



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

Appeal Number: PA/07524/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
On 21 August 2020**

**Decision & Reasons Promulgated
On 26 August 2020**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

S A

(ANONYMITY DIRECTION CONFIRMED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Decision made under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Graves ('the Judge') sent to the parties on 3 December 2019 to refuse the appellant's appeal on humanitarian protection grounds.
2. The appellant has not appealed the decision of the Judge to refuse his asylum and human rights (articles 2 and 3) appeals.
3. The Judge allowed the appellant's appeal on human rights (article 8) grounds and the respondent did not appeal this decision. I have been

informed by Ms. R Pettersen that the respondent has granted the appellant limited leave to remain on human rights (article 8) grounds.

4. By a decision dated 18 February 2020 Upper Tribunal Judge Blum granted the appellant permission to appeal on the two grounds advanced and stayed consideration of the error of law hearing until the handing down of the decision in *AS (Safety of Kabul) Afghanistan CG* [2020] UKUT 00130 (IAC), which took place on 1 May 2020.
5. The appellant's legal representatives are Ata & Co, Harrow, Middlesex.

'Rule 34'

6. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules').
7. In light of the present need to take precautions against the spread of Covid-19, the Vice-President considered the papers filed in this matter and observing the overriding objective expressed at rule 2(1) of the 2008 Rules, and also at rule 2(2)-(4), indicated by a Note and Directions sent to the parties on 23 March 2020 his provisional view that it would be appropriate to determine the following questions without a hearing:
 - (i) Whether the making of the First-tier Tribunal's decision involved the making of an error of law, and if so
 - (ii) Whether the decision should be set aside.
8. The parties were requested to inform the Tribunal if, despite the directions, a face-to-face hearing was required. The time limit for such objections has passed and neither party raised an objection to the Tribunal's provisional view.
9. The appellant filed written submissions, authored by Mr. J Dhanji, Counsel, dated 20 April 2020. Ms. Pettersen's written submissions were filed on behalf of the respondent on 24 April 2020. The Tribunal is grateful to the representatives for their helpful submissions.
10. In the circumstances and being mindful of the importance of these proceedings to the appellant and to the overriding objective that the Tribunal deal with cases fairly and justly I am satisfied that it is just and appropriate to proceed under rule 34.

Anonymity

11. The Judge issued an anonymity direction and neither party requested that it be set aside. The direction is detailed at the conclusion of this decision.

Background

12. The appellant is a national of Afghanistan and is presently aged 24. He asserts a well-founded fear of persecution consequent to his having

rebutted efforts by the Taliban to join them. He arrived in this country in 2009, whilst a minor, and claimed asylum. The respondent refused his claim for international protection but granted him discretionary leave to remain until November 2012. The appellant made an in-time application for further leave to remain which was refused by the respondent consequent to a decision letter dated 10 September 2014. The appellant's appeal was dismissed by a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Sangha) dated 3 November 2014 (AA/07294/2014). JFtT Sangha did not find the appellant to be a credible witness. The appellant became appeal rights exhausted on 19 May 2015.

13. The appellant submitted further representations on 20 October 2017. The respondent accepted that the representations constituted a fresh claim for the purpose of paragraph 353 of the Immigration Rules ('the Rules') but refused to grant the appellant leave to remain in this country.
14. The appeal came before the Judge sitting at Hatton Cross on 3 December 2019. She determined at [41] that there was insufficient basis to depart from the findings of fact made by JFtT Sangha as to the appellant's personal history in Afghanistan. Having considered the expert report of Dr. Giustozzi, the Judge concluded that there would not be a breach of the appellant's article 3 rights if he were to relocate to Kabul, at [43]-[44]. Further, the situation in Kabul did not meet the relevant article 15(c) Qualification Directive threshold required for a grant of humanitarian protection, at [44].
15. The Judge allowed the appellant's article 8 appeal under paragraph 276ADE(1)(vi), determining, *inter alia*, at [50]
 - '50. I therefore find that this is an appellant who, while he is in good physical health, and is now an adult, is still vulnerable, and even with a significant degree of support in this country, is still not fully independent. He is physically capable of work, but is struggling with severe mental health problems, that I find will affect his ability to engage with other people in Kabul and elsewhere in Afghanistan, to build social and other relationships, and to fend for himself, in a difficult environment, where he will have no support network at all.

Grounds of appeal

16. The appellant filed detailed grounds of appeal drafted by counsel that raised two grounds concerned with the First-tier Tribunal's determination of his humanitarian protection appeal, identified at para. 3 of the grounds as:
 - (i) A failure to properly engage with the evidence adduced by the appellant in support of his submission that the security situation in Afghanistan has deteriorated significantly since AK (Article 15(c)) Afghanistan [2012] UKUT 00163 (IAC) was promulgated and that there were grounds for the Tribunal to depart from that country guidance case and find that there is an article 15(c) risk in Kabul

- (ii) Reaching a decision – that there is no article 15(c) risk in Kabul – that was wrong in light of the country background evidence adduced by the appellant.

Decision

17. The challenge advanced by the appellant is a narrow one and as recognised by Mr. Dhanji in his written submissions, and appropriately so, the conclusions of the Tribunal in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC) is of material relevance to the determination of this appeal. The Country Guidance decision was promulgated on 1 May 2020, after Mr Dhani’s submissions were filed with the Tribunal, and the material part of the headnote as concerns this appeal details:
- (ii) There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence.’
18. I am satisfied that the Judge carefully considered the evidence presented by both parties as to the situation in Kabul and undertook her assessment in the round at [42]-[44]. However, even if there was an error of law in her consideration of the evidence of Dr. Giustozzi, the UNHCR Eligibility Guidelines (30 August 2018) and the EASO report (June 2019), it cannot be said to be material consequent to their subsequent consideration by the Tribunal in AS (Safety of Kabul) and the findings of facts drawn from such evidence by the Tribunal, when coupled with a much broader range of evidence, which is contrary to that asserted by the appellant.
19. The Country Guidance decision in AS is authoritative unless and until it is set aside on appeal or replaced by a subsequent country guidance determination: R. (on the application of Oader) v Secretary of State for the Home Department [2011] EWHC 1765 (Admin). In the circumstances as arise in this matter where the evidence relied upon was subsequently considered by the Tribunal in AS there is no material error of law arising from either ground of appeal advanced and so the appellant’s appeal against the Judge’s decision in relation to his humanitarian protection appeal is dismissed.

Notice of Decision

20. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
21. The decision of the First-tier Tribunal, dated 3 December 2019, is upheld and so the following is confirmed:
- (i) The appellant’s asylum appeal is dismissed

- (ii) The appellant's humanitarian protection appeal is dismissed
- (iii) The appellant's human rights (articles 2 and 3) appeal is dismissed
- (iv) The appellant's human rights (article 8) appeal is allowed

22. The anonymity direction is confirmed.

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

23. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 21 August 2020

TO THE RESPONDENT
FEE AWARD

As the appellant has been successful in his article 8 appeal, I have considered a fee award. The appellant was exempt from paying a fee and so no fee was paid. I therefore do not make a fee award.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 21 August 2020