



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04020/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House  
On the 2<sup>nd</sup> September 2021

Decision & Reasons Promulgated  
On the 11<sup>th</sup> October 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

AZ  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Sardar, Counsel instructed by Duncan Lewis & Co

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

2. The appellant is appealing against a decision of Judge of the First-tier Tribunal Froom ("the judge") promulgated on 24 February 2021 dismissing his protection and human rights appeal.
3. The appellant is a citizen of Afghanistan from the Nangarhar province. He came to the UK in 2016 and (unsuccessfully) claimed asylum. He claimed (and continues to claim) that his uncle, who is a Taliban commander, attempted to force him to carry out a suicide bomb attack. He also claims that his uncle beat him brutally.

#### Decision of the First-tier Tribunal

4. The judge found that there were significant inconsistencies in the appellant's account, and that his evidence was not credible. A previous judge (Judge of the First-tier Tribunal Turquet) had rejected the appellant's account as not credible, and the judge was satisfied that there was no reason for him to reach a different conclusion.
5. The judge also found that the appellant did not face a real risk from indiscriminate violence in his home area such that he was entitled to humanitarian protection under article 15(c) of the Qualification Directive.
6. Having found that the appellant did not face a real risk of suffering serious harm in his home area, the judge considered, in the alternative, whether, in any event, the appellant could avoid any risk by relocating to Kabul. The judge found that he could, and also that the appellant could reasonably be expected to relocate to the city.
7. The judge then considered whether the appellant's removal from the UK would breach article 8 ECHR, and found that it would not.

#### Grounds of Appeal

8. The grounds do not challenge the judge's assessment of the appellant's credibility.
9. Grounds 1 -3 challenge various aspects of the judge's assessment of whether, even though the appellant's account was rejected, he faces a real risk of serious harm in his home area of Nangarhar. Ground 1 contends that the judge failed to address the risk he would face in returning to a Taliban control district (even if he did not face a specific risk from his uncle); ground 2 argues that the judge failed to consider the risk arising from travelling between Kabul (the city to which the appellant would be returned) and his home area; and ground 3 submits that the judge failed to properly consider evidence showing that the risk of indiscriminate violence in Nangarhar reaches the article 15(c) threshold.

10. Ground 4 challenges the judge's assessment of the reasonableness of the appellant being expected to relocate to Kabul.
11. Ground 5 takes issue with the judge's proportionality assessment under article 8 ECHR.

### The Protection Claim

12. It was common ground that if the judge did not err in respect of his finding, made in the alternative, that it was reasonable and safe for the appellant to relocate to Kabul, than any errors in respect of risk in Nangarhar would be immaterial. In other words, if I reject ground 4, there is no need to consider grounds 1-3 because even if the judge erred as claimed in those grounds the errors would be immaterial because of the availability of internal relocation to Kabul. I therefore consider ground 4 (the internal relocation challenge) first.
13. The judge's assessment of internal relocation is set out in paragraphs 79 – 88 of the decision.
14. The judge directed himself to, and quoted from, the extant country guidance case on the safety of, and the reasonableness of relocation to, Kabul: *AS (Safety of Kabul) Afghanistan* CG [2020] UKUT 00130(IAC). The judge noted that the panel in *AS* found that a person such as the appellant would not face a serious and individual threat to his life or person by reason of indiscriminate violence.
15. With respect to the reasonableness of the appellant relocating to Kabul, the judge took into account (as set out in paragraph 85 of the decision) a range of factors, including that the appellant is young and single, speaks Pashto, has family (mother and sisters) living in Kabul and would be well enough to work. The judge also found that the appellant, although he has "some mental health symptoms" does not currently require treatment and could obtain medication (citalopram and venlafaxine) in Kabul. In paragraph 87 the judge found that because the appellant has family in Kabul "there would be people able to show him how to navigate the systems in place in Afghanistan".
16. The judge's finding, in paragraph 85, that the appellant has some mental health symptoms but does not require treatment was based on his evaluation of evidence about the appellant's health, which is set out in paragraphs 46 – 63 of the decision. In these paragraphs, the judge summarised (in considerable detail) expert evidence from clinical psychologist Dr Falk, who prepared a report dated 24 October 2018; a retired GP trained by Freedom From Torture, Dr Turvill, who prepared a report dated 27 November 2018; and consultant forensic psychiatrist Dr Galappathie, whose report is dated 18 May 2020. The judge contrasted the expert evidence with that given by two people who knew the appellant well. The judge found at paragraphs 61 - 63:

