been accused of spying against them. The Respondent refused his protection and human rights claim in a decision dated 22 July 2010.
5. Judge Osborne dismissed the appeal in a decision promulgated on 5 December 2019 on all grounds. In essence, the First-tier Tribunal did not find the Appellant's asylum claim to be credible given the number of discrepancies in it and found that he could return to his home area and family without risk from the Taliban. The First-tier Tribunal found that the Appellant was suffering from PTSD, not caused by any incidents or events in Afghanistan but from his journey from Afghanistan to the United Kingdom. The First-tier Tribunal noted that the Appellant is receiving treatment for PTSD and it is likely that he will have received most if not all of the proscribed treatment before he is returned to Afghanistan.
6. In relation to humanitarian protection, the First-tier Tribunal found that there was no substantial grounds for believing the Appellant would face a real risk of suffering serious harm if returned to the country of origin; primarily on the basis that his account of serious harm is incredible. In relation to human rights, the First-tier Tribunal found no material breach of any protected rights under Article 2, 3 or 8 of the European Convention on Human Rights and can not meet the requirements of the Immigration Rules for a grant of leave to remain on private life grounds.

The appeal

7. The Appellant appeals on the basis that the First-tier Tribunal failed to properly consider the Appellant's claim under Article 15(c) of the Qualification Directive making only scant findings on whether there was "armed conflict" in the Appellant's home area and without considering whether there was a general risk of harm to the Appellant of indiscriminate violence; which necessarily required consideration of his personal circumstances as a young man with PTSD. Further, it was accepted that even if so, the Appellant would need to establish that he could not internally relocate to Kabul but it was submitted that in light of his mental health and lack of family connections in Kabul; he could arguably do so.

8. At this stage it is helpful to note that in the grounds of appeal the Appellant does not challenge the dismissal of his appeal on asylum grounds; nor is there any challenge to the dismissal of his appeal on human rights grounds. The grant of permission by the Upper Tribunal records this and confirms that the findings on those matters stand.
9. Further to the directions of Upper Tribunal Judge Owens, written submissions were filed on behalf of the Appellant on 15 June 2020 (with an extension of time for the same having been granted) which expanded upon the grounds of appeal as follows. The written submissions reiterate that there has been no meaningful determination of the issue of whether the Appellant, as a young man with PTSD, would face an individualised risk of serious harm from indiscriminate violence in Laghman province. The Appellant's submissions make reference to the medical evidence of PTSD with likely detrimental impact on removal from the United Kingdom and the country evidence showing that fewer than 10% of Afghan conflict survivors received adequate social support from the state, together with the expert report that stated that the Taliban had concentrated their efforts on the Appellant's home area.
10. Although it is accepted that the First-tier Tribunal found the Appellant, on return to his home area, would be no worse off than anyone else seeking treatment for a similar illness, the Appellant highlights that this finding was in the context of assessment of whether there would be very significant obstacles to reintegration on return to Afghanistan; not in the context of risk of indiscriminate violence. On behalf of the Appellant it is submitted that his personal circumstances might well put him at enhanced risk of serious harm.
11. The Appellant submits that the First-tier Tribunal failed to take into account relevant evidence, including (i) whether or not the Appellant had in fact completed any necessary mental health treatment; (ii) that Dr Banting's report records that the Appellant tries to avoid being around families at times as this reminds him of past trauma, when finding he would receive family support on return; and (iii) whether the Appellant's family has any material experience or qualifications to assist in alleviating the Appellant's mental health problems.
12. Further it is submitted that the Appellant's circumstances would be exacerbated by the large number of mental health sufferers and the diminished available healthcare facilities in Afghanistan. Specific consideration should have been given as to the Appellant's risk of suicide on return as a potential breach of Article 3 of the European Convention on Human Rights. For those purposes, the decision in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 would be relevant to assess whether there would be a significant reduction in the Appellant's life expectancy on account of the absence of appropriate treatment or lack of access to such treatment. The Appellant submits that such a consideration has direct relevance to a claim under Article 15(c) of the Qualification Directive because the threshold of serious harm must

include at least those matters against which Article 3 of the European Convention on Human Rights offers protection.

