



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02756/2017

THE IMMIGRATION ACTS

Decided at Field House
On 13 December 2021

Decision & Reasons Promulgated
On 13 December 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

AK
(Also known as AKW)
(ANONYMITY DIRECTION CONFIRMED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity Order

Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings

DECISION AND REASONS

Introduction

1. The appellant is a national of Afghanistan and is presently aged 19. He is represented by the Migrant Legal Project in Cardiff.

Anonymity

2. The Upper Tribunal previously issued an anonymity order and neither party has requested that it be set aside. The order is detailed above.

History of Proceedings

3. Following his arrival in this country in 2016, the appellant was assessed to have been born in January 2002. The respondent refused the appellant's application for international protection by a decision dated 3 March 2017. Upon the respondent concluding that adequate reception arrangements in Afghanistan could not be established, the appellant was granted limited leave to remain until 1 July 2019, when he was aged 17½.
4. The appellant filed an 'upgrade' appeal asserting that he faced a real risk of forcible recruitment by the Taliban, who had previously killed his father.
5. The First-tier Tribunal (JFtT Ferguson) dismissed the appellant's appeal on 6 June 2017. This decision was set aside by the Upper Tribunal (UTJ Storey) on 1 June 2018 in respect of two identified grounds: (1) the availability of reception facilities, and (2) judicial consideration of the appellant's vulnerability. The findings of fact made by JFtT Ferguson were preserved.
6. UTJ Storey subsequently remade the decision and dismissed the appellant's appeal on 19 February 2019. The appellant was granted permission to appeal by the Court of Appeal on 8 November 2019. By an order of Haddon-Cave LJ, sealed on 4 December 2019, the appellant's appeal was allowed to the extent that the decision of UTJ Storey was set aside, and the matter remitted to this Tribunal for fresh determination on the basis of the further documents filed.
7. The hearing came before me at Field House on 16 June 2021. The appellant was represented by Ms. L Gardner, Counsel, and the respondent by Mr. S Walker, Senior Presenting Officer. In respect of his international protection appeal the appellant relied upon his age and his poor mental health. As to the latter issue, he further relied upon the lack of family or any other support network in Afghanistan.
8. The appellant filed with the Tribunal two medico-legal reports prepared by Dr Arnsby-Wilson who diagnosed severe PTSD and a severe depressive order. The appellant is identified as being at a high risk of self-harm. He is observed as banging his head and pulling his hair as a coping mechanism. He is further identified as a high-risk of suicide, having acted on suicide ideas on at least two occasions. He reports having intended to throw himself in front of a moving train, stopping himself when he reached the platform. He also reports preparing a noose and hanging it from his bed when he received the respondent's decision to refuse his claim.
9. Dr Arnsby-Wilson's observations are echoed in letters provided by GARAS (Gloucestershire Action for Refugees and Asylum Seekers), the appellant's social

worker and his foster family. All consider him to be vulnerable and at risk of exploitation on return to Afghanistan.

10. Following the service of an addendum appellant's bundle running to over 180 pages on the morning of the hearing I granted an adjournment at the respondent's request to permit consideration of the documents now relied upon.

Decision

11. Mr. Walker wrote to the Tribunal on 5 August 2021, confirming:

'Following on from the adjourned hearing on the 24th June [sic], and after discussions with Mark Shepherd of the Migrant Legal Project, the Secretary of State considers that [the appellant] should be granted Humanitarian Protection.

Both parties are in agreement that there is no need for a further hearing, but would request a short determination to ensure that given the current delays attributable to the COVID pandemic there will be minimum delay to the Secretary of State granting leave.'

12. There was an unfortunate delay in this correspondence being placed before a Judge. On 7 December 2021, the Tribunal was contacted by Mr. Shepherd, Migrant Legal Project, seeking an update. He confirmed on behalf of the appellant that there was agreement as to the respondent's decision to grant humanitarian protection consequent.
13. I accept the medical opinion provided as to the appellant's suicide ideation and risk of self-harm. I observe that he has required regular and continuous trauma-focused psychological treatment as well as considerable personal support whilst going through the treatment process. He has attended over forty sessions of psychological therapy and has been identified as not making significant progress despite the length of the intervention. I find that the appellant is still suffering from a very severe and enduring mental health condition which has deteriorated.
14. I am satisfied that on the facts arising in this matter the respondent was correct to concede the appellant's humanitarian protection appeal on article 3 ECHR grounds: paragraph 339C(iii) of the Immigration Rules, read with paragraph 339CA(iii).
15. I therefore allow the appeal on this ground.

Notice of Decision

16. By a decision dated 1 June 2018 the Upper Tribunal partially set aside the decision of the First-tier Tribunal dated 6 June 2017, having identified a material error of law.
17. I remake the decision in respect of the humanitarian protection appeal (article 3 ECHR) and allow the appeal.

18. I dismiss the Refugee Convention appeal.
19. The anonymity order is confirmed.

Signed: *D. O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 13 December 2021