



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

Appeal Number: AA/02934/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 May 2016**

**Decision & Reasons  
Promulgated  
On 7 June 2016**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**SHIRZAD WALIZADA**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms C Robinson, of Counsel instructed by Messrs Sutovic & Hartigan

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Afghanistan appeals with permission against a decision of Judge of the First-tier Tribunal Andrews, who in a determination promulgated on 15 December 2015 dismissed the appellant's appeal against a decision of the Secretary of State made on 15 February to refuse him asylum in Britain.

2. The appellant had claimed asylum in October 2009 asserting that he was 15 years of age. His application was refused. His appeal was heard by Judge of the First-tier Tribunal Parker who found that because of his relationship with a young woman in his local area in Kabul he was likely to be at risk but that he would be able to relocate to avoid any further difficulties. However, as the judge accepted that the appellant had been born as he had claimed on 16 January 1995 he found the decision was not in accordance with the law and remitted it to the Secretary of State to consider her statutory duties under Section 55 of the Borders, Citizenship and Immigration Act 2009: in particular the appeal was remitted on the basis that the Secretary of State had not considered whether or not there were suitable reception arrangements for the appellant in Afghanistan or made any enquiries as to the whereabouts of his family members.
3. The respondent then made a fresh decision granting the appellant limited leave to remain as an unaccompanied child. That decision was again appealed and considered by Judge of the First-tier Tribunal Walters and dismissed. Judge Walters also accepted the appellant's evidence but again considered that internal relocation was open to the appellant. An application for permission to appeal to the Upper Tribunal was made and granted and in April 2011 Upper Tribunal Judge Kekic found a material error of law in Judge Walters' determination because the respondent had still not discharged her duty under Section 55 of the 2009 Act. The appellant's appeal was allowed by Upper Tribunal Judge Kekic to the extent that it was remitted to the respondent to consider her obligations under Section 55. The Court of Appeal refused permission to appeal Judge Kekic' decision. An application by the appellant was then made for further leave to remain. That again was refused and in these circumstances the appeal came before Judge Andrews. What is of note however is that in July 2012, after the hearing before Upper Tribunal Judge Kekic a judge in the High Court found that the appellant was an adult whose date of birth was 16 July 1990 and he was therefore not a minor. In refusing the further application the Secretary of State relied on that fact and also emphasised that internal relocation to Mazar-e-Sharif was a viable option for the appellant to avoid any risk of persecution and that he would be able to find a job and support himself there. Reference was further made to the Assisted Voluntary Return Scheme to help with the appellant's re-integration into Afghanistan.
4. In his witness statement which was considered by Judge Andrews the appellant had said that his only family was his mother and two maternal uncles, one of whom lived in Kabul and the other in Mazar-e-Sharif and that he feared return to Afghanistan because he had entered into a relationship with a young woman, Farzana which had been discovered by her father who was a powerful, well-connected commander in the Afghan Army and that had led to the appellant and his mother fleeing to the appellant's uncle's house in Mazar-e-Sharif. Farzana's father had beat her and the appellant's uncle in Kabul to find out where the appellant was: his

uncle had then also relocated to Mazar-e-Sharif. Farzana's father had been told that the appellant was there but not exactly where. The appellant's assertion was that he was in danger, even in Mazar-e-Sharif from Farzana's father. The appellant had claimed that he had no contact with any of his family since leaving Afghanistan and the family had planned to leave Afghanistan and he had unsuccessfully tried to contact them.

