



Neutral Citation Number: [2024] EWHC 1950 (Admin)

Case No: AC-2023-LON-001019

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Date: 30/07/2024

**Before :**

**THE HONOURABLE MRS JUSTICE FARBEY**

-----  
**Between :**

**THE KING**

**ON THE APPLICATION OF**

**(1) YMB**

**(2) C2**

**(3) C3**

**(4) C4**

**(5) C5 (a child by his grandfather and litigation  
friend YMB)**

**(6) C6 (a child by his grandfather and litigation  
friend YMB)**

**Claimants**

**and**

**SECRETARY OF STATE FOR FOREIGN AND  
COMMONWEALTH AFFAIRS**

**Defendant**

-----  
**Ms Julian Norman** (instructed by **Duncan Lewis Solicitors**) for the Claimants  
**Mr Jonathan Kinnear KC** and **Mr Paul Skinner** (instructed by **Government Legal  
Department**) for the Defendant  
**Mr Zubair Ahmad KC** and **Mr Bilal Rawat** (instructed by **Special Advocates' Support  
Office**) as Special Advocates

Hearing date: 4 July 2024

**Approved Judgment**

This judgment was handed down remotely at 4:00 pm on 30 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**MRS JUSTICE FARBEY :**

1. This is my ruling on the claimants' renewed application for permission to apply for judicial review. The first claimant, YMB, is an Afghan national who was evacuated to the United Kingdom on 26 August 2021 as part of Operation Pilling. He has been granted indefinite leave to remain. The other claimants are members of his family who live in Afghanistan. They are respectively his adult daughter (C2), his adult son (C3), his son's wife (C4) and his two young grandchildren (C5 and C6). By a written application to the Upper Tribunal dated 21 November 2022, the claimants applied for judicial review of the Secretary of State's decisions to decline to endorse the family members' eligibility for resettlement in the United Kingdom under the Afghan Relocation and Assistance Policy ("ARAP"). The Secretary of State had taken an initial decision to that effect on 28 March 2022. Following a process of review, a further decision was taken on 22 August 2022. While the formal application notice filed in the Upper Tribunal refers to the review decision, the grounds for judicial review sought to challenge both decisions, notwithstanding that the claimants were considerably out of time to challenge the initial decision. Before me, both decisions were challenged, as was a third decision taken after a further review process undertaken by the Secretary of State.
2. There has been some dispute before me about the precise scope and meaning of the ARAP policy. In very broad terms, family members of Afghan nationals were eligible for leave to enter outside the Immigration Rules if they satisfied published criteria relating to the threat of harm in Afghanistan or to exceptional dependence on a person who had been relocated to the United Kingdom because of links with the British Government. The policy was amended from time to time and eventually replaced by Immigration Rules with accompanying guidance. The Rules retained the "threat" and "dependency" tests. In the present claim, there is no issue raised about dependency. The challenge concerns the Secretary of State's approach to the criteria for establishing a threat of harm.
3. By Order dated 30 March 2023, the claim was transferred from the Upper Tribunal to the Administrative Court. Permission to apply for judicial review was refused by Lang J on consideration of the papers on 16 November 2023. On 23 November 2023, the claimants renewed their application for permission. On the same day, the Government Legal Department informed the claimant's solicitors that the Secretary of State had "additional material which is disclosable in the proceedings pursuant to the duty of candour" but which could not be openly disclosed without damage to the interests of national security. As a result, Special Advocates (Mr Zubair Ahmad KC and Mr Bilal Rawat) were appointed to represent the claimants' interests in relation to the sensitive, closed material. The relevant procedural steps under sections 6 and 8 of the Justice and Security Act 2013 were undertaken.
4. The finalised grounds of renewal are set out in the skeleton argument of Ms Julian Norman (who was not previously instructed). The Secretary of State resists the renewed application on the grounds set out in her Amended Open Grounds of Defence. The Special Advocates, in closed grounds of challenge, support Ms Norman's submissions and make additional arguments that are entirely closed.
5. I turn to the factual background. On around 18 September 2021, YMB applied to the Secretary of State for the other claimants (together with two family members who are not parties to this claim) to be relocated to the United Kingdom under the part of the ARAP

