Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08430/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 February 2020	**On 6 March 2020**
Extempore	

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

N J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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 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.

Representation:
For the Appellant: Mr R Sharma, Counsel, instructed by J McCarthy Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge G D Davison ("the judge"), promulgated on 16 October 2019, by which he dismissed the Appellant's appeal against the Respondent's decision dated 13 August 2019, refusing his protection and human rights claims.

2. The Appellant, a national of Afghanistan born in January 1992, had previously had an appeal before the First-tier Tribunal in 2010 (AA/14859/2010). The previous judge had roundly rejected all material aspects of the Appellant's protection claim and found that there was no risk on return.

Decision of the First-tier Tribunal

3. Judge Davison correctly directed himself to the well-known principles set out in Devaseelan * [2003] Imm AR 1 and took the previous judge's decision as a starting point, a reference to the adverse findings being stated in [22]. At [23] to [28] the judge concluded that certain aspects of the Appellant's evidence were unreliable, that the Appellant had what is described as "extended family" ties in Kabul, and that he was in contact with family members in Afghanistan.

4. The previous country guidance decision of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) is referred to, as is the judgment of the Court of Appeal overturning that decision on a limited basis (AS (Afghanistan) [2019] EWCA Civ 873. At [29] the judge stated that he was treating the Upper Tribunal's decision in AS "with a degree of caution". At [30] and [31] the judge considers the UNHCR Guidelines of April 2018. He sets out a number of factors which in his judgment went to show that the Appellant was neither at risk in Kabul, nor would internal relocation to the capital be unduly harsh. At [33] it is concluded that there was no Article 15(c) risk to the Appellant either. At [34] the judge briefly considers Article 8, concluding that there would not be any "very significant obstacles to the Appellant's reintegration" into Afghani society, nor were there any exceptional reasons as to why he should succeed on Article 8 grounds.

The grounds of appeal and grant of permission

5. The grounds of appeal essentially argue that: the judge failed to adequately consider the UNHCR Guidelines; that he erred in reaching certain adverse credibility findings; and that he failed to address Article 8 adequately or at all.

6. Permission to appeal was granted on a limited basis, namely the assertion that the judge erred in respect of the UNHCR Guidelines and in assessing Article 8. There has been no application for ground 2 (relating to the credibility findings) to be resurrected.

The hearing

7. Mr Sharma put forward perfectly respectable arguments in support of the Appellant's challenge. Essentially, he submitted that in light of the Court of Appeal judgment in AS, it was in principle possible for the judge to have departed from the guidance set out by the Upper Tribunal. The judge had failed to adequately consider all of the relevant factors set out in the UNHCR Guidelines. The judge had also failed to give adequate consideration to the Article 8 claim, both within the context of the Immigration Rules and without. Mr Sharma quite properly accepted that the UNHCR Guidelines did not state in terms that all returnees to Kabul are at risk of Article 15(c) treatment, and that was not the basis upon which this appeal was being put forward.

8. Mr Avery submitted that the grounds amounted to nothing more than a disagreement with the judge's adequately reasoned decision.

Decision on error of law

9. I conclude that the judge has not materially erred in law.

10. Whilst his observation in [29] that the findings of the Upper Tribunal in AS were to be treated with "a degree of caution" may appear at first glance to be somewhat ambiguous, it is clear enough from what follows in [30] and [31] that he gave careful consideration to the core item of documentary evidence relied on by the Appellant in the appeal, namely the UNHCR Guidelines. Reading the decision as a whole, the judge did adequately address the relevant characteristics of the Appellant in the context of whether it would be unreasonable/unduly harsh for him to relocate to Kabul. Specifically, the judge was entitled to conclude that there was family in Afghanistan, and extended family members in Kabul in particular, having regard to what he said in [23], [24] and [26] of his decision. The judge adequately dealt with the lack of any risk based upon perceived "westernisation". In short, he was entitled to conclude that internal relocation to the capital would not be unreasonable or unduly harsh.

11. The judge was also entitled to conclude that the Appellant would not be at risk of serious harm or with reference to Article 15(c) of the Qualification Directive. Contrary to a passage in the grounds of appeal, the UNHCR Guidelines do *not* assert that the mere presence of an individual in Kabul gives rise to such a risk.

12. In respect of an issue raised at the hearing, it is quite possible that the consideration of internal relocation to Kabul was something of a legal red-herring, as it were. This is because it had already been found in the previous decision of the First-tier Tribunal that there was no risk in the Appellant's home area. For whatever reason it does not appear as though any real attempt was made to resurrect the original claim that there was such a risk there. In any event, the judge was entitled to regard the previous decision of the First-tier Tribunal as a starting point and in my view, given that there was no risk in the home area the issue of internal relocation did not actually arise at all. There was nothing to suggest that the Appellant could not go back to that home area, thereby avoiding the need to relocate anywhere. For the reasons I have previously given, whether or not there was a risk in the home area is immaterial: the judge's conclusions on risk and internal relocation are sound in any event.

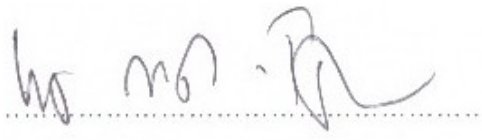
13. Turning to the issue of Article 8, it is right that the judge dealt with this only briefly at [34]. However, what is said there must be seen in the context of findings previously made which included the existence of family connections, an absence of risk, the Appellant's good health, his linguistic abilities, and the absence of any other particular characteristics that could possibly have resulted in there being "very significant obstacles" to reintegration. On the same factual basis, the judge was entirely justified in concluding that there were no exceptional features in the Appellant's case which could justify success on Article 8 grounds outside the context of the relevant Rules.

Notice of Decision

The decision of the First-tier Tribunal does not contain errors of law.

The decision of the First-tier Tribunal stands.

The appeal to the Upper Tribunal is dismissed.



Signed Date: 24 February 2020

Upper Tribunal Judge Norton-Taylor