



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10851/2018**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 10 May 2019**

**Decision & Reasons Promulgated
On 15 May 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AY
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Singh, Consultant Solicitor instructed by Aman Solicitors Advocates

For the respondent: Ms Young, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Introduction

1. I have made an anonymity order because the appellant is a minor, having been born in Afghanistan in September 2001.
2. The appellant has appealed, with permission granted by First-tier Tribunal ('FTT') Judge Buchanan, against a decision of FTT Judge Row sent on 12 December 2018, in which his asylum and Article 8 appeals were dismissed.

Background

3. The appellant, a citizen of Afghanistan, lived with his grandfather in Langham province. He claims that the Taliban were active in Langham and tried to recruit him. He fled his home area to escape the Taliban and made his way overland via various countries to seek the protection of the UK, where his father has resided since 2004. The appellant claimed asylum immediately upon arrival in the UK on 27 February 2018 but this was refused by the respondent in a decision dated 28 August 2018.
4. The appeal against this decision was heard by the FTT on 13 November 2018. The FTT accepted certain aspects of the appellant's account but concluded that he was not at risk in his home area. Significantly, the FTT went on to address whether "in any event" the appellant could internally relocate away from his home area, in Kabul. The FTT considered the country guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT, and reached the conclusions set out below.
 - (a) Even if the appellant's account is true he would only be of low level interest to the Taliban and the country guidance in AS makes it clear that he would not be at real risk of persecution in Kabul.
 - (b) Although the appellant will be a 17-year-old without family in Kabul, he will not be destitute and would be able to arrange accommodation and employment. This is because he will have financial and other necessary support available to him from his family in Laghman province and his father in the UK, bearing in mind the family were able to raise at least \$10000 to finance the appellant's journey to the UK. The FTT observed that the appellant is a physically robust young man but if necessary his father could accompany him on the journey back to Kabul.
5. The FTT considered the appellant's family life with his father in the UK but found that his failure to seek to join his father by lawful means weighed heavily against him. The appeal was therefore dismissed on Article 8 grounds.

Grounds of appeal and hearing

6. The grounds of appeal have been drafted by the appellant's solicitors. They focus entirely upon the Refugee Convention appeal and are threefold:
 - i) The FTT failed to take into account the evidence that the Taliban were prevalent in Laghman.
 - ii) The FTT did not provide adequate reasons for rejecting the appellant's claim to be at risk in Laghman province, having accepted important aspects of the appellant's background.
 - iii) In concluding that the appellant's claim that he was at risk in Afghanistan was not plausible because he failed to find temporary refuge in Kabul or countries en route to the UK at [30], the FTT contradicted its acceptance at [29] that the appellant's failure to claim asylum en route did not damage his credibility because he understandably wanted to join his father in the UK and was under the control of an agent.
7. At the beginning of the hearing Mr Singh confirmed that he relied upon the grounds of appeal, which focussed entirely upon the FTT's findings of fact in relation to the credibility of the appellant's account in his home area. I invited Mr Singh to explain how any of the three grounds of appeal were material, in the light of the FTT's clear finding that the appellant could safely and reasonably relocate to Kabul. At first, Mr Singh submitted that the FTT failed to factor in the appellant's age when dealing with internal relocation. I pointed out that it is clear from [18] of the decision, that the FTT approached the issue of internal relocation correctly, i.e. on the basis that the appellant is a 17-year-old minor. Mr Singh was unable to advance any further argument as to why the errors of law made a material difference to the outcome of the asylum appeal. In these circumstances, I did not need to hear from Ms Young.

Error of law discussion

8. I have sympathy with the first and third grounds of appeal. There is country background evidence, consistent with the appellant's evidence, that the Taliban has had a significant presence in Laghman province. In addition, the distinction made between credibility at [29] and plausibility at [30] is difficult to understand, given the respondent's concession in the refusal letter that adverse inferences should not be drawn from the failure to claim asylum in other countries when the appellant's father has been lawfully present in the UK for many years.
9. However, the FTT went on to address the appellant's circumstances in Kabul on the basis that it was wrong about the credibility of his account in relation to his home area. The grounds of appeal entirely omit any reference to the findings on internal relocation. Mr Singh did

not even attempt to identify any error of law in the findings concerning internal relocation. The FTT was obliged to direct himself to the country guidance case of AS and was entitled to find that the appellant could safely and reasonably relocate to Kabul in all the circumstances. This conclusion renders the errors of law identified in the grounds of appeal immaterial. Even assuming the FTT erred in law in concluding that the appellant is not at risk of persecution in his home area, it was still bound to dismiss the appeal on the basis that on its unappealed findings, he could internally relocate to Kabul.

10. Mr Singh confirmed that there was no appeal against the FTT's Article 8 findings.
11. When the decision is read as a whole I am satisfied that the grounds of appeal do not contain any material error of law, and I decline to set aside the decision.

Decision

12. The FTT decision did not involve the making of a material error of law and I do not set it aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
10 May 2019