



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

Appeal Number: PA/13087/2016 (V)

THE IMMIGRATION ACTS

Hearing at Cardiff Civil Justice Centre

**Decision & Reasons
Promulgated**

**Remotely by Skype for Business
On 10 December 2020**

On 30 December 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**N A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr J Gajjar instructed by SMA solicitors

For the respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State refusing his claims for asylum, humanitarian protection and under the ECHR. In a decision sent on 10 September 2020, Judge Buckwell dismissed his appeal on all grounds.

2. The appellant appealed, with permission to the Upper Tribunal. In a decision sent on 3 July 2020, UTJ Coker concluded that Judge Buckwell had erred in law in dismissing the appellant's appeal and set aside the decision, in order that it could be re-make in respect of Art 3 and 8 of the ECHR.
3. The appeal was listed for a CMR Hearing on 10 December 2020 at Cardiff Civil Justice Centre. I was based in court at the Cardiff CJC. Mr Howells, who represented the Secretary of State, joined the hearing by Skype for Business. Mr Gajjar, who represented the appellant, joined by telephone only.
4. Following discussion with the representatives, it was accepted that the judge had not made any relevant findings in respect of the outstanding issue under Art 3, namely relocation to Kabul. There were no findings in respect of the appellant's evidence which would need to be given afresh, together with expert medical evidence in relation to his mental health and background evidence about Kabul. It was agreed that in the light of the nature and extent of fact-finding which was needed to re-make the decision, it was appropriate to remit the appeal to the First-tier Tribunal to re-make the decision in respect of Art 3 and 8 of the ECHR.
5. It was further agreed that a number of findings (and decisions) would be preserved:
 - a. That the s.72 certificate was upheld (paras 97-99);
 - b. The appellant's asylum and humanitarian protection claims stood dismissed (paras 97-99); and
 - c. The appellant would be at real risk of serious harm in his home area from his family (para 101).
6. Consequently, the outstanding issues which had to be decided were:
 - a. Art 3 (limited to internal relocation to Kabal); and
 - b. Art 8.
7. Mr Gajjar indicated that it was the appellant's intention to serve on the Secretary of State in advance of the FtT hearing evidence concerning the appellant's relationship with a British citizen partner (who is pregnant).
8. In order to do so, and to obtain up-to-date medical evidence on the appellant's mental health, Mr Gajjar invited me to direct that the appeal not be listed for 6-8 weeks. With Mr Howells' concurrence, I agreed that to direct that the appeal not be re-listed in the FtT before the week commencing 15 February 2021.

Decision

9. The decision of the First-tier Tribunal (Judge Buckwell) was set aside by UTJ Coker in her decision sent on 3 July 2020.
10. The appeal is remitted to the First-tier Tribunal to remake the decision in respect of Art 3 and 8 of the ECHR in accordance with paragraphs 5 and 6 above.
11. The appeal to be remitted to the Taylor House Hearing Centre and not to be listed before week beginning 15 February 2021 before a judge other than Judge Buckwell.

Signed

Andrew Grubb

Judge of the Upper Tribunal
10, December 2020