13. Finally, it is submitted that the First-tier Tribunal would have to consider the option of internal relocation to Kabul and in doing so, it is noted that there is no overt evidence of the Appellant having any family connection there, or whether any such person could alleviate his mental health problems.
14. The Respondent made written submissions in reply on 16 June 2020 opposing the appeal. The Respondent submits that there is no proper basis to depart from the findings in paragraph 41 of the decision and that although this was by reference to the rubric of paragraph 276ADE of the Immigration Rules, there is no doubt the appeal was considered globally and the same findings of fact inform each distinct area of legal analysis required. It is noted that the First-tier Tribunal expressly stated that the facts will not be repeated in the section on humanitarian protection, given that they have already been set out.
15. The Respondent also submits that in his written submissions, the Appellant seeks to expand upon the grounds of appeal on matters in relation to which no permission to appeal was sought or granted; these include the risk of suicide on return, which does not arguably come within the ambit of protection of Article 15(c) and Article 3 of the European Convention on Human Rights and in any event, the high threshold for such cases on mental health and suicide grounds can not arguably be met on the Appellant's evidence and no reliance has been placed on the analogous provision in Article 15(b) of the Qualification Directive.
16. As to the remainder of the Appellant's submissions, the Respondent submits that these amount to no more than disagreement with the findings made. In particular, it was open to the First-tier Tribunal to find that, three months after Dr Banting's report in August 2019 expecting treatment for a further six to nine months; the Appellant was likely to have received most of the prescribed treatment before return to Afghanistan. It was also not necessary for the First-tier Tribunal to refer to each and every part of the evidence in the decision.
17. In relation to the availability of healthcare in Afghanistan, the Respondent submits that there is nothing to indicate that the First-tier Tribunal was not aware of the difficulties in accessing the same, but the salient finding is that the treatment required would have been wholly or largely completed before removal.
18. Finally, any issue as to the reasonableness of internal relocation does not arise in circumstances where the First-tier Tribunal found that the Appellant could return to his home area.
19. In response to the Respondent's written submissions, the Appellant clarified that there was no intention to expand or widen the grounds of

appeal or issues to be addressed at this stage; only to identify the materiality of the error of law by reference to the matters which would be in play on reconsideration of Article 15(c) and whether the Appellant would be entitled to humanitarian protection; which would include an assessment of mental health and suicide risk as well as the possibility of internal relocation.

Findings and reasons

20. The only paragraph in the First-tier Tribunal's decision relating specifically to humanitarian protection is as follows:

"38. I have considered this aspect of the appeal separately from the asylum appeal. I do not need to and so will not repeated the facts. On the established facts I find that the core of the Appellant's account of serious harm is incredible and is a fabrication designed to gain access to the United Kingdom. Given these conclusions, I find that substantial grounds have not been shown for believing the Appellant would face a real risk of suffering serious harm if returned to the country of return and that the Appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Qualification Directive."

21. The essence of this appeal is that findings above are wholly inadequate and that there has not been a proper assessment of whether the Appellant meets the requirements of Article 15(c) of the Qualification Directive. Although it is self-evident that there is no detailed consideration in the decision; it is necessary to consider what the Appellant's position on this was before the First-tier Tribunal and the evidence relied upon when considering the adequacy of this assessment in the overall context of the decision under appeal.
22. In paragraph 4 of the decision, the First-tier Tribunal identified the substantive issues in the appeal, which included the Qualification Directive in relation to humanitarian protection as one of the grounds of appeal and which in any event inevitably goes hand in hand with an asylum claim. However the record of proceedings shows that at the outset of the hearing before the First-tier Tribunal the issues in the appeal agreed by both representatives were (i) credibility; (ii) risk on return/internal relocation; and (iii) sufficiency of protection. The record of proceedings does not disclose any specific witness evidence in relation to the issue of humanitarian protection; nor any substantive submissions on Article 15(c) of the Qualification Directive, only a brief reference at the very end to it being unreasonable for the Appellant to relocate to Kabul by reference to asylum, Article 15(c) and Article 8.

23. The Appellant was legally represented before the First-tier Tribunal and his Counsel submitted a skeleton argument, which only included the following in relation to humanitarian protection:

“23. In the alternative, the appeal should be allowed on the basis that the Appellant would experience breaches of Article 3 ECHR and/or Article 15(c) of the Qualification Directive.

24. The return of the Appellant as a young person would expose him to a very high degree of suffering and leave him particularly vulnerable to exploitation. The situation in Kabul for vulnerable young men without families is dire. The Appellant has significant mental health difficulties, suffers from PTSD and lived previously in rural Afghanistan, not a major city. He is simply not equipped mentally, culturally or in any other way to survive adequately in Kabul or elsewhere in Afghanistan.”

24. As can be seen from above, there were no detailed submissions in relation to humanitarian protection either in writing or orally on behalf of the Appellant and there is nothing to suggest that matters now relied upon in the grounds of appeal and further submissions were put in issue before the First-tier Tribunal at all; nor any suggestion that the humanitarian protection claim was distinct from or relied upon any different factors than the asylum claim such that it would not stand or fall with the main claim and on the same factual matrix.
25. In particular, there was no substantive reliance on any specific evidence or particularised submission the Appellant was at risk of indiscriminate violence in his home area; either by mere presence or due to his personal characteristics, only a bare statement that the appeal should be allowed in the alternative under Article 15(c) of the Qualification Directive. There was further no submission that the First-tier Tribunal should depart from the findings in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) (confirmed as unaffected by the decision in AS (Safety of Kabul) CG [2020] UKUT 130 (IAC)) in which it was found that the level of indiscriminate violence in Afghanistan as a whole was not at such a high level to meet Article 15(c) such that a civilian does not face a real risk to his life or person solely by being present in the country.
26. As to whether that starting point of no general risk of indiscriminate violence was affected by consideration of the Appellant’s personal characteristics, primarily his PTSD and suicidal ideation, again no specific reliance was placed on this before the First-tier Tribunal and there was no reliance on any particular evidence in this regard.
27. The Appellant’s bundle did contain a medical report which detailed his symptoms, diagnosis and treatment. In terms of treatment and the future position for the Appellant, the report concluded as follows:

“Treatment:

In terms of treatment, [the Appellant] has engaged well with the YMOAT group and is keen to access 1:1 support. He is currently on the 1:1 waiting list. He is keen to improve his mental health and continue to build a meaningful life for himself.

