



IAC-BH-PMP-V1

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

Appeal Number: AA/05872/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 November 2015**

**Decision & Reasons Promulgated  
On 4 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**JAWAD SAFI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Blundell of Counsel instructed by Malik & Malik, solicitors

For the Respondent: Miss S Sreeraman of the Specialist Appeals Team

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is an Afghan national whose date of birth is given as 1 January 1996. He clandestinely entered the United Kingdom and subsequently claimed asylum. The Respondent refused his application but granted him discretionary leave until 20 April 2012. On about 2 March 2012, in time, he applied for further leave which on 30 July 2014 the Respondent refused.

2. On 14 August 2014 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert that on return he will be at risk of persecution on account of imputed political opinion because people will wish to exact revenge on him on account of his father who was accused of killing people. The grounds also refer to Articles 2, 3 and 8 of the European Convention and assert the Appellant's account is credible and entitled to recognition under the Refugee Convention.
3. The Respondent relied on the reasons given in a letter of 20 April 2009 for the refusal of recognition under the Refugee Convention and did not accept the Appellant's accounts of why he would be at risk on return. It was at that time the Appellant was granted discretionary leave.
4. The Appellant had entered illegally and following expiry of the discretionary leave granted to him he was an adult and able to return to Afghanistan. He had not supplied any evidence of efforts to contact his family in Afghanistan. Addressing the interference with any family and private life he might have established in the United Kingdom which result from the decision the Respondent considered the Appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules and could not show that that his removal would be a disproportionate interference with his rights protected under Article 8.

### **The First-tier Tribunal's Decision**

5. By a decision promulgated on 29 September 2014 Judge of the First-tier Tribunal Kaler dismissed the Appellant's appeal on all grounds.
6. On 6 November 2014 Judge of the First-tier Tribunal Landes granted the Appellant permission to appeal because it was arguable the Judge had erred in her assessment that the application of Section 117B of the 2002 Act, in particular in relation to the appropriate degree of facility in the English language expected of the Appellant. Permission to appeal on all grounds was granted.

### **The Upper Tribunal Hearing**

7. At the start of the hearing Ms Sreeraman said she had not seen a copy of the grounds for appeal. A copy was made available and time given to her to considerate.

### **Submissions for the Appellant**

8. Mr Blundell made the initial point the Judge's treatment of the factors referred to in Section 117B of the 2002 Act at paragraph 43 of her decision was insufficient in the light of the later decisions in *Dube (ss.117A-117D) Zimbabwe [2015] UKUT 90*, *Forman (ss.117A-C considerations) USA [2015] UKUT 412* and *Bossade (ss.117A-D - interrelationship with Rules) DRC [2015] UKUT 415*. Additionally, the Upper Tribunal had given guidance on the meaning of "precarious immigration status" in *AM*

(s.117B) *Malawi [2015] UKUT 260*. The learning in these decisions should now be reflected in the assessment of the proportionality of the Respondent's decision to refuse the Appellant further leave and to remove him to Afghanistan.

9. Mr Blundell accepted that the grounds at paragraphs 4 and 8 of the grounds for permission to appeal which he had not drafted did not pose an arguable challenge to the Judge's decision. The only remaining effective ground for appeal was the Judge's assessment of the requisite facility in English language by way of reference to S.117B(2) of the 2002 Act which did not impose a requirement that an applicant speak fluent English merely an ability to speak English. There was ample evidence in the Respondent's bundle before the Judge at pages G20 and G21 that the Appellant in 2010 when aged about 14 was recorded in his Key Stage 3 Assessment to have a facility in English language covering speaking and listening, reading and writing, albeit below the national expected standard for most 14 year olds. Consequently, by the date of the hearing before the Judge, the issue of the Appellant's facility in English language was simply a neutral factor and not an adverse one.

### **Submissions for the Respondent**

10. Ms Sreeraman argued the Judge had not made any material error in her treatment of the factors identified in ss.117A-117D. The decision in *AM* made it clear that satisfying the s.117B requirements did not itself create a right to remain in the United Kingdom. Even if the Judge had erred, the error was immaterial because there was no reasonable prospect of any different outcome from another tribunal.
11. Mr Blundell made the point again that the consideration of the Appellant's facility in English language as a factor under s.117B of the 2002 Act had been taken by the Judge against the Appellant when it should have been a neutral factor.

### **Findings and Consideration**

12. The Judge erred in law by construing s.117B(2) of the 2002 Act as requiring fluency in English language as the relevant factor rather than simply an ability to speak English of which there was some evidence at pages G20 and G21 of the Respondent's bundle. The basis of the grounds for appeal in paragraph 8 of the permission application has effectively been undermined by what is said about a "precarious" immigration status in *AM*.
13. There was no challenge to the Judge's other findings. While the Judge's treatment of the factor of English language facility in s.117B(2) of the 2002 Act was an error of law, I do not find that it was material and consider there is no reasonable prospect of any different outcome if the matter were heard by another tribunal. For these reasons the decision of the First-tier Tribunal shall stand.

**Anonymity**

14. There was no request for an anonymity direction and having considered the appeal I do not find one is not warranted.

**NOTICE OF DECISION**

**The decision of the First-tier Tribunal did not contain an error of law such that it should be set aside. Accordingly it stands. The effect is that the Appellant's appeal is dismissed.**

Signed/Official Crest

Date 27. xi. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal