



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

Appeal Number: IA/00120/2020

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 8th December 2021**

**Decision Promulgated
On 30th December 2021**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**SY
(anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant: Ms L. Mair, Counsel instructed by Braitch Solicitors
For the Respondent: Mr C. Bates, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Afghanistan born in 1993. He appeals with permission against the decision of the First-tier Tribunal (Judge Thorne) to dismiss his appeal on protection and human rights grounds.

Background and Findings of the First-tier Tribunal

2. The Appellant is a Tajik from Balkh province. The basis of his claim, made in June 2017, was that he has a well founded fear of

persecution/serious harm in Afghanistan at the hands of a local Hezbe-Junbish warlord. He had learnt from family members, in particular his mother and brother, that this warlord had killed his father, who had been a commander for the rival Hizb-e-Islami. The Appellant believed that because matters of honour would be at stake, he would also face a risk from this man. Further his mother had told him to leave because she believed that the Taliban wished to recruit the Appellant. He had initially claimed asylum in Germany but then had come here in order to be with his brother. On arrival the Appellant had asserted that he was a minor, although following an age assessment conducted by Nottingham City Council this was rejected and he has been treated as an adult throughout.

3. The First-tier Tribunal did not find the account of life in Balkh made out to the requisite standard. The Appellant was able to give very little detail and appeared to have based his claim on what his mother had told him. There was no country background evidence to support the claimed existence of the warlord and nothing to suggest adverse interest from the Taliban, other than his mother's fear. The Tribunal further found, in accordance with AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130 (IAC), that the Appellant could in any event relocate without undue difficulty to Kabul. Although he suffers from moderate depression he is otherwise fit and healthy and is familiar with the language and customs of the country.

The Appeal

4. The grounds of appeal are that the First-tier Tribunal materially erred as follows:
 - i) Failing to give proper consideration to the expert medical evidence, *in particular* in its assessment that his evidence was "vague". The Tribunal did not recognise the medical evidence that the Appellant had been prescribed medication, that his depression would worsen if returned to Afghanistan, or the argument that this could impact upon his ability to obtain employment;
 - ii) Further in this regard no finding was made as to whether the Appellant was a vulnerable witness. It was incumbent upon the Tribunal to consider and apply the Joint Presidential Guidance Note No 2 of 2010. This failure had a material bearing on the credibility assessment made by the Tribunal;
 - iii) Failing to consider the evidence/make findings on whether the Appellant had any support network left in Afghanistan. It had been his evidence that his entire family had fled or been killed;

- iv) Erring in fact in finding that there was no evidence before him of a lack of treatment for depression in Kabul – in fact such evidence was before the Tribunal in the form of the accepted evidence of Dr Ayesha Ahmad set out in detail in AS (Safety of Kabul);
 - v) No findings are made on the risk of forced recruitment by the Taliban;
 - vi) No findings are made on the case put that the Appellant would face a real risk of harm because he will be considered to be ‘westernised’.
5. In her submissions Ms Mair expanded on (iii) to add that nor was there any finding on other potentially relevant factors such as the Appellant’s ethnicity, his mental health, his lack of employment experience, his lack of an original *taskera* or the fact that he had no experience of, or connections to, Kabul. Read with ground (iv) this was a significant omission. The parties had proceeded on the basis that since removal would be to Kabul, the Tribunal had to start there. Implicit in that approach was the recognition by the Respondent that onward travel within Afghanistan could be dangerous, and that there was in general terms a lack of protection outside the capital. That being the case, the Tribunal was required, by AS, to conduct a detailed and individualised assessment of the Appellant’s position. This, submits Ms Mair, it did not do.

Discussion and Findings

6. I am satisfied that the decision of the First-tier Tribunal does contain errors of law such that it should be set aside.
7. The first is that the Tribunal appears to have given no consideration to whether the Appellant is a vulnerable witness per the Joint Presidential Guidance. It is true, as Mr Bates says, the doctor who provided the medical report, a Dr Pilgrim, did indicate that in his view the Appellant was able to give evidence. That evidence does however have to be read in the context in which it was given:

“8. Mr Y's depressive disorder is not at a level of severity that would impact on his ability or capacity to give evidence in open Court. He does not experience PTSD symptoms, and there is no evidence that he has been significantly traumatised by any of his experiences. I would therefore not anticipate that he would difficulty in recounting events in Court, or any need or desire to suppress negative memories. His past experiences do not have a significant effect on his day to day activities”.

8. To my reading that passage is concerned with the possibility, sometimes seen in this jurisdiction, that the *process* of giving evidence itself re-traumatises the witness. The anticipation that he would not have “difficulty in recounting events” had to be read in light of Dr Pilgrim’s express acceptance that the Appellant presented as objectively depressed and was experiencing symptoms including sleep disturbance, reduced levels of energy and impaired concentration and memory (Dr Pilgrim’s paragraph 7.1 read with 7.9). Whilst it is not immediately obvious that the Appellant’s mental health issue was of sufficient severity to warrant him being treated as vulnerable, nor can it be said that it was quite obviously the other way. It was an assessment that the Tribunal should have undertaken.
9. Further error is identified by Ms Mair in her expansion on the grounds summarised at my paragraph 5 above. Mr Bates accepted that this error was made out. Removal was to Kabul and unless there was evidence to suggest that the Appellant could reasonably be expected to get back to Balkh (a day’s journey from Kabul) the framework for enquiry had been to start by assessing whether the Appellant could be expected to live in Kabul. At paragraph 53 the Judge purports to undertake that assessment, but in doing so he does not consider whether the Appellant’s lack of ties to Kabul, or the apparently uncontested assertion that he has no family remaining anywhere in the country; the finding that there was “no evidence” that he would have any problems accessing mental health treatment appears to have been made without reference to the evidence of Dr Ahmad in AS and there is no consideration of whether the Appellant, an undocumented Tajik, would have any particular problems for those reasons.
10. The decision of the First-tier Tribunal is dated the 6th June 2021. Kabul fell to the Taliban on the 15th August 2021. On the 3rd November 2021 the Respondent issued new policy statements on Afghanistan in the form of three CPINs, *Fear of the Taliban, Security and Humanitarian Situation* and *Medical and Healthcare Provision*. As Mr Bates acknowledged, that change in situation means that the Home Office is now reviewing its decisions in Afghan cases. In those circumstances, the parties submitted, it would be appropriate for this matter to be remitted to the First-tier Tribunal where there is in place a formal system for pre-hearing review by the Respondent. I agree that this is the most pragmatic means of disposal. I make no directions other than to say that the appeal should be re-heard by a judge other than Judge Thorne and with the assistance of a Dari interpreter. It is for the Appellant to submit any relevant evidence to the Pre Appeal Review Unit that he considers to be relevant.

Anonymity Order

11. The Appellant continues to seek international protection. Having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, I consider that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“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, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions and Directions

12. The decision of the First-tier Tribunal is set aside.
13. The decision in the appeal is to be re-made in the First-tier Tribunal by a Judge other than Judge Thorne.
14. There is an order for anonymity.



Upper Tribunal Judge Bruce
8th

December 2021