



IAC-FH-CK-V1

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

Appeal Number: PA/02599/2020

**THE IMMIGRATION ACTS**

**Heard at Field House via Skype for Business  
On 10<sup>th</sup> May 2021**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> July 2021**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR S A  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr E Fripp, Counsel instructed by Ata & Co. Solicitors

For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Bart-Stewart dated 19<sup>th</sup> January 2021 whereby she dismissed the appellant's appeal against the Secretary of State's decision to refuse the appellant's protection and human rights' claim.

2. The appellant is a national of Afghanistan born on 11<sup>th</sup> August 1992 and was brought up in Sangar Village of the Laghman Province. He maintains that his father ran a construction company which worked on various contracts for the Afghan government, particularly in the Helmand Province where the U.S. and allied reconstruction projects were taking place. Owing to targeting and attack by the Taliban, the appellant's family fled Afghanistan because of their association with the Afghan and international forces.
3. The appellant adds that in 2008, he was kidnapped and brought to Europe and was then aged 16. He escaped from his captivity, was placed in foster care and claimed asylum. Through his social worker the appellant contacted a distant relative in Afghanistan and was informed that since his departure his parents and three of his siblings had been killed and his younger brother and sister had been temporarily returned to Afghanistan. The appellant's protection claim was refused in March 2009 but he was granted discretionary leave to remain and he appealed the refusal of his protection claim. By determination on 17<sup>th</sup> June 2011 Judge Cameron accepted the appellant's account but found that following the death of his father he would no longer be at risk on return.
4. In early 2015 the appellant was removed to Afghanistan and he located his brother at his grandmother's home but maintains that after a short period he was forced to flee again, this time with his brother, who has subsequently claimed asylum in France, and returned to the United Kingdom.
5. It was asserted that the appellant had suffered from a mental health condition since the attack on his family and has been treated in the UK for anxiety, depression, stress and psychosis and now has a diagnosis of major depressive disorder.
6. Following a lengthy delay, on 15<sup>th</sup> October 2019 the respondent refused the appellant's human rights claim. His appeal was dismissed on all grounds.
7. The grounds of permission to appeal challenge the decision on five grounds.

Ground 1 - the assessment of the medical evidence

8. The medical evidence produced was relevant to the appellant's claim both in relation to persecution, serious harm and to the Article 3 medical claim. It relied on the evidence of Dr Jolliffe, Clinical Psychologist, which summarised the appellant's medical history, and provided a diagnosis and a prognosis of the likely outcomes. Dr Jolliffe observed that the appellant lacked the skills and awareness to seek help that he needed and that he had been actively self-harming until 2017.
9. It was submitted that the judge at paragraphs 64 and 65 irrationally minimised the extent of the appellant's ill-health and referred to the appellant currently receiving no treatment but immediately contradicted this by reference to the medication and made no reference to the treatments prescribed by Dr Jolliffe which he considered necessary and imperative to the appellant's ability to maintain even the standard of

health he has. There was no reference to the prognosis for the appellant's health if returned to Afghanistan.

10. Both **DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC)** and the Supreme Court in **AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17** emphasised the importance of the medical diagnosis and prognosis in such cases. In **Miao [2006] EWCA Civ 75** Sedley LJ held:

*"The Immigration Judge was wrong to dismiss it [an opinion on the basis of his clinical knowledge] as merely an opinion, much less to treat it as speculative or conjectural. Like any prognosis it might turn out to be wrong, but the uncontroverted evidence the Immigration Judge had ... was that ... the father's state, ... would markedly worsen."*

The judge failed to address the medical opinion adequately.

**Ground 2 - an incorrect approach to DH (Particular Social Group)**

11. **DH** held that if there was sufficient evidence that the appellant would be perceived as different by to society to which they would be returned and if they would face ill-treatment as a result they may be at risk of persecution as a member of a particular social group. The key issue was how the appellant would be perceived on return. No such assessment was made of how the appellant would be viewed on return.

**Ground 3 - there was no consideration of the background evidence or the country guidance case of AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130**

12. The medical evidence produced concluded that the appellant was considered to be a risk to himself and that should he be removed his health was likely to deteriorate rapidly. The appellant's claim to face serious harm and/or his inability to relocate was also reliant on an assessment of the support systems available for the medical care and it was thus incumbent upon the judge to make a proper assessment of the evidence presented. **AS (Safety of Kabul) Afghanistan [2020]** confirmed there was a lack of facilities available to provide treatment in Kabul and the background reports in the appellant's bundle illustrated the dire medical facilities relating to mental health care. Dr Giustozzi highlighted the shortcomings in access and provision of services both in hospitals and outside and concluded that access to treatment was only really available to those living in Kabul and even then access was extremely limited. This was not contradicted by the respondent, whose burden it was to do so.
13. There was no proper assessment of the background evidence or in relation to **AS (Safety of Kabul) Afghanistan.**

**Ground 4 - material factual errors**

14. It was submitted that the judge made factual errors regarding the appellant's current and prospective support network.

15. In relation to the family in Afghanistan the documents at page C6 to 9 of the respondent's bundle refer to the maternal uncle living in Iran and returning to see the appellant.
16. In terms of the support network in the UK the judge notes that the appellant's community support consisted solely of his extended family.
17. Dr Jolliffe noted that in fact it was his friends with whom he lived without whom he was likely to suffer a serious deterioration in his health.

