



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

Appeal Number: AA/04891/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 April 2015**

**Decision & Reasons  
Promulgated  
On 23 April 2015**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SHAHAGHA ZABED  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer  
For the Respondent: Mr M Saleem, Counsel instructed by Malik & Malik  
Solicitors

**DECISION AND REASONS**

1. Although the claimant is an unsuccessful asylum seeker this is not a case where there is any reason to find him at risk just because his identity is made known. There is no good reason to restrict reporting in this case and I make no order.
2. The appellant in this appeal, hereinafter "the Secretary of State", appeals with permission a decision of the First-tier Tribunal to dismiss an appeal by the present respondent, hereinafter "the claimant", against the decision of the Secretary of State on 9 June 2014 to refuse him asylum.
3. The claimant is a national of Afghanistan who was born in 1990 and who has lived in the United Kingdom since February 2006. The claimant said

that he was a refugee or alternatively that he was entitled to humanitarian protection or alternatively that removing him would be a disproportionate interference with his private and family life and that in any event he was entitled to remain under something described as “the Legacy Policy”.

4. The First-tier Tribunal dismissed the appeal on international protection grounds without making a finding on the claim that removal would be contrary to the United Kingdom’s obligations under Article 8 of the European Convention on Human Rights. The Tribunal allowed the appeal in part in the following terms:

“The appeal under the Immigration Rules is allowed to the limited extent that the matter is remitted to the respondent for consideration of the [claimant’s] claim under the Legacy Policy.”

5. This decision was challenged by the Secretary of State essentially on the grounds that there is no Legacy Policy. The grounds complain particularly that the First-tier Tribunal failed to follow the decision in **AZ (asylum - “legacy” cases) Afghanistan [2013] UKUT 00270 (IAC)**.
6. The appeal came before Deputy Upper Tribunal Judge J M Lewis in November 2014. He was concerned by points raised and gave directions for skeleton arguments for the better progress of the appeal. The claimant was to serve on the Tribunal and the Secretary of State a detailed skeleton argument by 24 November 2014 and by 22 December 2014 the Secretary of State was to serve a skeleton argument in reply.
7. Neither party complied with the directions. I do not know why the claimant did not comply. I do know that the claimant did supply a skeleton argument on 9 March 2015 which is a long time after the time specified. For some reason this had not come to Mr Wilding’s attention but he did serve on the Tribunal a skeleton argument on 27 March 2015. Mr Wilding was being as helpful as he could. He could not respond to the claimant’s skeleton argument because he had not seen it but he did outline his case to the Tribunal as well as he understood it.
8. As Deputy Judge Lewis had allowed four working weeks to reply I would have given Mr Wilding more time if he had needed it to respond to the claimant’s skeleton argument. Mr Wilding had an opportunity to consider his position and decided that the skeleton argument did not catch him by surprise and he did not need more time.
9. The appeal arises from the decision of the Secretary of State explained in a letter dated 9 June 2014. Essentially the Secretary of State did not believe the claimant’s case and found that the claimant could establish himself in Afghanistan. Removal would not contravene the United Kingdom’s obligations under Article 8 of the European Convention on Human Rights. Further, the Secretary of State acknowledged that the claimant had made reference to the “Legacy Programme” but concluded that the claimant was not entitled to any kind of leave as a result of the “Legacy Programme”.
10. The First-tier Tribunal Judge said at paragraph 18:

“There is merit in Mr Saleem’s submission that the [Secretary of State] has not given proper consideration to whether the [claimant] is eligible for leave to remain under the Legacy Programme, beyond simply stating, without more, that the appellant’s application is declined. I find that the refusal to consider his eligibility is not in accordance with the law and that the appropriate remedy is to remit the matter to the [Secretary of State] for a consideration of the [claimant’s] case under the Legacy Programme.”