policy concerned with “additional family members” (“AFMs”). In support of the application, YMB cited and described his history of working for British organisations including (i) an organisation which I shall call ABC where he worked as an Examiner; (ii) an agency which I shall call DEF, which was funded by the British Government, where he worked as an interpreter and translator; and (iii) an organisation supporting redevelopment in an Afghan city which I shall call UVW, where he worked as a senior consultant. YMB described the extent to which his family members were financially dependent on him and claimed that they “are searched to be punished” because of their relationship with him. He supplied copies of identity and financial documents but did not provide any supporting evidence of any threats faced by the AFMs as a result of the work he had done for the British Government, British organisations or other organisations with a British connection.

6. By letter to YMB dated 28 March 2022, the application was refused. The decision letter states (with grammatical errors retained):

“The panel was unable to endorse your application for the following reasons: there is insufficient evidence (financial, medical or other) that [the AFMs] have specific vulnerabilities that have led to an exceptional dependency on you. As such, they do not meet the criteria for dependency and have formed independent family units who remain in Afghanistan. The threat identified is not sufficiently evidenced to those listed, or to the work you undertook for ABC, as to consider relocation to the UK for these [AFMs]”.

7. By letters dated 19 April and 27 July 2022, YMB sought a review of the decision. In support of the review, YMB provided fresh documentary evidence and made representations about matters that he had not previously raised. He disclosed for the first time what he said was his key role in the establishment of an organisation promoted by a British organisation. In order to protect the identities of the claimants – who have the benefit of anonymity in these proceedings – I shall refer to this organisation as XYZ. In his representations, YMB emphasised that he had been XYZ’s first president for about five years. His name and photograph had been published and circulated in written XYZ materials. The organisation had promoted women’s rights and had operated in rural areas under Taliban control. He had in addition been active in social, educational and youth affairs in the district in which he lived. The Taliban had repeatedly contacted him and threatened him on account of his work for foreigners. His son C3 was one of his key supporters and always accompanied him in local activities. He and his family had been forced to move to another part of their home city. YMB said that C3 had accompanied him in his work for XYZ such that C3 was vulnerable to kidnap and torture or even death. He stated that, since his departure to the United Kingdom, the Taliban had come to his house a number of times and had asked about him and C3. Fortunately, C3 was not at home.
8. YMB’s solicitors wrote to the Secretary of State on 2 August 2022 with further representations relating in particular to the risks to C1 and to C2. The representations stated that, as a result of YMB’s activities, C3 had been forced to live away from the family home in fear of Taliban militants. C2 was unmarried and vulnerable to harm as a lone female associated with YMB.

