



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03067/2020 (V)**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House (by remote
video means)
On the 11 February 2022**

**Decision & Reasons
Promulgated
On the 23 March 2022**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Knight, Legal Representative, instructed by
Duncan Lewis Solicitors

For the Respondent: Ms H Gilmour, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Cockburn (hereafter “the Judge”) promulgated on

21 June 2021, in which his appeal against the decision to refuse his asylum claim was dismissed on protection and human rights grounds.

2. The Appellant is a national of Afghanistan and is from the province of Nangarhar. He entered the United Kingdom on 13 April 2016 and claimed asylum the next day as an unaccompanied child. A Merton-compliant age assessment concluded that he was an adult born on 26 May 1990. The asylum claim was predicated upon an asserted fear of the Taliban. The Respondent refused the claim on 16 March 2020.
3. The Respondent refused the application on the basis that the Appellant was not at risk on return to Afghanistan from the Taliban. She noted numerous discrepancies in the Appellant's account which undermined his claim that the Taliban forcibly recruited him, and there were significant considerations adversely affecting his credibility under section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. In any event, it was said the Appellant could reasonably relocate with the assistance of his family to Kabul and, where there would be no risk under Article 15(c) of the Qualification Directive. Further, the Appellant did not meet any of the requirements of paragraph 276ADE of the Immigration Rules for a grant of leave to remain on private life grounds and he could receive medication and treatment for depression and PTSD in Afghanistan.

The Judge's Decision

4. The Judge had the benefit of hearing oral evidence from the Appellant following which she made a number of positive and negative findings.
5. In summary, whilst the Judge did not accept the Appellant's claimed date of birth, she nevertheless accepted that his father was killed by the Taliban, and that, the Appellant escaped following his forcible recruitment. The Judge found that the Appellant would be at risk on return to his home area, but that it was reasonable to expect him to relocate to Kabul. In her analysis of the internal relocation issue, the Judge found that there was no risk to the Appellant from the Taliban or the authorities in Kabul and where there was no Article 15(c) risk. The Judge found that whilst the Appellant had lost contact with his mother and relatives in Afghanistan, his mental health problems were not severe and there were no impediments to his reintegration to a country where he had spent his formative years.
6. Further, the Judge concluded that the Appellant's removal would not be in breach of Article 3 or 8 of the European Convention on Human Rights. Accordingly, the appeal was dismissed on all grounds.

The grounds of appeal and grant of permission

7. The Appellant's grounds of appeal are set out in two brief paragraphs. They are not sufficiently particularised, but essentially, it is argued, first, that the Judge should have considered the implications of the western withdrawal from Afghanistan and the impact of withdrawal in the context of relocation to Kabul and, secondly, that the Judge failed to properly consider the guidance in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130 (IAC) and, in particular, by reference to the Appellant's individual characteristics.

The hearing before us

8. The hearing was remote which was not objected to by the parties. The form of remote hearing was by video, using Teams. There were no audio or visual difficulties during the course of the hearing. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained the papers in hard copy.
9. Mr Knight relied on his skeleton argument and made further oral submissions. First, he submitted that the United States withdrawal from Afghanistan was announced by President Trump in February 2020, and that, the Judge should have foreseen as a consequence of that announcement that the Taliban would take control of Afghanistan. Next, he submitted that the Judge failed to consider the Appellant's individual characteristics in concluding that it was reasonable to expect him to relocate to Kabul. The Judge accepted the Appellant had no family in Kabul, no employment skills to call upon and yet found he could survive in Kabul. He submitted that the Judge had not been realistic in assessing the Appellant's job prospects and failed to take into account that he would be competing for work against a large section of the populace with more experience and who had not, unlike the Appellant, been absent from the country.
10. On behalf of the Respondent, Ms Gilmour relied on the rule 24 response (drafted by Mr T Lindsay) dated 7 December 2021. She submitted that the issue of the western withdrawal of troops from Afghanistan was not raised before the First-tier Tribunal either in the grounds of appeal or before the Judge. The Judge could not therefore be criticised for not dealing with a point, which was not "Robinson obvious".
11. Ms Gilmour submitted that the Judge correctly applied the guidance in AS and gave detailed consideration to the Appellant's

circumstances. She emphasised the Judge's cumulative assessment in respect of the internal relocation issue. In summary, she submitted that the Judge's core conclusion was, on the evidence, open to her. She indicated that it was open to the Appellant to make a further protection claim in view of the change in country conditions.