5. Judge Andrews heard evidence from a Mr S Krieger of the Children's Society and a friend of the appellant, Mr Hamidi. Mr Krieger had asserted that the appellant was a vulnerable young man who was homeless and jobless but that he had referred him to a hostel. The appellant had told Mr Krieger that he had nightmares relating to events in Afghanistan and that he experienced severe anxiety and Mr Krieger asserted that the appellant had genuine fear that he would be harmed if he returned to Afghanistan. The appellant had been referred to Freedom From Torture for counselling and an appointment was awaited. It was Mr Krieger's view that the appellant had been traumatised by what had happened in Afghanistan.
6. Mr Hamidi had become a close friend of the appellant since meeting here. He said that the appellant had been trying to trace his family through the Red Cross.
7. Judge Andrews considered a report from Ms Kralj, a psychotherapy nurse specialising in complex trauma, regarding the appellant's mental health and considered considerable background evidence including country expert reports from Dr Guistozzi and Dr Van Engeland. She applied relevant case law and noted that Ms Robinson who also appeared before her, had argued that she should not follow the country guidance case of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)** because of the deteriorating situation in Afghanistan. She noted that Dr Van Engeland referred to events which had taken place in Mazar-e-Sharif. Judge Andrews considered the various reports before her in detail and then in paragraphs 42 onwards set out her findings of credibility and fact. She felt bound by the findings of Judge Parker and Judge Walters and therefore accepted that the appellant had become involved with Farzana in Kabul and that there would be repercussions for the appellant if he returned to Kabul. She therefore accepted that the appellant was reasonably likely to be at risk in his local area and took the view that relocation was open to the appellant.
8. With regard to the appellant's health she stated that she accepted that the appellant suffered from a major depressive disorder.
9. She made general credibility findings and placed weight on the fact the appellant had not claimed international protection before arriving in Britain and also reached the conclusion that the appellant's claim that Farzana's father had found out that he had relocated to Mazar-e-Sharif was an embellishment and that that damaged his credibility.

10. She considered in detail the fact that the appellant had told her that he had given his uncle's name to somebody called Hafiz asking him to find his family but that they had been unable to do so. However she placed weight on the fact that Mr Hafiz had not attended the hearing. There was no evidence why that was the case.
11. She also referred to the issue of the appellant's age accepting that there had been a finding that the appellant had been born in 1990 rather than in 1995 as he had claimed and therefore he had been an adult when he sought asylum here. She placed weight on a finding by Judges Walters and Parker that the appellant's claim not to have been in contact with anyone in Afghanistan since leaving lacked credibility and she did not accept the appellant's evidence that he had not been in touch with his family since leaving Afghanistan. Indeed she found that the appellant was someone who was willing to tell untruths in the hope of improving his immigration status. Having reached the conclusion that the appellant's family were in Mazar-e-Sharif in 2010 where one of his uncles already lived she adopted Judge Walters' conclusion that he had been satisfied that the appellant had family to whom he could return in Afghanistan. She found moreover that he would not be found by Farzana's family in Mazar-e-Sharif reaching that conclusion after having considered in some detail the reports before her. She considered that internal relocation was open to the appellant. She concluded therefore that the appellant was not entitled to refugee status. Moreover having considered the background evidence and the relevant country guidance she considered that he was not entitled to humanitarian protection. For the same reasons she found that the appellant was not entitled to protection under Article 3 of the ECHR. In considering the issue of the appellant's rights under Article 8 of the ECHR she applied relevant case law and concluded that, notwithstanding the appellant's mental health problems, that his removal to Afghanistan where he had family members would not be a disproportionate interference with his rights under Article 8 of the ECHR.
12. The rather lengthy grounds of appeal asserted that the judge had erred in her approach to the appellant's credibility: they referred to the fact that Mr Krieger and Ms Kralj had found him to be credible. They argued that the judge should not have placed weight on the fact that the appellant had not claimed asylum earlier and that she was wrong to place weight on the fact that Mr Hafiz had not attended the hearing. They stated that she had erred in not departing from the country guidance case of **AK** and that her approach to Article 8 of the ECHR was flawed.
13. In her submissions Ms Robinson relied firstly on the skeleton argument which largely repeated the terms of the grounds of appeal emphasising that there was evidence from Mr Hafiz regarding his travel to Afghanistan and his lack of success in tracing the appellant's family.