11. The Secretary of State particularly relied on a decision of Upper Tribunal Judge Kopieczek decided in the Upper Tribunal and published as **AZ (asylum - “legacy” cases) Afghanistan [2013] UKUT 270 (IAC)**. The headnote of that case, which, like all headnotes in reported decisions of the Tribunal was drawn by the Tribunal is in the following terms:

“(i) Where an appellant in an asylum appeal had previously been informed that his case is being considered as a ‘legacy case’ but no decision under the process had been made, a subsequent immigration decision following a rejection by the Secretary of State of his asylum claim is not rendered unlawful by reason of the failure to make a decision under the legacy process.

(ii) There is no obligation on a Tribunal to adjourn an asylum appeal so as to allow for a decision to be made under the legacy process.”

12. In short, the Upper Tribunal appears to have decided previously that the Secretary of State is not obliged to make a specific decision under the legacy process in circumstances such as these.
13. Mr Wilding adopted that argument but further submitted that the Secretary of State had made a decision in the sense that it was clear from the decision that “legacy” had been considered and found not to assist the claimant.
14. Mr Wilding’s skeleton argument essentially made two points. It relied on the headnote in **AZ** and paragraph of the decision of the Court of Appeal in **SH (Iran) & Others v SSHD [2014] EWCA Civ 1469** at paragraph 65 where Davis LJ said:

“I add a footnote. The position with regard to legacy cases on these particular points is now to be taken as laid to rest. There have been many decisions in the last two years on the salient points, all of which are in substantial accord. There is no separate legacy ‘policy’. There is no basis for relying on delay as, in itself, a ground for obtaining leave to remain. There is in the ordinary case no relevant legitimate expectation, other than that the case will be considered on applicable law and policy at the time the decision is made. There is no basis for saying that there is a commitment on the part of the Secretary of State to ‘conclude’ a case either by effecting actual removal or by granting leave to remain.”

15. Mr Saleem’s skeleton argument sets out something of the history of the legacy scheme and it pays particular attention to the aspirations of the administration including dealing with a backlog of cases. He noted that amongst the cases included in the Case Resolution Programme were “asylum applications which had been refused but there is no indication that the applicant has left the UK”. His point was that a case could still be

within the scope of the Case Resolution Programme even after an asylum application had been refused.

16. I read this rather differently from the way urged by Mr Saleem. I find that the policy was contemplated cases being in the Case Resolution Programme after an asylum decision had been refused but when where no removal decision had been made. Until fairly recently it was common practice for asylum to be refused but the appellant not to be removed, at least not immediately. Very often there was no removal decision. In the instant case there has been a refusal of leave to enter which is an appealable decision and, on my reading, means that there is no need for the Case Resolution Programme to be involved.
17. Mr Saleem makes much in his grounds about factors that would be considered at any particular time and points out how they have been changed and how they are now harder to satisfy. All this seems to me perfectly correct but I cannot agree with the conclusion for which he is arguing. It is the nature of asylum cases that circumstances change and an application that succeeds when it is made would not necessarily succeed on the same facts some time later. Not everyone who has been given refugee status loses it when there is a change in country conditions. Such a policy would be impossible to implement and may well be undesirable because it would give people no incentive to integrate into the new community. Perhaps the reasons are not important, at least not to the Tribunal. It is settled law that a person's application will be decided in accordance with the Rules and policy in force when the decision was made. It is irrelevant that a person might have been successful if the case had been decided earlier just as it is no answer to a successful asylum application to say that it could have been refused if it had been considered earlier. From the point of view of litigant who sees his circumstances being essentially the same as someone who had a different outcome this seems unfair but it is, ironically, the likely consequence of an attempt to impose order on a system of deciding appeals.
18. Mr Saleem sought to distinguish the case from the decision in **AZ** because in **AZ** there had been no decision on his "legacy case" whereas here there was reference to the legacy scheme albeit without showing much depth of analysis. Mr Saleem has produced copies of chapter 3 of the Enforcement Instruction and Guidance in 2011 and 2014. Mr Saleem argued that the case of **AZ** was decided wrongly. He drew my attention to various points which he said were factually wrong or mistakes in the judgment.
19. This submission, which may not be well-founded in any event, misses the point. As was explained by the Court of Appeal in **SH (Iran)** there is no "legacy policy" in the sense that the legacy provisions create a separate set of Rules or identify separate considerations that put people in a more advantageous position than they would be if their case was decided only with reference to the Rules. So called "legacy cases" are decided with reference to the Rules. The legacy provision is an attempt to organise and explain the way in which all cases will be decided. It is conceivable that a person might want to say that his or her case should be decided under the legacy policy but that is not an argument about how it is decided but an

argument that it should be decided. Here the decision has been made and the appellant does not like it.