12. In her closing submissions, Ms Gilmour drew to our attention paragraphs [6] and [7] of the rule 24 response and the Respondent's challenge to the Judge's credibility findings. Therein, the Judge is criticised for failing to take into account the Appellant's deceit in masquerading as a minor on arrival, and argues that she failed to apply the correct test of reliability in considering the documentary evidence.
13. In reply, Mr Knight submitted that the Judge made findings of credibility that were properly open to her on the evidence. He reiterated that it was apparent the Taliban would take control of the country and that the Judge failed to take into account the Appellant's characteristics and the lack of facilities for returnees.

Findings and reasons

14. We have carefully considered the evidence and submissions of the representatives before us. Whilst Mr Knight did not refer us to the skeleton argument filed for this appeal we have considered its contents in our deliberations.
15. For the reasons set out below, we conclude that the Judge did not materially err in law.
16. It is perhaps prudent to first deal with the Respondent's challenge to the Judge's factual findings in the rule 24 response. Mr Knight did not object to the route by which it comes before us and we accept that this is a permissible approach following the guidance given in EG and NG (UT rule 17: withdrawal; rule 24: Scope) Ethiopia [2013] UKUT 00143 (IAC) and Smith (appealable decisions; PTA requirements; anonymity) [2019] UKUT 00216 (IAC).
17. We conclude, without hesitation, that the Respondent's challenge is without merit. The assessment of credibility is always a highly fact sensitive task. The Judge was required to consider the evidence as a whole. In assessing the credibility of the Appellant and the claim advanced by him, the Judge was required to consider a number of factors. They included, whether the account given by the Appellant was of sufficient detail, whether the account was internally consistent

and consistent with any relevant specific and general country information, and whether the account was plausible. Some of those factors may be more relevant in an individual case than others.

18. We are satisfied that the Judge followed this approach. It is appreciably clear that she did so at paragraphs [18] to [23] and she gave detailed reasons for her findings. Those findings are mixed, both positive and negative, and demonstrates in our view the fair approach adopted by the Judge to the assessment of credibility.
19. Notwithstanding the Respondent's complaint to the contrary, the Judge was clearly aware of the Appellant's attempt to deceive the authorities in respect of his age and took this into account. She rejected his claim to be a minor and further confirmed that she had considered this issue and the documentary evidence by reference to the principles in Tanveer Ahmed [2002] UKIAT 00439 31 "in the round" at [23] and [24]. Having made that clear, we should be cautious to conclude that she did not adopt that approach.
20. We are satisfied that the Judge's assessment of credibility was entirely lawful and we thus reject the Respondent's challenge to the Judge's factual findings.
21. We next turn to consider the Appellant's challenge to the Judge's substantive findings. Before we do, however, we note that paragraphs [6] to [8] of the skeleton argument and, indeed Mr Knight's opening submissions to us, concern the position taken by the Respondent in failing to take a pragmatic approach to this appeal in view of the position she adopts in the Country Policy and Information Note: Afghanistan: Security and humanitarian situation; v.8 published in October 2021, namely, that she accepts in light of the Taliban's capture of Kabul on 15 August 2021 that internal relocation to Kabul is unlikely to be a reasonable option whilst they remain in control.
22. Whilst we recognise that, in view of the Judge's factual findings and the extant guidance above, our decision is likely to be viewed as academic, but these are not matters that can concern us. We are seised with an appeal where our statutory duty is to decide, in the first instance, whether there is a material error of law in the decision of the First-tier Tribunal. We have thus disregarded these arguments as they are not relevant to our consideration. Whether the Appellant wishes to make a further protection claim in light of the change in country conditions, as the Respondent invites him to do, is a matter entirely for him.