“61. Ms M [ ] evidently knows the appellant quite well due to her frequent contact with him over the years. It is clear that she is committed to helping the “boys” she got to know through working at Kent Kindness Maidstone, a charity which sadly has had to close down. However, the two letters which stood as her evidence in chief are now dated. When she was asked in cross-examination whether the appellant was having any treatment, she said she did not know. Despite giving the impression of being close to the appellant, she said they did not talk about such things.

62. Ms P [ ], a trained cognitive behavioural therapist, has lived with the appellant for more than a year and yet her evidence made only fleeting reference to the appellant showing symptoms of mental health problems. In cross-examination she said she thought the appellant had stopped taking antidepressants before they got together, which was in July/ August 2019. She did not report him having flashbacks, nightmares, panic attacks or hearing voices.

63. It is difficult to reconcile these observations from two people who know the appellant well with the seriousness of the concerns raised by Dr Galappathie following a single video meeting. I cannot accept the appellant’s condition is currently as serious as he believes. He indicated that the appellant had improved since he saw Dr Falk. I find that this is certainly the case and I do not accept that the appellant now experiences worsening symptoms such as hearing voices and panic attacks. He does not currently require treatment at all.”

17. The grounds of appeal (and Ms Sardar in her skeleton argument and submissions at the hearing) argued that the judge did not properly consider the medical evidence when assessing the reasonableness of internal relocation. Specifically, it is argued that the judge failed to take into account that the experts factored into their evaluation of the appellant that he had been found to have given a false account, and that their assessment of his vulnerability (and the impact on him of losing his support network in the UK) did not depend on his core protection claim being true. In her submissions, Ms Sardar argued that although the judge recognised that the appellant’s partner was a stabilising influence on him, he failed to take into account the impact on the appellant’s mental health of this relationship ceasing as a result of the appellant’s removal. She observed that the judge found that the appellant would have family to support him in Kabul, but submitted that the judge failed to assess whether, and if so to what extent, this would effectively replace the protective influence of his partner.

18. Mr Whitwell argued, in response, that the judge made clear findings on a range of factors relevant to internal relocation, including the availability of family support in Kabul. He submitted that the judge undertook a detailed assessment of the medical evidence and, having done so, made a sustainable finding about the seriousness - and implications - of the appellant’s mental health condition.

19. I am satisfied that the judge did not err – and reached a conclusion that was open to him – in respect of whether it would be reasonable to expect the appellant to relocate to Kabul, for the following reasons:

- a. First, the judge directed himself to, and applied, the applicable country guidance case on internal relocation to Kabul: *AS*. It was not argued before the judge that he should depart from *AS* and therefore no error can be said to arise from following it.
- b. Second, *AS* emphasises the importance of family (or other) networks in Kabul, and the significance of a returnee having the benefit of family support. In paragraph 230 of *AS* it is stated:

“A returnee with a support network or specific connections in Kabul may be in a significantly stronger position than others and in some cases the availability of a network will counter a particular vulnerability of an individual on return.”

The judge was therefore entitled to place substantial weight on the finding, which was not challenged in the grounds of appeal, that the appellant’s mother and sisters live Kabul.