9. The application for a review was considered by a Review Panel. By letter dated 22 August 2022, YMB was informed of the outcome of the review and that the Secretary of State adhered to the initial decision. The decision letter makes plain that the Review Panel was unable to verify the validity of the fresh documentation. There was insufficient evidence of threat to the AFMs and of any exceptional dependency on YMB.
10. On 18 October 2022, the claimants' solicitors sent a letter before claim and matters proceeded in the Tribunal and then in this court as I have set out above. During the course of the proceedings and after Lang J had refused permission on the papers, the claimants were informed that the Secretary of State would carry out what has been called an "exceptional review" of their case. The claimants were invited to submit any evidence that would support their case. They submitted further documents.
11. On 30 April 2024, an ARAP Review Panel met and carried out the exceptional review. The Panel Minutes demonstrate that the Panel considered all the materials provided by YMB and his solicitors for the initial application, the first review and the exceptional review. The Panel considered other material including an email from ABC setting out YMB's employment with them. The Panel did not have sight of the record of the first review decision but reached its own decision in relation to each family member individually by applying the two tests of "threat" and "dependency" in accordance with guidance in force at the date of the exceptional review.
12. The Panel concluded that none of the family members met either of the two tests and so it refused to endorse the resettlement application. The initial decision was upheld. On 3 May 2024, the Secretary of State wrote to the first claimant to that effect.
13. The claimants now challenge the initial decision, the first review decision and the exceptional review decision. The grounds of challenge raise two principal issues. First, the claimants contend that the various decisions were irrational and failed to consider relevant matters. Secondly, the claimants contend that the decision-making process was unfair because the Secretary of State has relied on closed material and because the claimant had no opportunity to deal with various aspects of the exceptional review decision before it was taken.
14. Ms Norman submitted in writing and orally that I should consider the lawfulness of the initial decision, the first review decision and the exceptional review decision by reference to the policy guidance in force at the time of the initial decision when Operation Pilling was still underway. She submitted that it would be unfair for the claimants not to have the benefit of the original policy because any delay in considering the claimants' case was not their fault. I was on that basis asked not to apply later iterations of the policy guidance or the later Immigration Rules brought into force to replace the policy guidance on AFMs. I did not entirely understand this submission but, at any rate, I was provided with the versions of the guidance for the admission of AFMs that came into force on (respectively) 4 June 2021, 11 April 2022 and 30 November 2022. I was also provided with the Immigration Rules Appendix ARAP. I was told by counsel that the ARAP Rules came into force in November 2022.
15. The various iterations of policy and the Rules are not all in the same terms. As regards the "threat" test, the June 2021 guidance refers to "high and immediate risk" to AFMs and makes plain that any such risk must be specific to the individual family member. The

April 2022 guidance refers to “genuine, verifiable compelling reasons relating to the family member’s safety and security”. The November 2022 guidance refers to an “elevated risk of targeted attacks, specific threats or intimidation, putting [the AFM] at high risk of death or serious injury” which reflects the Immigration Rules which were by then in force. Although there is some difference in wording, I was provided with no persuasive reason to suppose that, in relation to the issues that fall for decision in the present case, there was any material difference between any of these tests or thresholds.

16. Ms Norman’s submissions focussed on the June 2021 guidance which deals with the consideration of the exceptional circumstances that must be demonstrated by Afghan locally employed staff (“LES”) who seek to bring AFMs to the United Kingdom. The guidance sets out that there may be exceptional circumstances where the work of the LES has led to specific threat or intimidation of members of their family who would not normally qualify for relocation to the United Kingdom under the Rules. The guidance states:

“If the LES makes a request for [AFMs] to accompany them on that basis, the employing department, normally the Ministry of Defence (MoD) or the Foreign, Commonwealth and Development Office (FCDO), must obtain all available and relevant information to enable ATREU [Afghan Threat Risk and Evaluation Unit] to make an assessment of the level of risk faced by those family members.

If the risk is assessed as high and immediate, ATREU may recommend to the Home Office that they are included with the LES for relocation alongside family members who qualify under immigration rules.

The assessment must confirm that the risk is specific to the additional family member(s) and related to the work undertaken by the LES in order for relocation to be considered.”

17. Ms Norman submitted that the Secretary of State had misdirected himself as to the threshold for risk to the AFM that would qualify under the policy documents and (if applicable) the Rules. In the initial decision, there had been no adequate risk assessment and in the first review decision the validity of the supporting documents had not been fairly or reasonably considered. The Secretary of State had considered whether the AFMs were at “targeted” risk of harm or attack, whereas the correct test was “specific” risk. In the exceptional review decision, the Secretary of State’s approach required the risk to AFMs to be exclusively connected to YMB’s work which was too strict a test and did not reflect the guidance which required only that the risk should be “related” to YMB’s work.
18. On behalf of the Secretary of State, Mr Jonathan Kinnear KC with Mr Paul Skinner submitted that the initial decision and the first review decision were academic as they had been overtaken by the exceptional review decision to which the Immigration Rules applied. There was no arguable error of law in the procedure adopted by the Review Panel which had provided a fair, full and lawful decision. The Panel had reached conclusions which were reasonable and disclosed no public law error.
19. In my judgment, the present renewed application demonstrates the difficulties of bunching together successive decisions made at different times under different policies or

rules. The submissions on behalf of the claimants were not easy to follow as they moved between the different decisions and guidance or Rules in generalised terms.

