



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005197

First-tier Tribunal No: PA/55808/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

22<sup>nd</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**  
**DEPUTY UPPER TRIBUNAL JUDGE BLACK**

**Between**

**HH**  
**(Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs N Ahmad, instructed by Buckingham Legal Associates  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 17 January 2024**

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan born on 25 January 1988, from Baghlan. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claims.

2. The appellant arrived in the UK on 1 June 2017 and claimed asylum, having left Afghanistan in early 2011 and travelled to Italy where he was granted asylum but having returned to Afghanistan in October 2011 and in 2014 and then left in

2016/2017 and travelled again to Italy, and then on to France and the UK. He left the UK in 2019 and travelled to France but then re-entered the UK on 25 May 2020. It appears from correspondence in the appellant's appeal bundle that the initial asylum claim was treated as withdrawn by the respondent because the appellant failed to attend an interview in February 2020 and that a subsequent claim made in May 2020 was treated as withdrawn in October 2020. However further submissions were accepted and the appellant was then interviewed about his claim on 27 July 2022.

3. The appellant claimed to have been a farmer in Afghanistan. He claimed that he left Afghanistan because he feared the Taliban as a result of having informed government soldiers about their activities planting objects underneath a bridge when he was working irrigating the land with his father, which then led to a confrontation between the Taliban and the soldiers and a gunfight in which one of the Taliban was killed. The appellant claimed that his father was shot and killed by the Taliban the following day and that they were searching for him so he fled Afghanistan. He believed that the Taliban would kill him for his role in informing the authorities about their activities.

4. The respondent refused the appellant's claim on 30 November 2022, rejecting his account of the Taliban having killed his father and rejecting his claim that the Taliban were looking to kill him for informing on them. The respondent noted that the appellant claimed to have returned to Afghanistan after leaving there, in order to marry his wife, and he claimed to have stayed in Kabul so that the Taliban would not find him. The respondent also noted that the appellant had returned to Afghanistan despite having been granted asylum in Italy, claiming that the Taliban member who had been killed had relatives in Italy and France and they could find him there. The respondent considered that the appellant's return to Afghanistan undermined the credibility of his claim that the Taliban were looking for him to kill him and noted that there had been no indication from his family of any further threats when he spoke to them in June 2022. The respondent noted that the appellant had also provided inconsistent evidence about the location of his identity documents, about his family and about the dates when he returned to Afghanistan. The respondent did not accept that the appellant feared persecution in Afghanistan or that he was at any risk on return to that country and considered that his removal from the UK would not breach his human rights.

5. The appellant appealed against that decision to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge Nolan on 23 October 2023. The judge heard oral evidence from the appellant. She noted that his account of when he returned to Afghanistan, how many times he returned there and how long he stayed when he returned there was unclear and inconsistent, but noted from his evidence in his statement that he was claiming to have returned there to get married and to have spent a year in Kabul. She considered that he had returned there twice and noted that his wife and children remained in Afghanistan. The judge did not accept the appellant's claim that the Taliban were looking for him due to an incident whereby he informed on them to the government forces and she did not accept that his father was killed by them. She found that his account of the events lacked credibility and did not accept that the Taliban were searching for him. She considered that his claim to be at risk from the Taliban due to those incidents was a fabrication, as was his claim to have left Italy because of the presence there of a deceased Taliban member's family. She did not accept the claim that the appellant's family had been or were being harassed or threatened by the Taliban due to his absence or for any other reason. The judge noted the medical evidence from the appellant's GP and the diagnosis that he suffered from PTSD and had been prescribed anti-depressants and she accepted that he had a

mental health condition as described in the GP's notes. She did not find him to be at increased risk of suicide. She accepted that the standard of medical care in Afghanistan, particularly with regard to mental health care, was well below the standard available in the UK but did not accept that the Article 3 threshold was met or that there were very significant obstacles to the appellant's integration in Afghanistan or other circumstances preventing his removal on wider Article 8 grounds on that, or any other, basis. The judge accordingly dismissed the appeal on all grounds.

6. The appellant sought permission to appeal against the judge's decision on two grounds. Firstly, that the judge had failed to give adequate reasons for rejecting the credibility of his claim. Secondly, that the judge had failed to have regard to the Home Office Country Policy and Information Note (CPIN) Afghanistan: Fear of the Taliban Version 3.0 April 2022 in regard to the plausibility of him returning to Afghanistan in 2011 and 2014 but not being able to return now given the change in the country situation subsequent to August 2021, and had failed to have regard to the CPIN in regard to the medical care available in Afghanistan.

7. Permission was refused in relation to the first ground but was granted on the second ground, on the basis that the judge had arguably failed to address the effect of the change in circumstances in Afghanistan in August 2021 and the impact that that might have had on the appellant's ability to access medication.

8. The matter then came before us for a hearing. Both parties made submissions and those are addressed in our discussion below.

## **Discussion**

9. As stated, the appellant was not granted permission to appeal Judge Nolan's decision on the first ground. Indeed permission was properly refused, as the judge's adverse credibility findings were fully and cogently reasoned and were properly open to her on the evidence before her.

10. The second ground was divided into two parts, both of which related to the CPIN. Mrs Ahmad submitted with regard to the first part that the judge had misdirected herself by failing to consider the changed circumstances in Afghanistan since the Taliban took power in August 2021 and the plausibility of the appellant not being able to return there now but being able to return there in 2011 and 2014. She referred to the appellant's evidence that he had been in hiding in Kabul when he returned to Afghanistan previously and she submitted that he had been able to return at that time because the Taliban were not in power, whereas he could not return there now that they were in power. However, as we pointed out to her, his asylum claim had been based on a risk from the Taliban at that time. The appellant had been found, partly because of his voluntary return to Afghanistan on two occasions, and also because of the lack of credibility of his overall account of being of adverse interest to and at risk from the Taliban, not to have a well-founded fear of persecution at that time. The only basis for his protection claim had been that he was being sought by the Taliban and, accordingly, the changed country situation and the fact that the Taliban were currently in power was irrelevant. If he was of no interest to the Taliban previously, and had never been of any adverse interest to the Taliban, the fact that the Taliban were now in power was of no relevance. Accordingly, as Ms Ahmed properly submitted, the reliance upon the CPIN was essentially a 'red herring'. There is therefore no merit in that ground of challenge.

11. As for the second part of ground 2, Mrs Ahmad submitted that the judge had failed to take into account the references in the CPIN, particularly at paragraph 4.4.1, about the gaps in the availability of mental health services in Kabul and other cities and the fact that such services were virtually non-existent in rural areas, such as the appellant's home area. She submitted that that was a material error made by the judge because she had accepted that the appellant had a mental health condition. She referred to the GP notes, which the judge had accepted, and which referred to the appellant having severe depression and PTSD and to the letter from Talking Therapies which referred to the appellant's moderate to severe depression and thoughts of not being alive. She submitted that the appellant was therefore someone who, given the lack of medical care available to him in Afghanistan, was at risk of his mental health deteriorating severely and rapidly and was at risk of killing himself and therefore met the threshold in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. She submitted that the judge had erred by failing to consider that.

12. However, as Ms Ahmed submitted, it was clear from the judge's findings that she did not accept that the first stage in the AM (Zimbabwe) test, as set out in the headnote to AM (Article 3, health cases) Zimbabwe [2022] UKUT 131, had been met, namely that the appellant had discharged the burden of establishing that he was a seriously ill person. The judge had clearly undertaken a full and detailed assessment of the medical evidence. As Mrs Ahmad accepted, the appellant had not produced a psychiatric or psychologist report but was relying upon his GP's notes and a letter from Talking Therapies. At [17] the judge considered the GP notes and the prescription for an anti-depressant drug and she took account of the diagnosis of PTSD, but noted the GP's view that the appellant had no suicidal ideation. She also had regard to the letter of 15 August 2022 from Talking Therapies and their similar view. Whilst she accepted that the appellant had a medical condition as described in the GP notes, she found at [17] that he was not at an increased risk of suicide. She found at [18] that there was no credible evidence that the threshold was met in AM (Zimbabwe) on the basis of his medical conditions and at [22] that the evidence submitted with regard to his medical conditions fell well short of the threshold established in AM (Zimbabwe). At [21] she found that his medical condition was not such that his removal would be disproportionate under Article 8. Having given careful consideration to the medical evidence ourselves, which we note was limited, we consider that the judge properly found that the appellant was not a seriously ill person. The judge was perfectly entitled to take the view that she did.

13. For all these reasons the challenges made in the grounds are not made out. The judge considered all relevant matters, had full regard to the evidence and made clear and cogently reasoned findings. There is nothing in the CPIN which undermines the judge's conclusions on risk on return or on the engagement of human rights on that or any other basis. The judge reached a decision which was fully and properly open to her on the evidence before her. We accordingly uphold her decision.

### **Notice of Decision**

14. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Appeal Number: UI-2023-005197 (PA/55808/2022)

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

17 January 2024