I anticipate that [the Appellant] will be in mental health services for the next 6-9 months. I anticipate that this treatment will allow him to function well in the future and move on in his life. It is my view that it would be highly detrimental to his mental health for him to be removed from the UK and it would increase his risk of suicide. [The Appellant] also notes that if he was to be sent back to Afghanistan that he would be very worried that he would have nowhere to go, as he cannot go back to his village and he does not know where his family are. He is also very concerned that he would end up in the hands of the Taliban and that his life would be at significant risk."

28. The First-tier Tribunal were unarguably entitled to find on the basis of this evidence, from August 2019, that the Appellant was likely to have wholly or largely completed the planned medical treatment prior to his return to Afghanistan on the basis that three of the six to nine months that it was envisaged that the Appellant would remain in mental health services had already passed at the date of hearing and given the time taken for onward appeal rights and practicalities of actual removal; that was an unassailable finding. There was no suggestion from the Appellant at the date of hearing that his proposed treatment was not going according to the timetable set out in evidence or that the position had changed. In these circumstances, the First-tier Tribunal were not required to consider whether the Appellant had actually completed the planned treatment, the evidence supported the finding made.
29. As to the medical evidence itself, it is notable that it does not include any further treatment beyond 1:1 support expected to be completed within six to nine months; either within the United Kingdom or if the Appellant were removed to Afghanistan. The First-tier Tribunal clearly referenced the relatively limited mental health facilities in Afghanistan and difficulties accessing the same, but there was simply no evidence before it as to what, if any, further treatment was required.
30. Further, although the medical evidence refers to the detrimental impact on the Appellant's mental health of removal; it is not stated whether that was before or after completion of the planned treatment in the United Kingdom; nor is this statement explained at all, particularly against the potentially contradictory statement that the planned treatment will allow the Appellant to function well in the future and move on with his life. In any event, there is no assessment whatsoever of the likely impact, if any, of the Appellant's mental health on his circumstances on return to Afghanistan. Further, the statement about detrimental impact would have to be considered in light of the report referring to the Appellant's PTSD being caused in part by his experiences of an incident in Afghanistan,

which is contrary to the unchallenged finding of the First-tier Tribunal that there was no such incident as claimed.

31. The Appellant placed no express reliance on any part of Mr Foxley's expert report in support of a claim for humanitarian protection and Article 15(c) and it is notable that although this refers to incidents of violence in the Appellant's home area; the primary risk to the Appellant was said to be of indiscriminate violence and identification by the Taliban (the latter rejected by the First-tier Tribunal). There is some suggestion that the problems faced by the Appellant may be exacerbated by his mental health problems but this is not expanded upon nor specifically related to any Article 15(c) risk, and as above, there is no detailed evidence as to the Appellant's likely mental health on return.
32. The lawfulness of the First-tier Tribunal's decision on humanitarian protection contained in paragraph 38 set out above has to be assessed in light of the evidence that was before it and the Appellant's claim in relation to it. As can be seen from what is set out above, there were no substantive or particularised submissions on the Appellant's behalf as to any risk under Article 15(c) and no express reliance on any particular evidence to provide a basis for departure from the country guidance as to general risk or personal to him as to any increased risk of indiscriminate violence based on his personal circumstances. In any event, there was a lack of any detailed evidence of his likely mental health on return (after wholly or largely completing all planned treatment in the United Kingdom) or how this would or could place him at greater risk of indiscriminate violence in his home area compared to a person not at risk of the same by mere presence in the area.
33. In these circumstances, although at first sight it may appear that the First-tier Tribunal failed to undertake a detailed assessment of whether the Appellant was entitled to humanitarian protection, I find that on the evidence and submissions presented to it, the relatively short findings were entirely lawful and appropriate in response. The First-tier Tribunal was faced with no more than a bare assertion that Article 15(c) applied, without any submissions or relevant evidence to support it; and no suggestion that any claim for humanitarian protection was distinct from the asylum claim.
34. Further, even if there was an error of law in the First-tier Tribunal failing to expressly make any more detailed assessment of whether the Appellant was entitled to humanitarian protection and or established a risk under Article 15(c), it would not be material to the outcome of the appeal given that on no rational or lawful basis could the First-tier Tribunal on the evidence that was before it, allow the appeal on humanitarian protection grounds.
35. As accepted by the Appellant, there was no application for permission to appeal on the grounds of Article 3 or specifically suicide risk and matters of internal relocation are only relevant if the Appellant had established a

risk on return to home area; which he had not. These matters could only become relevant to any remake if I had found an error of law in the decision of the First-tier Tribunal requiring it to be set aside; which I have not.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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.

Signed G Jackson
Upper Tribunal Judge Jackson

Date 10th August 2020