



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05649/2016

THE IMMIGRATION ACTS

Heard at Field House
On 13 July 2018

Decision and Reasons Promulgated
On 06 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

[N S]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton (counsel instructed by Duncan Lewis Solicitors)

For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of [NS], a citizen of Afghanistan with a birth date recorded as 1 January 1978, against the decision of the First-tier Tribunal of 28 February 2017 to dismiss his appeal on asylum grounds, itself brought against the decision of the Secretary of State of 23 May 2016 to refuse his asylum claim.
2. His claim was based on his fears of the Jamiat Political Party and the Taliban. When he was aged around 13, his family became caught up in a feud between Jamiat and

Hezb-e-Islami. His brother was killed early on in the feud, and in retribution members of the opposing party were slain, leading to a hunt for the appellant's father.

3. They went to Pakistan, though in the camp where they resided the family was attacked; his father struck one attacker with an axe, seriously injuring him, and the appellant injured another man. His father was subsequently arrested over the incident, and imprisoned for 25 years following the attacker's death. Meanwhile the appellant went on the run, there being a warrant out for his arrest. He married and began to live in Haripur. There he was attacked, but escaped. He went to live in Bahawalpur for several years, before returning to Afghanistan, as his family could no longer cope with being separated from him.
4. His father was attacked and killed in 2008, whilst holding the appellant's three-month-old son, who was also injured. This incident apart, they lived safely in Afghanistan for several years, until in June 2015 their enemies learned of their location from a nephew they bribed, and a grenade was thrown into the family home. The Appellant now feared for his safety that he felt that leaving the region altogether was the only solution.
5. The First-tier tribunal heard the appellant's appeal, having refused an adjournment application to seek expert evidence in order to authenticate the appellant's documents on the basis that the possibility of such material eventuating at this late stage was unduly speculative. The Tribunal did not accept the appellant as a credible witness, because
 - (a) His asylum claim was made very late, after some 8 years of absconding, to avoid being returned to Greece which would have been the country responsible for his claim;
 - (b) The documents recording his father's conviction and sentence did not suggest any political dispute: an appeal court judgment referenced some minor altercation and a dispute over the boarding of passengers; the evidence regarding his father's release was equally unclear;
 - (c) His account of events in 2015 was inconsistent as to the family's location and the supporting materials were not sufficiently cogent to assist him in establishing his claim.
6. In conclusion, whilst the Tribunal was willing to accept the possibility that the appellant's father may have been killed in the context of a family feud, there was nothing to show any political dimension to the death, notwithstanding the background evidence indicating that political violence was common in Afghanistan and Pakistan. None of the facts asserted by the appellant were accepted as established, beyond the fact he would be returning to his country of origin as a failed asylum seeker, in circumstances where he had a wife and children there.
7. Grounds of appeal contended that the First-tier tribunal had erred in law in failing to make findings as to whether the appellant would be at risk from the armed conflict in his home province of Baghlan or in Kabul were he to relocate there (given that on a return he would now present as westernised), failed to make findings on all relevant issues and evidence, and acted unfairly in refusing an adjournment.

8. Permission to appeal was granted and following a hearing confined to the question of whether the First-tier tribunal had erred in law in its treatment of the case, the Upper Tribunal issued a decision and reasons on 8 September 2017. It rejected the contention that there had been any material error of law, taking the view that the appellant's immigration history fully justified the findings made and that the documents he prayed in aid of his case did not establish the necessary background to put him at risk. Accordingly, the findings made had been sufficient to deal with the individualised element of his asylum claim. However, the Upper Tribunal accepted that there had been no treatment of the question of armed conflict risks, and set the appeal down for a continuation hearing to address that single issue. Given that Country Guidelines on that point were known to be pending, it was appropriate to defer final consideration of the appeal pending their publication.
9. In due course the decision in *AS (Safety of Kabul) Afghanistan* CG [2018] UKUT 118 (IAC) (28 March 2018) was issued. At the continuation hearing before me, Mr Eaton recognised that there were significant obstacles to the appeal's success, though nevertheless sought valiantly to defend his client's interests with references to country evidence that might bear on his circumstances, particularly extracts from the Amnesty International report *Forced back to danger: Asylum-seekers returned from Europe to Afghanistan* (5 October 2017), the Home Office Country Policy and Information Note – *Afghanistan: Security and humanitarian situation* (August 2017), and the UNHCR Eligibility Guidelines for assessing Afghan asylum claims 19th April 2016.
10. For the Secretary of State, Mr Wilding replied that the Country Guidelines set out in *AS Afghanistan* decision were determinative of, and fatal to, the Appellant's appeal.

Findings and reasons

11. These extracts from the headnote to *AS Afghanistan* are of particular interest:

“Internal relocation to Kabul

(ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

(iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

(iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

(v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security

situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.”

12. The material cited by Mr Eaton undoubtedly raises humanitarian concerns about the advisability of returning asylum seekers to Afghanistan. For example, the Home Office Guidance cites country evidence to this effect:

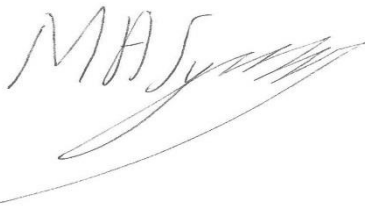
“**2.3.14** Since the promulgation of AK in May 2012 the overall number of civilian deaths and injuries in Afghanistan documented by UNAMA has increased. The number of civilian casualties in 2016 (11,418 – 3,498 deaths and 7,920 injured) has increased by 32% compared to 2011 (7,842) – the highest since recording began in 2009; and a 3% increase in total civilian casualties compared to 2015.”

13. However, the reality is that all the materials cited to me are amongst those listed in the exhaustive catalogue of relevant country materials listed in the Annex to *AS Afghanistan* itself. The situation for civilians in Kabul, particularly those who have not lived there in recent years, is clearly not all that it might be. Doubtless there are challenges for returnees in making a new life for themselves. There may very well be humanitarian objections to the return of asylum seekers; but there are only legal barriers if the individual in question is owed the recognition of some status in domestic or European Union law. *AS Afghanistan* has answered that question in the negative for the average returnee unable to distinguish themselves from the general run of healthy young men who would face no dangers from any particular source of persecution in Kabul.
14. The reality of the Appellant's case, in so far as any facts were accepted by the Tribunal below, is that he is a healthy single adult male who can, applying the Country Guidelines, be reasonably expected to return there to make a life for himself. This is the case whether or not he has any support network or specific connections there. As the Tribunal stated in *KH Iraq* CG [2008] UKAIT 00023: “The plight of persons who flee armed conflicts affronts our common humanity” Whilst the level of violence which afflicts Afghanistan is higher than anyone would ideally be expected to face, we live in an imperfect world, and the *AS* Tribunal has recently found that the security situation there is not such as to engage the UK’s international (or European Union) obligations.

Decision:

The decision of the First-tier Tribunal does not contain a material error of law.

The appeal is dismissed.



Signed:
Deputy Upper Tribunal Judge Symes

Date: 20 July 2018