20. I shall assume in the claimants' favour (without deciding) that the relevant guidance is the June 2021 guidance as this appeared to underlie Ms Norman's submissions. As I have set out above, the guidance states that a person will qualify for entry as an AFM if he or she is assessed as being exposed to "high and immediate risk" in Afghanistan. The risk must be "specific" to the particular individual and "related to the work" undertaken by the principal family member.
21. On the basis of the evidence before the Secretary of State at the time of the initial decision, it is not arguable that the decision not to endorse the resettlement of the AFMs was irrational or susceptible to some other public law challenge. The Secretary of State was unarguably entitled to conclude that, when the initial decision was taken, YMB had provided no proper evidence of threat to the AFMs arising from his work for ABC or any other organisation. The emphasis in oral submissions was that his work for XYZ had placed him and his family members at risk of serious harm; but his involvement with XYZ was disclosed only after the initial decision had been taken. On conventional public law principles, it cannot have been irrational for the Secretary of State to have reached an adverse decision in relation to material that was not before him.
22. In any event, the situation moved on and the initial decision was superseded by the first review decision. I agree with Mr Kinnear that the initial decision became unarguably academic. YMB took advantage of the review process. He and his solicitors made detailed representations to the Review Panel and submitted documentary evidence.
23. As regard the lawfulness of the first review decision, Ms Norman emphasised the claimant's role in XYZ. She submitted that his longstanding work for that organisation had made him a high-profile figure. She contended that the Secretary of State was bound to conclude that the AFMs were the subjects of high and immediate risk which was related to the work undertaken by YMB. However, her submissions did not properly recognise that the function of this court in judicial review proceedings is not to re-take any decision about the AFMs but to scrutinise the decision taken by the Secretary of State. The mere assertion that the threshold of high and immediate risk is satisfied and that the risk must relate to YMB's work does little to advance any public law ground of challenge. Ms Norman's submissions struck me as an invitation to the court to become involved in the merits of the review decision and failed to grapple with the court's public law jurisdiction. Moreover, I was presented with no persuasive submissions on behalf of the claimant as to why it was irrational for the Secretary of State to cast doubt on whether the fresh documents were genuine.
24. Even if the first review decision was somehow flawed, the situation has again moved on. The first review decision has, like the initial decision, become academic. I agree with Mr Kinnear that the real target of the claim must be the Review Panel's consideration of the case when it carried out the exceptional review.
25. As regards the exceptional review, the Review Panel Minutes are clear and detailed. The Panel noted that YMB had worked for ABC as an Examiner on an ad hoc basis. He had been under contract with ABC for only eight months before he left Afghanistan. The work would not have brought him into contact with members of the Taliban. There was

no reason to conclude that any of the AFMs were at risk of harm from this work. In terms of the specific risks to C3, the Panel noted that he was a student until the events of August 2021 and was himself personally involved in promoting human rights and democracy, such that any threat to him from the Taliban could not be automatically attributed to his relationship to YMB.

26. The Panel considered the information provided by YMB that C3 had been arrested by the Taliban in October 2022 but had managed to escape a few weeks later owing to a deal between a community elder and security personnel. The Panel noted the assertion that his arrest was due to the work YMB undertook for the United Kingdom government. The Panel noted the various sources of evidence submitted in support of YMB's assertions about C3 but noted significant deficiencies in some of the documents supplied. On the basis of all the evidence, the Panel concluded that none of the AFMs were at an elevated risk of targeted attacks, specific threats, or intimidation that would put them at high risk of death or serious injury because of YMB's employment.

