



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

Appeal Number: PA/08070/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House by video
conference on 03 June 2021**

**Decision & Reasons Promulgated
On 30th July 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

Representation:

For the appellant: Mr P. Anderson, instructed by Law Lane Solicitors

For the respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 31 July 2019 to refuse a fresh protection and human rights claim.
2. First-tier Tribunal Judge Aujla dismissed the appeal in a decision promulgated on 25 September 2019. The judge made several findings relating to the credibility of the appellant's account, and solely on grounds of credibility, rejected his claim to be at risk in his home area of Nangarhar province.
3. The Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law in a decision promulgated on 14 February 2020 (annexed). The judge's credibility findings were preserved, but the Upper Tribunal concluded that the judge failed to consider the likelihood of general risk in the appellant's home area, and if necessary, to then go on to make findings relating to internal relocation to Kabul.
4. The file was reviewed due to the Covid-19 pandemic. Various directions were made relating to case management and the appropriate mode of hearing. The case was listed for a remote hearing on 23 September 2020, but had to be adjourned for a combination of reasons. It is unclear why it took so long to relist the case, but it was listed for a resumed hearing on 03 June 2021 to remake the decision. The scope of remaking was confined to considering whether there is a general risk in the appellant's home area of Nangarhar province, and if so, whether it would be unreasonable or unduly harsh to expect the appellant to relocate to Kabul.
5. Due to the continued need to take precautions to prevent the spread of Covid 19 the hearing took place in a court room at Field House with the legal representatives appearing by video conference and with the facility for others to attend remotely. I was satisfied that this was consistent with the open justice principle, that the appellant could give evidence without impairment, the parties could make their submissions clearly, and that the case could be heard fairly by this mode of hearing. There was no objection to the case proceeding by this mode of hearing.
6. The appellant gave evidence with the assistance of a Pashto speaking interpreter. His evidence and the oral submissions made by the parties are on the record. I will refer to relevant aspects of the evidence within my findings.

Decision and reasons

Risk in Nangarhar province

7. The appellant says that he comes from Hesarak district in Nangarhar province, which publicly available maps indicate is a rural district to the south west of Jalalabad and which lies south east of Kabul.

8. In 2015 the First-tier Tribunal did not find the appellant's original account to be at risk from the Afghan authorities because his father was a member of Hizb-i-Islami to be credible, and even if his claim was taken at its highest, it only created a historic risk. In further submissions made in 2019 the appellant claimed that the Taliban had made a threat against him. He produced a copy of a threatening letter but the First-tier Tribunal rejected the credibility of the appellant's explanation as to how he obtained the evidence and therefore the reliability of the letter.
9. It was submitted on his behalf that the overall security situation had deteriorated in Afghanistan since the First-tier Tribunal made its decision in 2015. Generally, this was borne out by the background evidence. The most recent evidence considered by the Upper Tribunal in *AS (Safety of Kabul) Afghanistan* CG [2020] UKUT 00130 (IAC). At [94] the Upper Tribunal noted a SIGAR report from 2019, which showed that Nangarhar province had 'significantly higher' rates of casualties per capita (0.81 per 1,000) than Kabul, and indeed, any other province. The SIGAR report showed that the casualty rate in Kabul was highest in absolute terms (1,703 = 0.31 per 1,000). The Upper Tribunal noted that the only other province with a casualty rate of higher than 500 people was Nangarhar province, which had a casualty rate over the same period of 1,517 in the context of a population that was one third that of Kabul. At [95] the Upper Tribunal went on to consider figures from UNAMA in 2019, which indicated that the casualty rate for Nangarhar for 2018 was recorded as 111 per 100,000 inhabitants, whereas the figure for Kabul over the same period was 38 per 100,000 inhabitants.
10. The Upper Tribunal also considered evidence relating to the rates of returnees to different provinces, including Nangarhar, which was reported to bear the brunt of the burden, hosting an estimated 15% of returnees nationwide [115]. The figures for overall returns indicated that there was a peak in 2016 (1,064,000), which dipped in 2017 (617,000), rose again in 2018 (821,000), but dropped significantly again in 2019 (453,000) [113]. The Upper Tribunal analysed some of the reasons why returnees might be attracted to Kabul, but there is little analysis of the reasons why Nangarhar might receive large numbers of returnees. I find that it is reasonable to take judicial notice of the fact that Nangarhar province borders with Pakistan and is likely to be the first province returnees travel to or through if returning from Peshawar, where a large number of Afghan refugees and displaced people are concentrated.
11. For a long time the background evidence has shown that the Taliban and other armed groups like Islamic State have had a significant presence in Nangarhar province. This is unsurprising given that Nangarhar borders areas of Pakistan where those groups also have a stronghold and from where attacks can be launched into Afghanistan. The evidence shows that the Taliban conducts operations against Afghan government positions in Nangarhar, which explains why the province has consistently recorded the highest casualty rates per capita.

