



IAC-AH-SAR-V1

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

Appeal Number: PA/08518/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 February 2020**

**Decision & Reasons Promulgated
On 4 March 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**GUL [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain,

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on to December 2019, I set aside the decision of the First-tier Tribunal and directed a resumed hearing in the Upper Tribunal. My reasons were as follows:

“1. The appellant was born on 1 January 1995 and is a male citizen of Afghanistan. He arrived in the United Kingdom in October 2015. His application for international protection was refused by the Secretary of State on 18 August 2017. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 1 May 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the outset of the initial hearing before the Upper Tribunal, Mr Diwnycz, who appeared for the Secretary of State, told me that the appeal was not opposed. I shall therefore be brief giving my reasons.

3. The appellant complains that the expert evidence, in particular the report of Dr Giutozzi, was not properly addressed by the judge. Parts of the report of Dr Giutozzi (e.g. [30]) which were supportive of the appellant's appeal were not referred to by the judge. Rather, the judge refers to the report of Dr Giutozzi at [18] and [20] only in support of the respondent's arguments. I agree that the discussion of the expert evidence is not entirely even-handed. Those parts of the report which supported the appellant's case (in particular, which considered the appellant's account of past events to be plausible) should, if the judge rejected them, have been properly addressed.

4. Secondly, the judge made an error in law by recording [9] that the appellant did not wish to argue that he could not return to his home area of Afghanistan on account of an Article 15 (c) risk. Both parties accept that that was not the case and that he did advance an appeal on Article 15 (c) grounds. The judge omitted discussion of one of the grounds of the appellant's appeal. He thereby erred in law.

5. Thirdly, the judge found at [25] that the appellant's account lacked credibility because he claimed that the Taliban were 'likely the ones who had taken him to hospital'. The judge considered that this claim 'bestows a degree of benevolence on the Taliban that is inconsistent with what is known of the way they work...' However, the parties agree that the appellant did not say that the Taliban had taken him to hospital; indeed, he did not know who had taken him because he had throughout the time concerned been unconscious.

6. Further submissions are made in respect of the judge's handling of the internal flight. The judge made findings on internal flight in the alternative; his primary finding was that the appellant was not at risk in his home area. There is some force in those submissions but, in the light of what I have said above, I do not propose to address them. I set aside the entirety of the First-tier Tribunal decision preserving none of the findings of fact.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The decision will be remade in the Upper Tribunal following a hearing in Bradford on a date to be fixed (Upper Tribunal Judge Lane)"

2. At the resumed hearing at Bradford on 13 February 2020, I notified the representatives that I intended to allow the appeal. I shall now briefly give my reasons.
3. Both parties accept that the appellant is at risk in his home area of Afghanistan. The only question for the determination remains whether the appellant would face circumstances which are unduly harsh if he were to exercise internal flight within Afghanistan to the capital city, Kabul. Following the decision of the Court of Appeal in *AS (Afghanistan) v SSHD* [2019] EWCA Civ 873, previous guidance from the Upper Tribunal to the effect that Kabul is safe for single males returning to Afghanistan and

exercising internal flight has been removed. The remitted appeal in *AS* has not yet resulted in any new guidance. I have, therefore, had regard to the UNHCR Guidelines issued in August 2018. I note also that the Court of Appeal in *AS* declined the Secretary of State's invitation to subordinate the overall test for internal flight to a relative approach focusing on whether a 'significant minority' of a country's population live in similarly poor conditions to those in the proposed place of relocation, and accepted the appellant's and UNHCR's submission that there is ultimately a threshold below which such conditions would be unreasonable. I am aware also that I have to have regard to the particular characteristics of this appellant when determining whether relocation to Kabul would be unduly harsh.

4. Whilst the appellant has a shrapnel injury to his chest which medical evidence indicates is not life-threatening, he is nonetheless severely disabled by reason of an injury to his right arm which renders that limb without use. I find that the appellant would be at very severe disadvantage in seeking work in the Afghan capital. As Mr Hussain put it, why would an employer take on the appellant with only one functioning arm when he or she might employ a fully-abled individual. Problems within the labour market would lead, in turn, to the appellant encountering considerable difficulties in obtaining suitable accommodation. Indeed, in my view, it is not possible to see how, without income, the appellant would be able to secure accommodation at all; such accommodation as is available is rented out at an average cost of about \$15 per day, which the appellant without income would be unable to pay. In the light of these observations and the UNHCR Guidelines which both parties accept indicate a considerable risk to those relocating to Kabul who are not familiar with the city and who do not have family members or friends living there, I find that it would not be reasonable but would be unduly harsh to expect this appellant, having regard to his particular characteristics, to relocate to Kabul. His appeal is therefore allowed.

Notice of Decision

The Upper Tribunal has remade the decision. the appellant's appeal against the decision of the Secretary of State dated 18 August 2017 is allowed on asylum and Article 3 ECHR grounds.

Signed

Date 15 February 2020

Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.