- c. Third, the judge considered the medical evidence about the appellant’s mental health in detail. He did not overlook, or misconstrue, any of the expert evidence. Rather, he considered the expert reports alongside the other evidence before him (including in particular that of two individuals who knew the appellant well), and reached a conclusion based on all of the evidence about the appellant’s mental health. This conclusion did not, as argued by Ms Sardar, flow from a failure to appreciate that the experts took into account the appellant’s account was not believed. It is plain, from reading the decision as a whole, that the judge appreciated this but nonetheless concluded that the appellant’s mental health condition was not as serious as claimed in the light of the witness evidence which gave a different impression of the appellant than emerges from the expert reports (as set out in paragraphs 61 – 63 of the decision). Another judge might have placed more weight on the medical evidence, or less weight on the witness evidence, but differences in weight are not a basis to set aside a decision for error of law.
- d. Fourth, the judge did not need to consider whether the appellant’s family in Kabul would be an adequate replacement for his partner as a protective factor for his mental health. This is because the relevant question for the judge was not whether the support the appellant would receive in Kabul would be the equivalent of, or as good as, the support he presently receives in the UK, but whether it was sufficient, when considered alongside other factors, to make internal relocation a

reasonable option. The judge adequately address this, in particular in paragraph 87, where he found that because of the appellant's family in Kabul "there would be people able to show him how to navigate the systems in place in Afghanistan..."

20. In conclusion, when assessing internal relocation the judge applied the current country guidance case, took into account all material considerations, did not overlook any material considerations, and reached a conclusion that was not irrational. The fourth ground of appeal is therefore not made out and consequently I am satisfied that the judge did not materially err in respect of the appellant's protection claim.

#### Article 8 ECHR

21. The judge's assessment of article 8 ECHR is set out in paragraphs 104 - 131.
22. The judge firstly considered whether the appellant satisfied the conditions of paragraph 276 ADE(vi) (very significant obstacles). The judge found that the appellant would not face very significant obstacles integrating into Afghanistan, for similar reasons to those which underpinned his finding that internal relocation would be reasonable: the presence of family, his knowledge of the language, and that his mental health problems were not as severe as presented.
23. The judge then considered whether the appellant met the conditions of Appendix FM. The judge accepted that the appellant was in a genuine and subsisting relationship (and cohabiting with his partner) but found that because the cohabitation had not subsisted for two years when the application was made the appellant did not have a "partner" as defined in Appendix FM.
24. The judge then undertook an article 8 proportionality assessment outside the Rules. He stated that he was required to have regard to the considerations in section 117B of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"), including section 117B(4)(b), which required him to attach little weight to the appellant's relationship with his partner given that it was established at a time when the appellant was in the UK unlawfully. In paragraphs 129 - 130 the judge stated:

129. Mr Lay's submission was that little weight does not mean no weight and the appellant can show that unjustifiably harsh circumstances would flow from his removal. He sought a finding that there were insurmountable obstacles to family life continuing in Afghanistan because paragraph EX.1.(b) of the rules represented the respondent's view of where the balance lies. However, I do not accept the argument that showing EX.1.(b) would be met sheds much light on where the balance lies. That is because paragraph EX.1.(b) refers to the applicant's "partner" and it is accepted that Ms P does not meet that definition.

130. I do regard this as significant. The cases of Agyarko and Lal v SSHD, which considered the correct approach to precarious relationships and insurmountable obstacles, were concerned with couples who were married or long-term partners. I have already said that the decision that there is family life in this case is a marginal one because the appellant and Ms P have not been in a relationship for very long and their future plans are not particularly clear. They are not married and there are no children. The relationship was formed when the appellant's representations had been refused and he was living in the UK without leave. Therefore, when they decided to start a relationship they must both have known that there was more than a possibility that the appellant would be removed. Whilst it might well be the case that there are insurmountable obstacles to family life continuing in Afghanistan, that does not deliver the answer to the proportionality balancing exercise in this case. Rather the weight to be given to the relationship is less than it might otherwise have been and is, I find, outweighed by the public interest in maintaining immigration controls. Remove the appellant not result in unjustifiably harsh consequences.

