



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

Appeal Number: PA/10219/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 7 April 2021**

**Decision & Reasons Promulgated
On 6 May 2021**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**G A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

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 their 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.

1. The Appellant is a citizen of Afghanistan. His date of birth is 1 January 1988.
2. In a decision of 17 September 2020, following an error of law hearing on 10 September 2020, I set aside the decision of Judge of the First-tier Tribunal Moffatt dismissing the Appellant's appeal against the decision of the Secretary of State on 15 October 2019 to refuse his application on protection grounds. The salient parts of the error of law decision read as follows:-
 - "20. The law has evolved with the decision of AS [2020]. The judge applied AS [2018]. There was no reference to the Court of Appeal decision. The Court of Appeal said that AS should be reconsidered in the light of the security situation and the risk from security incidents. The judge found that the Appellant would not be at risk from the Taliban in Kabul. He said at [61] that he must consider whether he could safely internally relocate in the light of 15(c) of the Council Directive (2004/83/EC) (Qualification Directive) and decided that he would be. These are sustainable findings in the light of AS [2020]. Mr Sharma did not seek to persuade me otherwise.
 21. The Appellant's evidence was that it would not be reasonable for him to internally relocate and the judge identified material parts of the judgment on AS [2018] to determine the issue; however, at no time does he decide whether internal relocation is reasonable as opposed to safe. This is a material error of law. I set aside the decision of the judge to dismiss the appeal on protection grounds. In the absence of a cross challenge to the Article 8 decision, there is no reason for me to go behind the decision of the judge that to remove the Appellant would breach his rights under Article 8. The judge made a number of findings about the Appellant's individual circumstances on return which are not challenged, and no good reason was drawn to my attention to justify going behind these.
 22. There was concern about court time. In the circumstances, I adjourned the case. The parties agreed that the matter should proceed by way of submissions at a future remote hearing."
3. The hearing resumed before me to hear submissions from the parties in respect of the only issue to be determined namely whether it is reasonable for the Appellant to relocate to Kabul properly applying AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130.
4. The First-tier Tribunal made sustainable and unchallenged findings concluding that the Appellant is at risk on return to his home area in Logar Province. The judge accepted the Appellant's account that he has a well-founded fear of persecution from the Taliban because of his imputed political opinion. It was accepted that in 2005 the Appellant and his father were abducted and ill-treated by the Taliban. Some six or seven years after that incident, the Appellant gave information about an individual with links to the Taliban to a local police commander in exchange for money. As a result, the Taliban killed the Appellant's father and detained the Appellant. The Appellant was able to escape as a result of a skirmish

between the Taliban who were holding him captive and the Afghan National Army and Special Forces. The judge accepted that the Taliban came to the Appellant's mother's home to look for him and told her that they were going to behead the Appellant. His mother is now deceased. However, the judge found that the Appellant could safely relocate to Kabul. He dismissed the appeal on protection grounds.

5. The judge made the following findings:-

"63. The appellant would be returning to Kabul as single man (sic) with no family network for support. He has been diagnosed with moderate to severe depression and significant PTSD (para 83 of Dr Turvill's report). Dr Turvill states at paragraph 90:

In my opinion, whether or not it is objectively justified, [GA's] fear of return is genuine from a psychological perspective. He would live in a constant state of uncertainty, and of fear of being subjected to further violence

64. Whilst [GA] states he is illiterate. He was able to own and manage a successful barber shop before he left Afghanistan. [GA] stated in his oral evidence, that there were no economic barriers to his return to Afghanistan, just his fear.

65. Mr Foxley states that the appellant would struggle to receive adequate, reliable and affordable treatment in Afghanistan. He refers to a 2019 article highlighting the extremely limited healthcare and mental healthcare resources available in Afghanistan. Mr Foxley states that

A fragile mental health condition, no education, an absence of a family network and a long period of time away are particular circumstances which could make it difficult for him to negotiate his way through a very adverse security environment such as Afghanistan.

66. Having considered all the evidence in the round and taking account of the Country Guidance by which I am bound, I find that the Appellant would not be at risk of serious and individual threat by reason of indiscriminate violence were he to return to Kabul. Therefore, I find that the Appellant's claim for humanitarian protection fails."

6. The judge, however, allowed the appeal on Article 8 grounds. At paragraph 71 he said as follows:-

"I have identified the factors in paragraphs 72 and 73 (sic) above the difficulties the appellant would face on return. The most significant of these, I find, is the limited availability of mental health treatment. Dr Turvill has stated the appellant requires psychotherapy to treat his PTSD. He has self-harmed and subjectively feels he is at risk on return. I find that the appellant would face very significant obstacles to his integration to Afghanistan on return. Looking at all the evidence in the round, I am satisfied that on the facts of this case requiring the appellant to return to Afghanistan would amount to a disproportionate interference in his Article 8 rights. In the circumstances I allow the Article 8 appeal."