12. The most recent country guidance decision also considered figures that indicated what sections of the population were most likely to be at risk. At [96] it considered a UN OCHA report issued in December 2019, which stated that 41% of casualties in the first three quarters of that year were women and children. The Upper Tribunal observed that this indicated that those who are economically active and most likely to be travelling around (in that case, Kabul, but it is equally applicable to other areas of the country) were at greater risk than those (mostly women) who do not.
13. The UNHCR Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan dated 30 August 2018 makes clear that young men of fighting age are more likely to be subject to forced recruitment by armed groups. The guidelines make several references to evidence of forced recruitment by the Taliban of young people from schools and madrassas (pg.28), and there is reference to a Danish Refugee Council report that stated that young returnee boys and men are at particular risk of recruitment by armed groups and criminal networks because of their 'high visibility' on return to a rural area (pg.47 f.n.298). In the section on forced recruitment UNHCR states that in areas which are under the effective control of armed groups, they are reported to use a range of coercive recruitment mechanisms. Those who resist recruitment, and their family members, are reportedly at risk of being killed or punished (pg.52-53).
14. The evidence referred to in the respondent's skeleton argument shows that the Afghan government only controlled 10 out of the 22 districts in Nangarhar province. In light of this, and the evidence of returns, it was submitted that the appellant would not be at risk in Nangarhar. However, I note that the same evidence from UNOCHA relating to displacement also refers to large numbers of people still being displaced in Nangarhar province during 2019 due to ongoing fighting. When the evidence is considered as a whole I am satisfied that Nangarhar continues to be an area showing the highest levels of conflict and casualty figures in Afghanistan. The majority of the province is still in the control of armed groups and not the government. The documentary evidence produced by the appellant purporting to show a specific threat from the Taliban was rejected. Despite the rejection of that specific threat, I am satisfied that the background evidence relating to the security situation in Nangarhar nevertheless shows on the low standard of proof that if the appellant returned to his home area, a rural village, as a young man of fighting age who has not lived in the area for many years, he is likely to be at risk of forced recruitment and/or would be at risk of serious harm if he refused. As a young man who is more likely to be economically active and less likely to be at home, the evidence also shows that he is more likely to be caught up in generalised violence.
15. For these reasons, I conclude that the appellant has a well-founded fear of persecution in his home area of Nangarhar province for reasons of his attributed political opinion (avoiding or refusing forced recruitment) and/or his membership of a particular social group (young men of fighting age).

Internal relocation

16. I turn to consider whether it would be unreasonable or unduly harsh to expect the appellant to relocate to Kabul. The most recent country guidance decision in *AS (Safety of Kabul) Afghanistan* CG [2020] UKUT 00130 (IAC) came to substantially the same conclusions as the panel in *AS (Safety of Kabul) Afghanistan* CG [2018] UKUT 00118 (IAC) in relation to Article 15(c) risk and the availability of internal relocation. The Upper Tribunal found that ‘it will not, in general, be unreasonable to unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera’. The Tribunal went on:

‘...However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person’s age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

... A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return. A person’s familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether, and if so how quickly and successfully he will be able to build a network.’

