



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

Appeal Number: UI-2021-001648  
IA/01458/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 May 2022**

**Decision & Reasons Promulgated  
On 18 July 2022**

**Before  
UPPER TRIBUNAL JUDGE PERKINS**

**Between  
W G J  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Collins, Counsel instructed by J McCarthy Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this order because the appellant is an asylum seeker and publicity of his identity might create a risk to his safety in the event of his return.
2. The appellant is a national of Afghanistan. He was born in January 1994 and so is now 28 years old. He entered the United Kingdom in April 2008 when he was 14 years old. He has lived in the United Kingdom since then and so has been in the United Kingdom for a little over fourteen years.
3. His immigration history shows that he claimed asylum in September 2008. His application was unsuccessful but he was given discretionary leave to remain until July 2011. An application for further leave to remain was unsuccessful and an appeal against that decision was dismissed by First-tier Tribunal Judge Ford on 19 March 2012. The appellant made further representations, most recently on 27 March 2020. The respondent accepted that these amounted to a fresh claim but refused the application on 27 March 2020. That decision was the subject of an appeal and the appeal was dismissed by the First-tier Tribunal Judge at Nottingham on 15 June 2021. The decision was promulgated on 18 June 2021. It is against that decision that the appellant now appeals.
4. Permission to appeal was granted by Designated Judge Shaerf on grounds settled by Mr Collins. I have read all of the grounds but I set out below paragraph 7 of those grounds which, in my judgment, goes to the heart of the criticisms. It says:

“Unfortunately the FTT Judge does use the previous negative decision of FTT Judge Ford as a *‘legal straight jacket’* in effect merely adopting [her] findings. It is important to note that the Hearing before FTT Judge Ford took place on 7<sup>th</sup> March 2012 over 9 years before the instant Hearing. Given the Respondent does not suggest that the Appellant should return to Nangahar province the core issue in the instant appeal was whether internal relocation to Kabul would be unreasonable or unduly harsh. Much, somewhat obviously, has changed in the intervening period between March 2012 and June 2021. The Appellant’s case is that given his individual circumstances and characteristics in particular lack of family in Afghanistan, lack of an effective support network or connections, limited options for accommodation, employment, his age and his length of absence from Afghanistan – over 13 years – as well as the perception of him being ‘westernised’ internal relocation would not be a viable option. All of that called for a discrete analysis and findings which it did not, with respect, receive.”

5. However, Mr Collins began his attack on the Decision and Reasons by pointing out that, in his submission, the First-tier Tribunal Judge had not understood the decision that she purported to follow. At paragraph 35 of the Decision and Reasons the First-tier Tribunal Judge made plain that she did not accept that the appellant had no family or connections in Afghanistan and said that the claim to the contrary was “firmly rejected by Judge Ford”.
6. That is right, but only to a limited extent. Judge Ford *did* say at paragraph 93 of her decision that she did not accept the appellant’s claim that his father was dead and that she was:

“not satisfied that the appellant is without family support on his return to Afghanistan including the support of his parents, a maternal uncle and a brother. I do not know where the appellant’s family currently live but the appellant has failed to satisfy me even to the lower standard of proof that he cannot access the support of his family if he were to be returned to Kabul.”
7. However, in the preceding paragraph, 92, Judge Ford had:

“reached the conclusion that the appellant and his brother and the rest of his family left Afghanistan at the latest by 2005 and moved elsewhere, most likely to Pakistan to live with relatives there.”
8. There had been no effective challenge to Judge Ford’s decision and so that was the necessary starting point but Judge Ford’s findings needed to be considered carefully. It is the appellant’s case that he would not have any support in Kabul now. Given the effluxion of time and the clear finding that the appellant’s closest relatives had removed from Afghanistan to a different country the First-tier Tribunal Judge should not have concluded without explanation that the situation had remained as it was when Judge Ford’s decision was promulgated. Quite how a family in Pakistan would be able to support someone in Kabul was not explained and, with respect, it really should have been if it was the judge’s view that there was meaningful support available to the appellant now.
9. I am concerned too that the First-tier Tribunal Judge criticised the appellant for saying he had contacted the International Red Cross with a view to their finding his parents when, on his case, he knew full well that his father was dead. The problem is that it has never been the appellant’s case that his mother was dead and whilst there might be a point to be made there, without a little more analysis about exactly what the appellant asked the International Red Cross to do, I am concerned that the judge may have taken a bad point.
10. Mr Tufan submitted that the First-tier Tribunal Judge had directed herself correctly and, appropriately, he cautioned me against taking an overly pragmatic approach in the light of the well-known regime change in

Afghanistan which took place around the time that the First-tier Tribunal was making its decision.