23. Turning then to the substantives issues, this decision is on the basis of whether there was an error of law in the decision of the First-tier Tribunal. The hearing before the Judge took place on 6 April 2021 and the decision was promulgated on 21 June 2021.
24. In February 2020, an agreement was signed between President Trump and the Taliban in which the United States agreed to fully withdraw its troops by May 2021 and in the months that followed the Taliban continued its advance across Afghanistan. The Appellant's skeleton argument for this hearing, drafted by Duncan Lewis Solicitors, avers that the situation in Afghanistan, as it then was, was raised before the Judge by the Appellant's representative. We note that that representative was, as he is before us, Mr Knight.
25. We are not satisfied that there is any support for that contention. Mr Knight made no oral submissions on the point and we were not referred to any evidence to support it, either from the grounds of appeal to the First-tier Tribunal, the Judge's decision or the Appellant's skeleton argument before the Judge which is an unnecessarily prolix document. Even if it was raised before the Judge, we do not see how this could have made a material difference to the outcome. We have seen no evidence that the Judge was asked to depart from extant country guidance, and note that the Appellant's skeleton argument called upon the Judge to apply it. We did not understand Mr Knight to argue the contrary before us.
26. We acknowledge that since the hearing of the appeal and, by the time the Judge promulgated her decision, events had moved on in Afghanistan. President Biden confirmed on 14 April 2021 that the United States would begin its withdrawal from Afghanistan on 1 May, and the Taliban continued to make advancements across the country finally taking control of Kabul on 15 August 2021. The latter, however, is a matter that the Judge could not have taken into account as the event post-dated her decision.
27. Whilst the progression of the Taliban in many regional areas of Afghanistan had been taking place over the course of a number of weeks and months, since February 2020, the position in June 2021 was arguably fluid and uncertain. Indeed it is accepted by Mr Knight that the speed with which complete control of Kabul itself was assumed was arguably unexpected. So what was the Judge supposed to do when determining the appeal in a climate of change of country conditions? It was not argued before us, rightly, that the Judge was bound to reconvene the hearing. It was, of course, open to the

Appellant to bring this issue to the attention of the Judge and either request that the hearing be reconvened or seek permission to lodge further written submissions and country evidence, expert or otherwise, with a view to persuading the Judge to depart from the country guidance of AS. The Appellant despite being represented by experienced representatives took no further action.

28. In June 2021 the Taliban were not yet in control of Kabul. As far as we are aware there was very little, if any, country background evidence in the public domain setting out the situation on the ground at that time. In the circumstances to suggest that the Judge would have reached a different conclusion is in our view unduly speculative.
29. We are not satisfied, therefore, that the Judge materially erred in failing to consider the withdrawal agreement and its implications, and we are far from being persuaded that any consideration would have made a material difference to the outcome of the appeal.
30. Having reached that conclusion, we agree with Ms Gilmour that the Judge was required to apply the country guidance case of AS. We are satisfied that the Judge properly considered and applied that guidance taking into account her findings of fact, the Appellant's individual characteristics, the medical and background evidence at [29] to [35]. Therein, is a sufficiently detailed consideration of the findings in AS in so far as they relate to the Appellant, which the Judge rightly identified as her "starting point". Whilst the Judge was not purporting to give an exhaustive list, she identified factors for and against the Appellant in her assessment of whether internal relocation was reasonable or not.
31. Those matters included the fact that the Appellant was a single male who suffered from some degree of mental health problems and, who had no family connections in Kabul. We note that the Judge did in fact consider the Appellant's submission that he would be unable to support himself by finding employment in Kabul because of his mental health difficulties at [32] and gave cogent reasons for rejecting that argument at [33]. The medical evidence was far from satisfactory and the Judge did not accept that the Appellant's condition was "severe". What we take this to mean is that the Judge was satisfied that there was no medical impediment preventing the Appellant from seeking employment in Kabul. That was a conclusion that was open to her on the evidence.

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