17. Although the general security situation was not deemed to be sufficiently serious to find that there was an Article 15(c) risk or, taken alone, to render internal relocation unduly harsh the Tribunal in *AS (2020)* found that the evidence showed that there was still ‘widespread and persistent conflict related violence in Kabul’ [253(ii)]. Safety and security issues were still thought to be ‘highly relevant to the reasonableness of return but are not by themselves determinative’ [216]. The Tribunal in *AS (2020)* also considered evidence relating to poverty and the humanitarian conditions in Kabul noting that the challenges that were said to face displaced persons included limited job opportunities, few or no social protection nets, poor shelter/housing conditions, impeded access to education and healthcare, and continuous fear of eviction [123]. The position remained the same as in 2018, whereby the evidence showed that ‘most of Kabul’s population is poor, lives in inadequate housing with inadequate sanitation, lack access to potable water, and struggles to earn sufficient income to sustain itself in a society without any safety net’ [225].

18. The Tribunal found that there was little evidence to suggest that returnees faced hostility because they have returned from the west, but face challenges ‘primarily because of poverty, lack of accommodation and the absence of employment opportunities, as well as the security situation’ [246]. The panel agreed that a person’s age was still relevant to

reasonableness. Returnees of any age without a network will face significant challenges establishing themselves in Kabul, but a person who left Afghanistan at a young age may, depending on individual circumstances, be less able than someone who spent their formative years in Afghanistan to navigate the challenges of the city by, for example, finding work and accommodation'[251].

19. The starting point from the country guidance is that, in general, it would be reasonable to expect a single adult male in good health to relocate to Kabul even if he does not have a Tazkera or specific connections there. However, the Upper Tribunal also made clear that there needs to be an individualised assessment of the facts of each case. At the date of the hearing the appellant is a 21 year old young man. There is no evidence to suggest that he has any significant health problems or might be physically unable to work. However, the appellant claims that he left Afghanistan in May 2014, when he was only 15 years old. Since his arrival in the UK it is likely that he has been a looked after child in the care of social services. He has also had the support of his older siblings, who are settled in the UK. He says that he has studied English, IT and Travel and Tourism. There is no evidence to show that he has had any work experience in the UK. Given that he has had no leave to remain since he reached his majority, it is unlikely that he has had permission to work. For this reason I accept his evidence that he does not have any meaningful work experience.
20. Any relatives he has mentioned during the course of his asylum claim in 2015 and the fresh claim are all said to be in Nangarhar province or in the Afghan diaspora outside the country. The appellant first fled to Pakistan, which is the more likely area of displacement given the proximity of Nangarhar to the border. There is no evidence to suggest that the appellant has any particular connections, familial or otherwise, to Kabul. I accept that it is likely that the appellant would have no support network in Kabul.
21. The appellant left Afghanistan at a young age. Although he is now a young adult, age is not a bright line issue. The appellant is still a young person with little experience of independent living and no direct knowledge of how to navigate life in Kabul. The most likely option for a person in the appellant's position would be to find sub-standard accommodation in a tea house and try to find manual work, which is still in short supply given the high unemployment rates in Kabul. However, the country guidance makes clear that the age when he left Afghanistan, his current young age, lack of support network, would make it more difficult for him to navigate the challenge of finding work and accommodation in Kabul, leaving this appellant particularly isolated and vulnerable. There is no evidence to indicate whether his close relatives in the UK may be in a position to assist him with some financial support. Even if they were able to contribute something, the appellant would be separated from close family members who currently provide him with emotional support and would find himself in an isolated and vulnerable position in an unfamiliar city.