11. I have reflected on that. However, for the reasons indicated above, although the First-tier Tribunal's error is somewhat less glaring than it might have seemed at first glance, I am satisfied that the judge should not have moved seamlessly from a clear but slightly puzzling finding that the appellant would have had support from his family in Pakistan nine years ago to concluding without explanation that such support was still available now. This is indeed a "straight jacket" approach of the kind criticised by this Tribunal in **R (on the application of MW) v Secretary of State for the Home Department (Fast track appeal: Devaseelan guidelines) [2019] UKUT 00411 (IAC)**.
12. It may be that the judge would have reached the same conclusion after more rigorous analysis of Judge Ford's Decision and Reasons and the appellant's explanation. I am aware that the appellant has frequently not made himself very easy to believe but there has been no challenge at any point to his claimed age and length of stay in the United Kingdom.
13. Mr Tufan, fairly and helpfully, drew to my attention a CPIN for April 2022 which recognised at paragraph 2.4.9 that persons perceived as 'Westernised' after having spent time in the West could be at risk although there is no definition of "Westernised".
14. I am satisfied the judge erred in law. The judge was too ready to uphold the existing findings without explaining why the appellant would still be safe after nine years had lapsed and the finding that there was family support was somewhat equivocal.
15. I therefore set aside the decision of the First-tier Tribunal.
16. The appeal must be redetermined. I find that this case turns on clearly established facts and background material. I see no point in a further hearing and I have decided to determine the appeal.
17. The burden of proof is on the appellant but it is sufficient if he proves his case to the low, "real risk" standard.
18. In addition to the CPIN drawn to my attention by Mr Tufan I have from the appellant an earlier CPIN, an additional document entitled "United Nations High Commissioner for Refugees (UNHCR), Guidance Note on the International Protection Needs of People Fleeing Afghanistan," dated February 2022 and another copy of the CPIN dated April 2022.
19. The points that most concern me in the UNHCR report are set out at page 36 of the additional bundle and refer to levels of indiscriminate violence having diminished but say that "conditions in Afghanistan remain highly

unpredictable, with widespread concerns about targeted violence and human rights violations.”

20. The same document also points out how there has been massive economic collapse and there is a humanitarian crisis “of unprecedented proportions”. I note that this is not the observation of a popular newspaper but the report of UNHCR and for it to refer to “unprecedented proportions” is, I find, a very worrying statement indeed. More than half of the population of Afghanistan face acute food insecurity. It is also known that some 3,500,000 Afghans are internally displaced.
21. I have no doubt whatsoever that returning this appellant to Afghanistan now in the belief that he would be able to establish himself in Kabul is wholly unrealistic.
22. Further the appellant is Westernised. I need little evidence to reach this conclusion. He has spent roughly half his life in the United Kingdom. I accept that in the event of his return to Afghanistan he would, at least for a significant period of time, stick out like a sore thumb. He has no adult experience of coping in the country. His whole bearing and underlying attitudes and indeed voice will be influenced greatly by his experiences in the United Kingdom over the last fourteen years. I am confident that in the event of his return he would find it very difficult to find any kind of gainful employment and he would attract attention because of his Western ways and he would come to the notice of the Taliban. The appellant has not been very good at persuading the authorities in the United Kingdom about his circumstances and I have no reason to assume he would do it better in Afghanistan. I am satisfied that there is a real risk that he would be perceived as a “Westerner” and that would bring a real risk of persecution at the hands of a regime that seems increasingly intolerant of opposition and keen to restrict human freedoms.
23. I have reminded myself of Mr Tufan’s apt warning about being overly pragmatic. I also remind myself of the concern that must follow about finding in favour of an appellant who has not shown himself to be a reliable witness but, on the present information available, I find that the appellant has established a real risk of serious ill-treatment in the event of his return because he would be perceived as an opponent of the regime and I therefore allow the appeal on asylum grounds.

**Notice of Decision**

24. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing the appellant’s appeal.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 30 May 2022