20. I have reflected carefully on Mr Saleem's arguments which were put in a measured but forceful way. I have read his skeleton argument. I note that he is inviting me to say much more than I am inclined to do. I do not see any point. It seems to me that the approach of the claimant in this case is fundamentally wrong. He has not been able to identify anything that ought to have been considered that has not been considered by the Secretary of State. All that has happened is that he had suffered delay. I do not mean to trivialise the position. Delay must be frustrating. It can, conceivably, make a difference to the outcome in particular circumstances but that is entirely a different point from the one argued before me that the decision ought to be considered under the legacy policy. There is no legacy policy.
21. Although this is my primary reason for deciding the case in the Secretary of State's favour I also make the point that if the case went back to the Secretary of State there would be nothing for the Secretary of State to do. The Secretary of State had said in the refusal letter that the legacy scheme had been considered. There is nothing to show it has been considered irrationally or inconsistently. The job has been done. The fact that Mr Saleem is not able to articulate how consideration under the policy would make any difference draws attention to the fact that there is no policy that determines the outcome of cases.
22. I do not agree that Judge Kopieczek's alleged failure to recognise that the policy extended beyond decided asylum cases makes any difference to anything.
23. Here the alleged additional obligation by the policy is to consider the possibility that a person who had been found not to be a refugee might still come within the scope of the Case Resolution Programme.
24. I have to conclude that on this occasion the First-tier Tribunal Judge misunderstood and should not have ruled the decision was not in accordance with the law. The decision has been made in accordance with the law and it is a decision that the appellant does not like. That is an entirely different point.
25. The appeal must be decided with reference to Article 8 of the European Convention on Human Rights. I do not see how the appeal can be allowed responsibly under the Convention with regard to the Rules or at all.
26. The appellant is now 25 years old. He has lived in the United Kingdom since he was 16 years old. He does not allege that he has any children or a life partner who might, in some circumstances, create a heavy weight in favour of allowing him to remain whatever the strict reading of the Rules might require. He is an apparently healthy young man who can return to his country of nationality and establish himself there. He has not lived in the United Kingdom for long enough to have acquired any right to remain. He is not a partner or a parent and there is nothing to support a finding

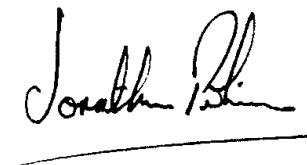
that there would be “very significant obstacles to the applicant’s integration” into Afghanistan.

27. He cannot satisfy the requirements of the Rules to remain on Article 8 grounds. There is nothing here that would justify a decision outside the Rules in his favour.
28. It follows therefore that I find the First-tier Tribunal erred in law. I set aside the decision allowing the appeal to the limited extent indicated above and substitute a decision dismissing the appeal under the Rules and with reference to Article 8 of the European Convention on Human Rights. Otherwise the decision of the First-tier Tribunal shall stand.

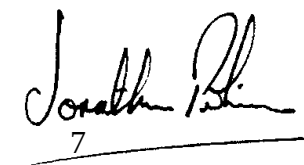
**Notice of Decision**

The Secretary of State's appeal is allowed to the extent that the decision that the Secretary of State's decision is not in accordance with the law is set aside and a decision dismissing the claimant's appeal on the additional ground that it is not contrary to the United Kingdom's obligation under article 8 of the European Convention on Human Rights is substituted.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 20 April 2015

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line with the number '7' written below it.