14. Ms Robinson emphasised the positive findings made by Judges Parker and Walters but stated that it was relevant that the judge had not made a finding as to when the appellant had fled to Mazar-e-Sharif and that in any event the finding that the appellant's family were there was an historic finding. She stated that it was wrong to apply the terms of Section 8 and to place weight on the appellant's delay in not claiming asylum en route to Britain and referred to the further evidence regarding the situation in Afghanistan as well as the psychological evidence put forward by Mr Krieger. She stated that the appellant would not be able to internally relocate to Mazar-e-Sharif and that he would be found there and therefore the decision of Judge Andrews regarding internal relocation was flawed. She referred to a report dated 4 May 2016 from a Mr Tim Foxley which asserted that the appellant would have difficulty reintegrating into life in Afghanistan because of his youth and lack of experience of living there and the extensive time he had now spent in Britain. She stated that there was clear evidence the appellant could be tracked down to Mazar-e-Sharif. She stated that the fact that there were assisted voluntary returns was not when relevant considering the appellant's case.
15. Mr Tarlow relied on a Rule 24 statement arguing that the judge had reached conclusions which were fully open to her. The Rule 24 statement emphasised that even if it were accepted that Mr Hafiz had been unable to trace the appellant's family when he was last in Afghanistan that was not capable of changing the reasons made by the First-tier Judge regarding the credibility of the appellant's claim. It was argued that she had reached conclusions which were fully open to her.
16. In reply Ms Robinson argued that the appellant was a vulnerable individual and that this increased the difficulties he might face in relocating.

## **Discussion**

17. What is of note in this case is that when the appellant arrived in Britain he asserted that was aged 13. If it were the case that that were correct then it is difficult to see what particular weight Farzana's father would have placed on the friendship between his daughter and the appellant. Clearly I would accept that it would have angered him and he might well have wished to find the appellant but the offence would clearly be a less serious one than if the appellant were older. However, the appellant has been found to have been born in 1990 and therefore to have been 19 when he claimed asylum. The difference in age is not one that can be accounted for merely because the appellant was uncertain about his age. It is clear that there was deliberate deception by the appellant when he arrived and claimed that he was much younger than he was. There are, of course, very clear benefits in seeking to be considered as a minor on arrival.
18. I consider therefore that Judge Andrews was entitled to consider that the appellant lacked credibility in his story of what had happened in Afghanistan although she did accept, following the principles in

**Devaseelan**, that the appellant had, as he had claimed, formed a friendship with Farzana of which her father had disapproved. Indeed she accepted that the appellant might be at risk in his home area. Taking into account the effluxion of time, of almost seven years that might well be considered to be a generous conclusion.

19. Nevertheless Judge Andrews considered that the appellant would be able to relocate to Mazar-e-Sharif. That was, I consider, a conclusion that was entirely open to her. Certainly in 2010 the appellant had an uncle who was living there - not someone who had merely relocated with the appellant from Kabul. At that age the appellant would have been 20. Moreover, there is nothing to suggest that there would be any likelihood of the appellant being traced there let alone any evidence to indicate that Farzana's father would still wish to trace him or even know that he had returned.
20. This is not the case of an Afghan who entered Britain as a young child who had spent all his teenage years here and would be returning to a country of which he had little memory. The reality is that the appellant was already an adult when he arrived in Britain and claimed asylum and, on his own evidence had worked in Kabul.
21. The judge's conclusions on the issue of internal relocation were conclusions which were I consider entirely open to her and were properly reasoned.
22. I note the further evidence from Mr Hafiz but I do not consider that that would have influenced the decision of the judge. The reality is that the appellant would be returning to Mazar-e-Sharif, a place where he had lived in the past and where, even if he could not find relatives would be likely to be able to make contact with people who had known his uncle there.
23. The judge did properly consider the various reports both on the internal situation in Afghanistan from Dr Giustozzi and Dr Van Engeland and on the appellant's mental health from Mr Kralz as well as the evidence of Mr Kreiger. She applied relevant case law on both of these issues and again her conclusions were fully open to her.
24. I therefore find that there is no material error of law in the determination of the Judge of the First-tier Tribunal and therefore her decision dismissing this appeal on asylum, humanitarian protection and human rights grounds shall stand.

Signed

Date

Upper Tribunal Judge McGeachy

7 June 2016