27. The Panel took into consideration that C2 no longer lived at an address associated with YMB and that there was no evidence that she had been threatened. The Panel's experience was that it was very unlikely that the Taliban would target a female adult child as retribution for the work of a parent. As regards all the AFMs, the Panel gave weight to the fact that other family members had chosen to remain in Afghanistan, suggesting that there was no risk to YMB's family arising from his work. The Panel concluded:

“...none of the AFM are at an elevated risk of targeted attacks, specific threats, or intimidation, putting them at a high risk of death or serious injury because of the Principal's employment for/with HMG in Afghanistan.”

28. In my judgment, the Panel's conclusion is unimpeachable. As regards the documents before it, YMB had supplied the Panel with a “threat letter” alleged to be from a Taliban Military Commander. The letter states that C3's arrest is sought so that he can face criminal charges. The Panel took into consideration that the threat letter had a smudged stamp at the top and a virtually illegible stamp at the bottom. It was not dated. The Panel's “threat adviser” (within the Ministry of Defence) had confirmed that the Taliban had no need to resort to threat letters of this sort: there was no need for the Taliban to send a warning letter. The claimants' submissions go nowhere near demonstrating that, in these circumstances, the Secretary of State was unreasonable to conclude that the threat letter was not genuine. Nor can there be any criticism of the Panel's decision to reject other documents as either being not genuine or as not having any real weight.

29. Having rejected the supporting documents, the Panel nevertheless gave individual consideration to the positions of C1 and C2 in Afghanistan and then considered the various factors that pointed to the assertion that any of the AFMs were at risk as a result of YMB's work. Ms Norman's contention that the Panel should have considered “specific” risk rather than the risk of “targeted attacks” rings hollow when the Panel expressly considered “specific threats” and when I was left with no clear picture as to why a targeted attack is materially different from a specific attack.

30. Ms Norman submitted that the Secretary of State was unreasonable to separate the risk faced by C2 and C3 from the risk faced by YMB and that the Secretary of State had assessed the risk to YMB as too low. She submitted that the Panel had considered



whether YMB worked directly for a British organisation when the test under the Rules extended to whether he worked “alongside” such an organisation. There is nothing in these points: they cannot and do not undermine or cast doubt on the lawfulness of the exceptional review decision.

31. Ms Norman submitted that the Panel had concentrated only on YMB’s work for ABC and had failed to consider other elements of his career history or to consider the risk posed by the various elements of his career in the round. It is plain that the panel had in mind YMB’s career history but concluded that the only work that YMB did with or alongside the British Government related to his patchy work for ABC as an Examiner. Such a conclusion was open to the Panel. There is no evidence that any other element of his career – whether considered on its own or in the context of his career as a whole – would give rise to any risk to the AFMs. Not least, ABC did not mention any other work that YMB undertook for it and was silent about any work he had undertaken for XYZ.
32. I turn to Ground 2 which concerns the fairness of the decision. There is no merit in relation to the challenge to the procedure by which the Secretary of State has withheld evidence from the claimants. Parliament has sanctioned such a procedure in the Justice and Security Act 2013. The relevant provisions of the Act have been followed by the Secretary of State and the Special Advocates, supervised by the court.
33. The Panel was entitled to reject the threat letter on the grounds that it was not genuine without seeking further representations from the claimants. Both the initial decision and the first review decision made plain that the Secretary of State was not satisfied with the claimants’ threat evidence. The first review decision expressly stated that the Panel were “unable to verify the validity” of the threat evidence. The claimants were therefore on notice that they needed to persuade the Panel that their documents were genuine and had ample opportunity to do so.
34. For these reasons, together with the reasons set out in my closed ruling, the renewed grounds for judicial review are not arguable. This application is refused.
35. The parties shall seek to agree the terms of a draft order for my approval, failing which the matter will be listed for a short hearing.