



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/11793/2019

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 4 January 2022

On 20 January 2022

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**AA
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION

Representation:

For the Appellant: Mrs A J Bradley Mughal, Legal representative

For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULES 40 (3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. AA is a citizen of Afghanistan, born on 1 January 2002. He is currently 20 years old.
2. He entered the United Kingdom on 4 March 2017 and claimed asylum. His claim for asylum was refused but he was granted leave as an unaccompanied minor until 11 July 2019. He appealed against the refusal of his asylum claim. His appeal was dismissed on 12

December 2017 on the basis that his fear of the Taliban was not credible. Permission was granted to appeal to the Upper Tribunal. The Upper Tribunal set aside that part of the decision which related to internal relocation because the judge had made inadequate findings of fact in relation to the appellant's family ties in Afghanistan. The negative credibility findings in respect of his fear of the Taliban were upheld. The appeal was re-made by the Upper Tribunal and dismissed.

3. On 28 June 2019 the appellant applied for further leave to remain in the UK on the basis that he would be at real risk of persecution if he returned to Afghanistan. The application was refused on 7 November 2019 by way of a decision to refuse his human rights claim and protection claim. The subsequent appeal was dismissed by First-tier Tribunal Judge C O'Garro on 30 March 2020. Permission was granted by Upper Tribunal Judge Rintoul on 1 March 2021.
4. On 17 June 2021 at the error of law hearing, it was agreed by both parties that the decision should be set aside because it was vitiated by a material error of law in that the judge had failed to take into account the evidence of the appellant's father and had erred in the consideration of the medical evidence. My decision in respect of this is attached at Appendix A.
5. The appeal was adjourned for re-making before the Upper Tribunal with no findings preserved.
6. The re-making hearing was listed before me today.
7. At the outset of the hearing, Ms Cunha for the respondent conceded that the appellant is entitled to Humanitarian Protection in the UK in line with the Respondent's current County Policy Note on Afghanistan (version 8) October 2021 because if he is returned to Afghanistan there is a real risk of serious harm contrary to paragraph 339C of the immigration rules because of his individual circumstances in particular his mental health problems. She accepted that the appeal must be re-made granting the appellant Humanitarian Protection.
8. Ms Mughal for the appellant confirmed that the appellant did not wish to pursue his claim for asylum on the basis that he has a well-founded fear of persecution for a Convention reason. The appellant was content with the grant of Humanitarian Protection.
9. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

10. On the basis of the concession by the respondent, I re-make the appeal allowing it under paragraph 339C of the immigration rules. I also accept that the appellant has family life with his father in the UK and that it would be disproportionate to remove him from the UK given the current situation in Afghanistan.

Notice of Decision

11. The appeal is refused on asylum grounds.
12. The appeal is allowed on Humanitarian Protection grounds.
13. The appeal is allowed on Article 8 ECHR grounds.

Signed

Date: 4 January 2022

R J Owens

Upper Tribunal Judge Owens

Anonymity Order

14. I am mindful of Guidance Note 2013, No 1. concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First tier Tribunal and this Tribunal is that an anonymity direction is appropriate where an appellant has made a claim for international protection. Pursuant to Rule 14 of the 2008 Procedure rules I make an anonymity direction 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 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”

Annex A



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/11793/2019

THE IMMIGRATION ACTS

**Heard remotely at Field House
By Microsoft Teams
On 10 June 2021**

**Decision & Reasons
Promulgated**

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Before

UPPER TRIBUNAL JUDGE OWENS

Between

**AA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fazli, Counsel instructed by Cassadys Solicitors

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

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Cas O'Garro sent on 30 March 2020.