22. Nothing in the country guidance dictates a certain outcome. The guidance makes clear that there must be an individualised and holistic assessment in each case. Whilst no one issue, taken alone, would render relocation unduly harsh, I am satisfied that the cumulative effect of a number of factors is sufficient to show that it would be unduly harsh for this particular appellant to relocate to Kabul. The evidence shows that there are still serious security concerns in Kabul and that casualty figures remain quite high. The appellant left Afghanistan as a child. He has no experience of how to survive there as an adult, and for this reason is likely to find the existing challenges of surviving in Kabul even more difficult than most. This is likely to be compounded by the fact that he does not have an existing support network in Kabul and would find it more difficult to establish one because of his lack of experience of how to negotiate adult life in Afghanistan. For these reasons I conclude that it would be unduly harsh for the appellant to relocate to Kabul.
23. I conclude that the appellant has a well-founded fear of persecution for a convention reason. His removal in consequence of the decision would breach the United Kingdom's obligations under the Refugee Convention.

DECISION

The appeal is ALLOWED on Refugee Convention grounds.

Signed M. Canavan Date 27 July 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email

Annex



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

Appeal Number: PA/08070/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 16 January 2020**

Decision Promulgated
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Before

**THE HONOURABLE LORD UIST
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL JUDGE)
UPPER TRIBUNAL JUDGE CANAVAN**

Between

**M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. We find that it is appropriate to continue the order. 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

Representation:

For the Appellant: Ms V. Adams, instructed by Law Lane Solicitors

For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 31/07/2019 to refuse a protection and human rights claim following further submissions made on 09/05/2019.
2. The appellant relied on three key sets of documents as part of the fresh claim. The first was a document which purported to be a threat from the Taliban to the appellant. The translation gave a date of 06/03/1440. The date was then translated to 15/11/2018 in the Gregorian calendar. The second document was a "Public Announcement" purportedly issued by the Taliban. The document was undated. It included two identical photos of the appellant. The copy of the document and the photograph in the bundle are somewhat obscured and unclear. The third set of documents the appellant relied on was a series of photographs that were said to be of the family home, which was destroyed.
3. First-tier Tribunal Judge Aujla ("the judge") dismissed the appeal in a decision promulgated on 25/09/2019. The judge made several findings relating to the credibility of the appellant's account and rejected the claim. The first point was that the appellant failed to provide an adequate explanation for the error in the date given on the first document. The appellant's evidence was that "HJ", who was a witness at the hearing, visited Afghanistan for a family function from July 2018 until September 2018. While she was there her brother-in-law was given some documents by a gentleman called "SW" who the appellant said was a neighbour from his village. The judge found that there was no explanation for the discrepancy in the date of the document which was said to have been handed to HJ at a time that predated the date on the document. We find that it was open to the judge to make an adverse inference because the appellant provided no adequate explanation either in his witness statement nor at the hearing to explain such an obvious discrepancy.
4. The second point related to the plausibility of the account of how the appellant received the documents. HJ attended the hearing and gave evidence, but the judge was not satisfied that the rather tenuous chain of events that she described was plausible. At [41] the judge found that the whole account of how the documents were brought to the UK was "very suspicious". We note that the judge failed to consider the fact that the appellant had explained who SW was in his statement. He claimed that SW was a neighbour from the village. However, even if the judge had taken that point into account it would undoubtedly be open to him to find that the account was, even then, inherently implausible, or at the very least undermined the appellant's claim that he was not in contact with anybody in Afghanistan. It is difficult to see how SW, even if he had been handed the documents by members of the Taliban, would have known to bring the documents to the family gathering to give it to HJ's brother-in-law, to hand to her, to hand to the appellant in the UK unless there had been some communication between the appellant or his family members and people

in his village. For this reason, we find that even if the judge had considered the full explanation he would have come to the same conclusion about the implausibility of the account.

