



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

Appeal Number: PA/00422/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 24 January 2018**

**Decision & Reasons Promulgated
On 26 March 2018**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

**FA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith, Counsel, instructed by Kesar & Co Solicitors (Dover)

For the Respondent: Mr S. Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan who was born on 1 January 2000. I am sure that is a nominal date of birth, as is often the case with Afghani citizens. It means that at some time in the year 2018, he will become an adult in accordance with United Kingdom law. However, at the time the decision was made by the Secretary of State and at the time the First-tier Tribunal Judge heard the appeal and promulgated the decision he was a

minor. It is in those circumstances that the appellant comes to appeal the determination of First-tier Tribunal Judge Woolf promulgated on 10 April 2017 dismissing his appeal against the respondent's decision of 23 December 2016 to refuse his protection claim and to refuse his claim that his removal would violate his human rights. Consequently, the issues at large are his protection claims including Articles 2 and 3 as well as Article 8.

2. I can summarise the position that was found by the First-tier Tribunal Judge. He and his father and the family were part of the Ahmadzai tribe and came from a village in Baghlan Province. His father was a member of the Ahmadzai Shora, which is a committee of notables from different provinces in Afghanistan who participate in a form of government. There is no doubt that the appellant's home area is controlled by the Taliban and it was his case that his father was threatened by the Taliban because they saw members of the Ahmadzai Shora as supporters of the government. That seems both plausible and, according to the judge, credible. In the result the judge was satisfied, according to paragraph 55 of the determination, that it was reasonably likely that the appellant's father came under threat to leave his post as a member of the Ahmadzai Shora and, accordingly, I think the inevitable consequence of that was that the appellant's family were at risk in the home area.
3. At present I do not see it was a finding made by the judge that the appellant himself as a minor could return to an area which is under the control of the Taliban, all the more so if his father had a position as a member of the Ahmadzai Shora. It followed from this that the issue before the Tribunal was whether or not it was reasonable, (the expression 'unduly harsh' is sometimes used as a synonym), for him to relocate as a minor to Kabul. The judge's findings in relation to the level of contact that the appellant had with his parents was equivocal. There are no findings that I find sustainable in relation to that element of the enquiry. He concluded: "I am not satisfied that the appellant has lost contact with his family members and that he would be unable to be united with them on return."
4. However, it was simply not enough to render the appellant's relocation to Kabul reasonable or not unduly harsh. It would require specific findings that the appellant as a minor could have returned to Kabul where he would have contacted a member of his family, either his mother or father or more distant relatives. In normal circumstances it would be a perfectly proper inference to draw that if a family member were confronted with a telephone call from a minor who could not return to his home area that the family member would make efforts to provide the safety net that the minor requires but there has to be a thoroughgoing enquiry as to whether that is possible.
5. If there is an issue as to whether it is reasonable for the appellant to relocate, the burden of establishing that is probably upon the respondent but at the very least it is a mutual matter upon which the Tribunal has to be satisfied. That does require a consideration of the family's

circumstances in the village, the circumstances in Kabul and the family's ability to offer the support which is, in my judgment, essential before it can be said that the appellant could properly return to Kabul as a minor. He would travel as an unaccompanied minor but in Kabul it would be essential that he becomes an accompanied minor. That was an enquiry which the judge did not embark upon and it is for that reason that I find that the determination is materially flawed. It requires a considerable amount of additional fact-finding which will include evidence as to the ability of the appellant to contact his parents.

DECISION

- (i) The decision of the First-tier Tribunal discloses an error of law and I set it aside.
- (ii) The decision is to be re-made in the First-tier Tribunal in Hatton Cross. A Pashtu interpreter will be needed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
Dated 20 March 2018