



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04620/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 29 September 2020 via Skype

Decision & Reasons Promulgated
On 05 October 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

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ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Mohzan, Consultant Solicitor instructed by French & Co
For the respondent: Mr Tan, 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.

1. The appellant has appealed, with permission granted by First-tier Tribunal ('FTT') Judge Neville, against a decision of FTT Judge Hawden-Beal sent on 27 September 2019, in which his appeal on international protection grounds was dismissed.

2. The appellant, a citizen of Afghanistan, claims that he is at risk of persecution from the Taliban for reasons relating to the American employment of his father and uncle. The FTT accepted that the appellant's family members were employed as security guards at the American Kandahar air base and received threatening 'night letters' from the Taliban for reasons relating to this, which in turn forced the family to relocate from their home area to Kabul. The FTT then applied the country guidance at the time to the appellant's situation in Kabul and concluded that he could safely and reasonably relocate there, where he would not be at risk of Article 15(c) harm.
3. In grounds prepared by Mr Sobowale of Counsel, the appellant relied upon one ground of appeal: in applying the country guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (23 March 2018) regarding Article 15(c) risk, the FTT erred in law by failing to engage with the Court of Appeal's ('CA') remittal of that case to the Upper Tribunal ('UT') - see AS Afghanistan v SSHD [2019] EWCA Civ 873 (24 June 2019). The CA set aside the 2018 CG decision on the basis that the conclusion that the percentage risk of being a casualty from a security incident was 0.01% was not reasonably open to the Upper Tribunal ('UT') on the evidence before it. The CA found that the case would need to be remitted to the UT in order for it to reconsider the decision on the reasonableness of Kabul as an internal relocation alternative on the basis of the correct figure regarding risk of death or injury from security incidents. This was the only error of law identified by the CA.
4. At the beginning of the hearing before me the representatives clarified that they relied upon skeleton arguments served in accordance with directions.
5. At the beginning of the hearing Mr Mohzan accepted there was only one ground of appeal - the FTT erred in law in applying the 2018 CG case when there was an issue that the CA considered required further consideration before the findings on Article 15(c) could be relied upon. Mr Mohzan acknowledged that the real issue was whether this error was a material one in the light of AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130 (IAC) (28 April 2020). I asked Mr Mohzam to explain in what way the guidance in the 2020 CG case was materially different to that in the 2018 CG case in the context of this appellant's circumstances. He was entirely unable to identify any material difference. Instead he pointed out that the FTT erred in failing to apply principles in AM (Zimbabwe) v SSHD [2020] UKSC 17 to the appellant's health condition. When I pointed out that this did not form any part of the pleaded grounds or an application to amend the grounds, Mr Mohzam accepted this and said that he did not wish to make any further submissions.
6. After hearing from Mr Mohzam I indicated to Mr Tam that I did not need to hear from him because I was satisfied that the FTT did not make a material error of law.

7. As Mr Mohzam conceded, the 2020 CG case did not amend the guidance on Art 15(c) risk or the matters to be relevant to internal relocation in any material manner, relevant to the appellant's circumstances. It follows that the failure to note the CA's decision made no material difference. The FTT would have inevitably reached the same conclusions (see [39] and [40] in particular) given the appellant's circumstances. As pointed out in the respondent's skeleton argument the headnote and guidance in the 2020 CG case are not materially different to the 2018 CG case applied by the FTT. Having found that the appellant would be able to benefit from family support in Kabul, the FTT would be bound to find that the appellant as a relatively healthy young man would be able to reasonably and safely relocate to Kabul.

8. The FTT also addressed the appellant's medical condition at [39] and was entitled to find that the appellant's hepatitis did not require treatment, medication or monitoring. Given this unappealed factual finding, the failure to apply AM is not material. AM emphasises that a high threshold is still required for Article 3 medical cases. The evidence in this case comes nowhere near this. In any event this did not form part of the grounds of appeal and there was no application to amend the grounds. If there was, I would have refused it. The underlying submission is hopeless given the FTT's finding of fact regarding the appellant's hepatitis.

Decision

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

Signed: *UTJ Melanie Plummer*
Judge of the Upper Tribunal

Dated: 29 September 2020