2. Both parties agreed that the decision of the First-tier Tribunal involved the making of an error of law. The appellant's father prepared a witness statement in support of the appeal and gave oral evidence. It is agreed that the judge failed to take into account this evidence and explain what weight was given to it. The evidence related to the provenance of the Taliban letters, the appellant's mental health which was relevant to the issue of relocation in Kabul and the family life between the appellant and his father. It was incumbent on the judge to give reasons for rejecting this evidence, if that was what the judge intended. This error infected the credibility assessment, the findings on the reasonableness of relocation and Article 8 ECHR and was material to the outcome of the appeal.
3. It is also agreed that the judge erred in the approach to the psychiatric evidence at [41]. The judge had before her a report by Dr Singh a consultant psychiatrist and member of the Royal College of Psychiatrists who had a face-to-face interview with the appellant and diagnosed him as suffering from PTSD, memory problems and depression and found that his mental health would deteriorate if returned to Afghanistan. The judge found that the medical evidence carried little probative weight because she rejected the credibility of the appellant. This was an error in accordance with the principles of Mbinga v SSHD [2005] EWCA Civ 367 in that the judge artificially separated the medical evidence from the rest of the evidence and then on that premise found the medical evidence to be of no assistance.
4. The judge failed to explain why she rejected the diagnosis of a consultant psychiatrist who referred not only to the asylum account but to the trauma of the appellant growing up in a war zone (which is amply supported by the background evidence). There was other evidence of the appellant's poor mental health including the appellant's own evidence, his father's evidence and GP evidence. The medical evidence importantly addressed possible reasons for inconsistencies and implausibility in the appellant's account and the failure to assess the evidence lawfully is material to the outcome of the asylum claim. It further fed into the judge's irrational finding at [43] that the appellant is not suffering from any mental illness. This in turn infected the assessment of the reasonableness of relocation and the Article 8 ECHR assessment and was material to the outcome of the appeal.
5. Finally, there is a further error of law with regard to Article 8 ECHR. This was not raised in the grounds of appeal but is an "obvious" error which relates to the appellant's Convention rights. At the date of the appeal the appellant was 18 years and 2 months old. The appellant has been living with his father in the UK since 2017 and his mother is in Pakistan. The judge at [46] stated that the appellant had provided no evidence that he has family life in the UK. The

witness statements addressed the close relationship between the appellant and his father and the judge failed to address this evidence at all when assessing Article 8 ECHR. This was a material error because had the judge found there to be family life between the appellant and his father, the judge may have come to a different decision on Article 8 ECHR.

6. In respect of disposal, I am mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. This appeal has already been heard by the First-tier Tribunal on two occasions and I am satisfied that the appropriate course of action given these circumstances is to re-make the decision in the Upper Tribunal. This will also ensure that the appeal is dealt with promptly which is important given the age of the appellant.
7. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

Notice of Decision

8. The decision of the First-tier Tribunal involved the making of an error of law.
9. The decision of the First-tier Tribunal is set aside, and the findings of the First-tier Tribunal are set aside in their entirety.
10. The appeal is adjourned for remaking at the Upper Tribunal of the first available date.

Anonymity Order

11. This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders, I therefore consider it appropriate to make an order 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 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”

Note and Directions

12. Despite having considered the present need to take precautions against the spread of Covid-19, and the overriding objective expressed at rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and also at rule 2(2) to (4), I have reached the provisional view that it would in this case be appropriate to hear the appeal by means of a face-to-face hearing because AA will be giving evidence through an interpreter and there will be witness evidence.

13. I therefore make the following directions:

- a) The appellant is to file and serve on the Tribunal and respondent, no later than 10 days before the resumed hearing, a skeleton argument together with any authorities addressing the substantive asylum claim, the issue of internal relocation and Article 8 ECHR.
- b) In the same timeframe, the appellant must file and serve on both the Tribunal and respondent a consolidated bundle. Any further evidence addressing Article 8 ECHR must be accompanied by the relevant rule 15A notices. It would assist the Tribunal to have more detailed evidence in relation to all of the appellant's family members both in the UK, Afghanistan and elsewhere, how those relatives in Afghanistan could assist the appellant, the circumstances of the appellant's father in the UK and how the appellant came to be reunited with his father.
- c) The respondent is to file and serve on the Tribunal and appellant, no later than 10 days before the resumed hearing the screening interview, substantive asylum interview, original refusal letter and the previous determination of First-tier Tribunal Judge White.
- d) The respondent is to file and serve a position statement/skeleton argument on the Tribunal and appellant in respect of the issues at a) no later than 5 days before the resumed hearing.

Liberty for the parties to provide reasons as to why a remote hearing is required in this matter no later than 7 days after this notice is sent out (the date of sending is on the covering letter or covering email).

Signed

Date: 11 June 2021

R J Owens
Upper Tribunal Judge Owens