7. There was no proper cross challenge by the Secretary of State to the decision of the FtT to allow the appeal on Article 8 grounds. Ms Cunha sought to challenge it for the first time at the error of law hearing. The Secretary of State had not been granted permission to appeal against the decision, no application having been made. I was not asked by Ms Cunha to consider waiving any requirement of the 2008 Procedure Rules (pursuant to Rule 7(2)(a) of the 2008 Rules) to comply with a requirement of the Rules (see Smith (appealable decisions; PTA requirements; anonymity) [2019] UKUT 00216). That decision stands. Relocation must be considered in the light of a finding that there are very significant obstacles to integration facing the Appellant on return to Afghanistan.

Submissions

8. Ms Cunha referred me to paragraphs 189 to 193 of AS where the Tribunal explained why the evidence of UNHCR should be approached with caution. She did not seek to challenge Dr Turvill's evidence. She submitted that although the Appellant genuinely fears return to Kabul so long as he continues with medical treatment his mental state and anxiety would improve.
9. She referred me to paragraph 229 of AS to support a submission that the Appellant may be able to create connections in time and develop a network and in any event if he were unable to form such connections, he would be able to find inexpensive accommodation in a "chai khana" and he would be able to work as a day labourer in the informal labour market in Kabul. He would have the assistance of the UK financial package and the assistance of charities on the ground. The evidence that he is at risk is very low. There is no evidence he would be targeted or that he would stand out. He is resourceful having left his country and travelled all the way to the UK.
10. Mr Sharma's primary submission was that that relocation of the Appellant is unreasonable. In addition, he submitted that the Appellant falls into a particular social group. He relied on DH (particular social group: mental health) Afghanistan [2020] UKUT 223.

Conclusions

11. While DH was not promulgated until after the hearing before Judge Moffatt, the issue could have been but was not raised at the error of law hearing on 10 September 2020. In any event, the submission is misconceived.
12. Judge Hanson in DH said that whether a person with a mental health issue falls within a PSG is a complex question of law and fact. The degree of disability in each individual's case will vary enormously and that only in a small number of cases will it mean there is a lack of mental capacity or behavioural traits that may expose that person to a real risk of harm as a result of their illness. He stated that there must be sufficient cogent

evidence to enable a clear finding to be made that such a person is suffering from serious mental illness. He stated that there are a number of mental health issues which can themselves vary in degree but which enable a person to function without any obvious external indicators or risk factors. He stated that “serious mental illness” includes diagnoses which typically involve psychosis (losing touch with reality or experiencing delusions) or high levels of care which require hospital treatment. He identified schizophrenia and bipolar disorder (or manic depression) as the most common however, he emphasised that it is fact sensitive question in each case. The Appellant in DH suffered serious mental health issues and lacked litigation capacity. The medical evidence was that he presented in a “significantly and chaotic and disturbed manner”. He suffered hallucinations and had been detained under the Mental Health Act 1983. His mental state was found by a psychiatrist to be “grossly abnormal.”

13. This Appellant has severe depression and significant PTSD. He has a subjective fear of further violence. Dr Turvill found that the Appellant had injuries which were highly consistent and typical of his account of torture, evidence that was accepted by the First-tier Tribunal. However, there is no evidence drawn to my attention that the Appellant has the type of serious mental illness which would expose him to acts of persecution.

AS (Safety of Kabul) Afghanistan CG [2020]

14. The country guidance case of AS postdates the promulgation of the decision of the First-tier Tribunal. In respect of reasonableness of internal relocation to Kabul the headnote reads as follows:-

- “(iii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or 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.*
- (iv) 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. Given the limited options for employment, capability to undertake manual work may be relevant.*
- (v) 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."

15. The two principal domestic authorities concerning internal relocation are the decisions of the House of Lords in Januzi v Secretary of State for the Home Department [2006] UKHL 5, [2006] 2 AC 426, and AH (Sudan) v Secretary of State for the Home Department [2006] UKHL 49, [2008] 1 AC 678. Considering all the relevant circumstances pertaining to the Appellant and his country of origin, it would not be reasonable to expect him to relocate and or it would be unduly harsh to expect him to do so.
16. The Appellant will be returning to Kabul without support or a network. This, in itself, is not sufficient to establish that relocation would not be reasonable. However, what is significant in this case is the First-tier Tribunal's acceptance of Dr Turvill's evidence that the Appellant has post-traumatic stress disorder and significantly a genuine subjective fear of return such that he would live in a "constant state of uncertainty" and a fear of being subjected to further violence". I have considered what the Tribunal said in AS in relation to safety and security at paragraphs 213 to 216; namely, that although there is no real risk that Kabul will fall under the control of anti-government elements or become a site of active conflict, the evidence is that its inhabitants are affected by armed conflict in particular because of violent attacks by Taliban and ISIS.
17. While the likelihood of the Appellant being killed or injured is small, the violence connected to armed conflict is widespread and persistent. Moreover, healthcare provision is poor. There is a lack of facilities available to provide treatment.
18. The Appellant has a genuine subjective fear of return. It would not be reasonable to expect him to live in a constant state of fear. There is an unchallenged finding that there would be insurmountable obstacles to integration. This is not determinative of the issue, but it supports that relocation is unreasonable. I conclude that it would not be reasonable to expect the Appellant to return to Kabul.
19. The appeal is allowed on protection grounds.

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Signed Joanna McWilliam

Date 29 April 2021

Upper Tribunal Judge McWilliam