5. The third point raised in the grounds relates to the judge's findings regarding the public announcement letter produced by the appellant. Mr Clarke accepted that it is difficult to see how the judge could have justified making his own assessment of the photograph on the letter. Not only is the photograph rather grainy, it is notoriously unreliable to assess a person's age solely on their appearance. However, there would be a legitimate credibility issue to raise about how the Taliban could have obtained the photograph. It seems to be accepted that the appellant was not asked about this at the hearing. We accept that this is an issue that should have been put to the appellant but having appealed the decision complaining that there was unfairness, no witness statement has been produced to show what explanation the appellant might have given had he been asked about this matter in order to assess whether it would have made any material difference to the credibility of his claim.
6. When we take the credibility findings as a whole, which included the judge's consideration of previous negative credibility findings made by the First-tier Tribunal, we consider that this last point, when taken alone and in the absence of any plausible explanation to show how or why it might have made a difference to the outcome, is insufficient to undermine the overall thrust of the judge's credibility findings. The judge heard evidence from the appellant, HJ and the appellant's brother. Despite that evidence it seems clear that the judge did not find the explanations about the documents to be credible. Those findings were open to him to make on the evidence. The First-tier Tribunal's findings relating to the credibility of the account of more recent threats from the Taliban shall stand.
7. In relation to the second ground, the appellant argued that the judge failed to consider the country guidance relating to conditions in Kabul properly. At the outset of the hearing the Tribunal raised an associated point. Having looked at some of the evidence relating to the conditions in the appellant's home area of Nangarhar province, Mr Clarke conceded that there was an error of law in the judge's approach to risk on return. At [43] the judge found that the account given by the appellant of the way in which he received the documents and the threats from the Taliban was not credible. He rejected the evidence of all three witnesses and found that the fresh claim had been engineered by the appellant. At the end of the paragraph he concluded:

"I find that the appellant would not be at risk of persecution or ill-treatment in his local area and therefore there would be no need for him to relocate to the capital Kabul or anywhere else. He did not claim to be at risk from the authorities and only from the Taliban, non-state actors. He could safely return to his home area".
8. Mr Clarke accepts that there is evidence to show that Nangarhar is one of the provinces where there is a much higher level of insurgent activity and

reported security incidents. He did not go so far as to concede that there would be a risk on return there, but the evidence suggested that the judge did at least need to consider the conditions in Nangarhar province regardless of whether he accepted the central account given by the appellant: we agree.

9. Having found that there was no risk in the appellant's home area, the judge did not go on to consider the next relevant issue, which was whether it would be unduly harsh for the appellant to relocate to Kabul. We doubt that the judge was right to say at [34] that he should apply the country guidance in *AS (Safety of Kabul) Afghanistan* CG [2018] UKUT 00118 in the absence of a fresh decision by the Upper Tribunal. It was clear that the Court of Appeal set aside at least one part of the Upper Tribunal's country guidance decision. The remaining guidance would need to be considered with that in mind and in light of any up to date evidence. However, we need not go into that point in any detail given that there is a concession that the judge's failure to consider risk on return in his home area amounted to an error. As a matter of fact, the judge did not go on to consider whether internal relocation would be unreasonable or unduly harsh.
10. We conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The judge's findings relating to the credibility of the appellant's most recent account are preserved but the Upper Tribunal will remake the decision in relation to the level of general risk in Nangarhar province and any relevant issues relating to internal relocation.

DIRECTIONS

11. The Upper Tribunal has recently reheard *AS (Afghanistan)*. The resumed hearing will be listed after the Upper Tribunal has published up to date country guidance.
12. The parties are granted permission to serve any up to date evidence relied upon at least **14 days** before the next hearing.
13. Given the general focus of the remaking it is anticipated that the appellant will not need to give evidence unless new issues arise relating to his personal circumstances which might be relevant to the general conditions in Nangarhar or the availability of internal relocation to Kabul.
14. If it is thought necessary to call the appellant an up to date statement should be served at least **14 days** before the next hearing and at the same time the Upper Tribunal should be notified if the appellant requires the assistance of an interpreter.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law
The decision will be remade at a resumed hearing in the Upper Tribunal

Signed M.Canavan
Upper Tribunal Judge Canavan

Date 13 February 2020