Ground 5 - very significant obstacles - there was a failure to consider relevant evidence

18. The judge failed to address the requirements of paragraph 276ADE(vi) in the appropriate manner. In relation to **Kamara [2016] EWCA Civ 813** Sales LJ indicated that:

*"The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there."*

19. The judge needed to have regard to all the facts relevant to whether the appellant would be able to engage but failed to consider that he suffered from chronic mental health difficulties.
20. Dr Giustozzi noted the very high levels of violence, the dire economic conditions and the deterioration due to the COVID-19 crisis and the Tribunal in **AS (Afghanistan)** emphasised that when considering the ability of an individual to navigate the challenges of finding work and housing, those who had left Afghanistan as children and thus had no working knowledge of adult life in Afghanistan were less likely to be able to cope. Dr Jolliffe made it clear that the appellant has no current capacity to find work or care for himself without support.
21. Permission to appeal was granted save for grounds 'a. and b.' and stated 'The Tribunal fully consider the appellant's current mental health issues including Dr Jolliffe's report, in concluding that he will not exhibit behavioural traits in Afghanistan that will expose him to a real risk of persecution in accordance with DH'.
22. At the hearing before me Mr Fripp submitted that the judge's consideration of the mental health condition was confined to and focussed on consideration of **DH (Particular Social Group)**. The mental health condition was not properly addressed when considering paragraph 276ADE. Mrs Pettersen agreed that the focus was on paragraph 276ADE.

## Analysis

23. There was some confusion in the grant of permission to appeal because the judge referred to grounds (a) to (d) when in fact there were five grounds of appeal. It would appear the ground in relation to consideration of background material and country guidance **AS (Safety of Kabul)**, ground 3, was not addressed at all in the permission. Nor had the judge when granting permission, indicated in the line of grant that the grounds were limited. When turning to consideration of the mental health and when attempting to confine the grant, it is clear from the grant that the judge did indeed direct her focus only towards a consideration of **DH**.
24. In the light of my observations above and in the light of **EH (PTA: limited grounds; Cart JR) Bangladesh** [2021] UKUT 0117 (IAC), I consider that permission was granted on all grounds and notwithstanding, all the grounds are before me, as set out in the notice of appeal.
25. Ground 1: the mental health of the appellant is a thread that runs throughout the appeal. The appellant had been diagnosed with a major depressive disorder and had been self-harming until 2017. He had been previously prescribed with anti-psychotic medication and continues, according to the report of Dr Jolliffe, with ongoing mental health difficulties. I do not accept that the judge considered the mental health of the appellant in the light of a particular social group only as per **DH** but she did, in error, draw unsupported inferences from the fact that the appellant had been discharged from mental health on 26<sup>th</sup> March and found, "he is not engaging with mental health support in the UK". (The appellant was in fact discharged three days after lockdown on 23<sup>rd</sup> March 2020). The judge also then contradicts the engagement point at paragraph 72 by reference to the medication the appellant takes. Further the judge made no reference to the treatments prescribed by Dr Jolliffe.
26. When turning to the application of **AS (Safety of Kabul) Afghanistan**, as identified below, the judge assumed that the appellant has an uncle available in Afghanistan and assessed the appellant's mental health difficulties and the ability to cope both in relation to Article 15(c) and paragraph 276ADE in the light of that fact. Nor is it clear how the appellant would make use of the support of those in the UK with his long-standing and chronic mental health condition. It was Dr Jolliffe's report that identified that it was those who he lived with that gave him support.
27. With reference to ground 3 it was submitted that there was no proper consideration of the background material or **AS (Safety of Kabul)**. I agree. The judge found the appellant could return to Laghman Province, but the judge also observed that as set out in the Giustozzi report, there are "no mental health facilities in Laghman". It would appear that the appellant's account (credibility) was accepted by the previous First-tier Tribunal decision and Dr Giustozzi in his latest report stated 'The Taliban no longer need to use Mr A to blackmail his father but might well have blacklisted him as well. The risk to Mr A will be highest in Laghman'. That report does not appear to have been factored properly into the assessment of the risk to the appellant.

28. As argued in ground 4, the documents refer to the maternal uncle living in Iran and returning to see the appellant. It was submitted that the uncle did not live in Afghanistan as the judge presumed. The judge thus made an axiomatic factual error when drawing conclusions on the appellant's current and prospective support network. In part it was access to family support that caused the judge to conclude that the appellant's mental health problems were not so severe as to prevent his relocation to his home in Laghman Province or to Kabul.
29. There were contradictory findings in relation to the appellant's mental health condition, and, factual errors or inadequate reasoning in relation to the appellant's support network when considering his ability to return to his home area or to relocate and integrate within Kabul.
30. In view of the nature of the errors, including the treatment of the background country material, and that the mental health assessment is fundamental to the consideration of appeal as a whole, I consider that the decision should be set aside, and no findings should be preserved.

*Notice of Decision*

31. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

**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.

Signed *Helen Rimington*

Date 26<sup>th</sup> May 2021

Upper Tribunal Judge Rimington