25. The grounds of appeal argue that the judge fell into error by disregarding (or by not adequately weighing in the appellant's favour) that there would be insurmountable obstacles to his relationship continuing in Afghanistan. The grounds argue that Appendix FM represents the respondent's position as to where the article 8 balance lies and therefore the fact that there would be "insurmountable obstacles" to the relationship continuing in Afghanistan, which is the test in EX.1(b), was a compelling factor weighing in the appellant's favour. Ms Sardar also argued that even if, taken alone, insurmountable obstacles was not enough to tip the balance in the appellant's favour, the judge needed to consider this cumulatively with the appellant's private life, which had not been done. She maintained that the appellant's private and family life, considered together, might, when considered cumulatively, outweigh the public interest in his removal.
26. Mr Whitwell submitted that the judge did not err as claimed because he took into account that the relationship will be severed (i.e. that there were insurmountable obstacles to the relationship continuing) if the appellant is removed. He argued that the judge did not err by attaching little weight to this because, firstly, weight is a matter for the judge; and, secondly, he was required to do so by section 117B(4)(b) of the 2002 Act. Mr Whitwell maintained that there is no basis to the contention that should judge did not consider private and family life cumulatively because the judge made clear that he did consider it cumulatively.
27. In my view, the judge was entitled, for the reasons he gave, to attach only little weight to the appellant's relationship with his partner. This is because the judge was required to attach only little weight to the relationship by section 117B(4)(b) of the 2002, as it was established when the appellant was in the UK unlawfully. The requirement to give the relationship little weight is subject to what was said by the Court of Appeal and approved by the *Supreme Court in Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58 about the generalised

normative guidance in Section 117B being overridden in exceptional cases and that, as explained in *Kaur (children's best interests / public interest interface)* [2017] UKUT 00014 (IAC), there is a spectrum within the self-contained boundaries of "little weight". However, in paragraph 130 the judge addressed, with clarity, why in this particular case the relationship between the appellant and his partner should be given only little weight. The sustainable reasons he gave include that the relationship had only subsisted for a short duration, the appellant and his partner did not have children, there was an absence of clear future plans, and both the appellant and his partner knew when commencing the relationship that the appellant faced removal from the UK.

28. Ms Sardar argued that Appendix FM reflects the respondent's view on how the balance under article 8 should be struck. That is correct, but this point does not support the appellant's case. Under Appendix FM, it is not sufficient that the appellant and his partner face insurmountable obstacles to the relationship continuing outside the UK. Appendix FM also requires that the relationship is demonstrably serious (between a spouse, civil partner or fiancé) or of a significant duration (at least two years cohabitation in a relationship akin to marriage prior to the date of application). As the relationship in this case was not between a spouse, civil partner or fiancé, and had not subsisted for two years at the time of the application, allowing the appeal would not represent a reflection of the respondent's view on the balance under article 8 cases as expressed in Appendix FM.
29. I do not accept Ms Sardar's argument that the judge failed to consider the appellant's private and family life cumulatively. Firstly, the judge explicitly stated that he did this, as in paragraph 128 he stated "family and private life must be viewed in combination...". Secondly, although the balancing exercise in paragraphs 129-130 focuses on the appellant's family life, it is apparent from reading paragraphs 121-131 together (which is the part of the decision where the judge assessed article 8 outside the Rule) that the judge took into account both the appellant's private and family life in the UK.

### Conclusion

30. The grounds of appeal do not identify a material error of law and therefore the decision stands.
31. The circumstances in Kabul have changed dramatically since the judge made his decision. These changes are not relevant to the issues before me, but plainly will need to be taken into consideration before the appellant is removed and/or if he makes another application for leave on protection and/or human rights grounds.



Notice of decision

32. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

*D. Sheridan*

Upper Tribunal Judge Sheridan

Dated: 6 September 2021