



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

Appeal Number: PA/01177/2016

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons Promulgated
Birmingham
On 8th August 2017**

On 25th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**ABDUL BARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Alban of Sultan Lloyd Solicitors

For the Respondent: Ms M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Afghanistan born on 15th July 1998. He arrived in the UK on 10th June 2012 and applied for asylum on 19th July 2012. That application was refused on 10th May 2013 but owing to the Appellant's age

he was granted discretionary leave until 10th November 2015. The Appellant applied for leave to remain on 5th November 2015. That application was refused for the reasons given in the Respondent's letter of 18th January 2016. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Lagunju (the Judge) sitting at Birmingham on 4th October 2016. She decided to dismiss the appeal on asylum and human rights grounds for the reasons given in her Decision dated 26th January 2017. The Appellant sought leave to appeal that decision, and on 16th May 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge dismissed the appeal for the following reasons. It was accepted by the Respondent and found by the Judge that some time in 2011 the Appellant was abducted by the Taliban and later released on payment of a ransom. Two or three months later the Appellant's father was kidnapped and as his family was unable to pay a ransom, he was killed. However, the Judge found that the Appellant had failed to show that he was at risk of being forcefully recruited by the Taliban partly because his mother, brothers and sisters still lived in the family home. The Judge was not satisfied that the Appellant had a well-founded fear of persecution on return, and concluded that it was safe for the Appellant to return to his home area. In the alternative, the Judge found that the Appellant could safely relocate to Kabul and that it was not unreasonable for him to do so. At the hearing before me, Ms Alban referred to her Skeleton Argument and submitted that the Judge had erred in law in coming to these conclusions. It was not in dispute that the Appellant was persecuted when he was abducted in 2011. However the Judge failed to consider the implications of this finding as given in paragraph 339K of HC 395 and Article 4(4) of Directive 2004/83. As there was past persecution, the burden was upon the Respondent to show that there were good reasons to believe the persecution would not be repeated as found by the ECtHR in **JK v Sweden**. The Judge had failed to consider the appeal from that perspective. The Judge found that the Appellant could safely relocate to Kabul, but that finding was tainted by the Judge's failure to make a proper finding as to the risk of future persecution.

4. In response, Ms Aboni argued that there was no such error of law as the Judge had directed herself appropriately and had given adequate reasons for her decision. The Judge accepted the Appellant's evidence but made no finding that the Appellant had been persecuted in the past. The Judge found that the Appellant had not explained his fear of future persecution by the Taliban. The Judge considered the decision in **AK (Article 15(c)) Afghanistan CG [2012] UKUT 000763 (IAC)** and found that as the Appellant still had family living in Afghanistan, it would be reasonable as not unduly harsh to expect him to relocate to Kabul.

5. Ms Alban made other submissions to me which I need not deal with in this Decision as I find that the Judge made a material error of law and that therefore her decision must be set aside and the decision in the appeal remade in the First-tier Tribunal. It was not in dispute that the Appellant had suffered an abduction in 2011. Although the Judge did not make a specific finding as such, this can only be viewed as persecution or serious harm. If the Judge thought it was not, it was an error for her not to say so and explain why. As there was past persecution or serious harm, it behoved the Judge to consider risk on return in the light of paragraph 339K of HC 395. This provides that such past persecution must be regarded as a serious indication of the Appellant's well-founded fear of future persecution on return unless there are good reasons to consider that such persecution will not be repeated. The Judge failed to deal with this issue at all. I agree with the submission of Ms Alban that such a failure renders the Judge's internal relocation finding as unreliable.
6. At the request of Ms Aboni, I decided not to proceed to remake the decision in the appeal but to remit that decision to the First-tier Tribunal for it to be remade there under the provisions of paragraph 7.2(b) of the Practice Statements. There is more fact-finding to be done in respect of risk on return.

Notice of Decision

7. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision will be remade in the First-tier Tribunal.

Anonymity

8. The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed I find no reason to do so.

Signed

Dated 25th August 2017

Deputy Upper Tribunal Judge Renton