



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/26764/2011

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28 July 2014

Determination Promulgated  
On 8 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR SIFAT JABARKHIL  
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Shibli instructed by Barnes Harrild & Dyer Solicitors  
For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Afghanistan born on 1 January 1994 and he appealed against the decision of the respondent dated 1 September 2011 refusing to grant him leave to remain in the UK and to refuse to vary his leave to remain.

2. The appellant initially claimed asylum on 10 March 2009 after arriving in the UK by means of a lorry with the assistance of an agent, but this claim was refused on 18th June 2009. However, he was granted discretionary leave as a minor until 1 July 2011.
3. A decision to refuse to vary the appellant's leave to enter or remain and a decision to remove him was made on 1 September 2011 and it is against that decision that the appellant appealed.
4. In the refusal letter of 1<sup>st</sup> September 2011 the Secretary of State recorded that the appellant's claim for asylum had already been considered on 18<sup>th</sup> June 2009 and refused and the reasons given for refusing his claim were still valid and relied upon. His representations dated 30<sup>th</sup> June 2011 were not considered to be a fresh claim for asylum as he had relied on the same grounds. His claim was thus considered only under Humanitarian Protection and Human Rights grounds. There did not appear to have been any form of judicial review of this decision and thus the appeal is restricted to those grounds.
5. His appeal against the refusal of further leave was heard by First Tier Tribunal Judge Herlihy on 31 October 2011 and it was dismissed. He appealed to the Upper Tribunal and on 3 July 2012 the appeal was remitted back to the First-tier Tribunal for a re-hearing. On 6 December 2013 the appellant's solicitors queried the progress of the appeal and the case was listed on 4 April 2014 before Judge of the First-tier Tribunal Sharp.
6. By the time the case was listed before Judge Sharp the appellant was 20 years of age and described as "a mature young man, well able to express himself".
7. The appellant claimed that his reason for coming to the UK was that he feared his father's enemies because his father had been in the Hezb-i-Islami as a commander. The appellant returned to Afghanistan after initially fleeing to Pakistan and found out that his enemies were searching for him. His father, as a commander in Hezb-i-Islami and against the government, was shot dead in 2006. The appellant then claimed his family were taken to prison where they stayed for some five to six months after which his father's friend, Shamshir Khan, a fellow Hezb-i-Islami Commander [SEF statement paragraph 15][AIR q37], bribed the guards to release them and thereafter they went to Pakistan. They stayed for two and a half years until they travelled back to Afghanistan where Shamshir Khan told him the authorities were still looking for him and he arranged for the appellant to travel to the UK.
8. His claim was refused as the respondent doubted the credibility of his claim as he had failed to provide a credible, consistent and accurate account of the events claimed and asserted that he could internally relocate.
9. At the hearing before Judge Sharp his brother, Ahmadullah Jabarkhil and the appellant gave evidence and his brother confirmed that his father was killed in 2006 when he was away and the security services raided their house.
10. It was submitted on behalf of the respondent that even taking the claim at its highest and even if the appellant could not return to his home area, he could relocate to Kabul where he could assimilate himself in that city.
11. The judge also dismissed the Article 8 claim.

12. An application for permission to appeal was submitted to the First-tier Tribunal which was refused and renewed to the Upper Tribunal which established these grounds.
  - Ground 1: The passage of time does not attenuate risk;
  - Ground 2: The failure to consider the risks from the anti-government group;
  - Ground 3: Internal relocation; The Tribunal's consideration of internal relocation failed to take into account that the client claimed to fear the Afghan authorities and the authorities clearly operated in Kabul, and
  - Ground 4: There was an error in the assessment of family life.
13. Application for permission to appeal was granted by Judge Hemingway on the basis that it was arguable that the judge erred in failing to consider and determine the claim that the appellant would be at risk of forced recruitment by anti-government forces and that the judge did not give adequate reasons for finding that the appellant could safely relocate to Kabul and it would not be unduly harsh to expect him to.

### The Hearing

14. At the hearing Mr Shibli stated that the judge had not adopted the right approach. There had been evidence of previous difficulties and the passage of time did not attenuate the risk. The fact that he had been targeted by the government in 2009 indicated he was still at risk as it was difficult to see how this had changed with five years.
15. Further, there was nothing in respect of anti-government groups contained in the determination. This is an appellant who was now educated abroad and questions would arise as to what he had been doing over the last five years. He had been out of the country for some time.
16. Mr Bramble submitted that there was a large number of documents but very limited evidence on which the judge had to rely and the judge was entitled to accept paragraph 399K unless there were good reasons why the persecution would not be repeated. Eight years had passed since that time. The judge had not dealt with forcible recruitment from anti-government groups but this was not provided for in the skeleton argument. There were brief references in paragraph 16 in the skeleton argument to the forcible recruitment and in paragraph 18 of the skeleton argument in relation to Dr Giustozzi's evidence. There was a further reference at paragraph 19 in relation to AA (unattended children ) Afghanistan CG [2012] UKUT 00016 IAC. This however was not a child.
17. The judge had looked at the evidence. He had not mentioned AK but paragraph 34 was sufficient.
18. The findings in relation to private life were also sufficient.
19. Mr Shibli responded that it could not be the case that if the skeleton argument did not deal with something that the judge should not deal with it. It had been raised in the grounds of appeal. There was no reference to AK v (Article 15(c)) Afghanistan

**CG [2012] UKUT 00163(First Tier Tribunal (Immigration and Asylum Chamber))**

or to forcible recruitment.

20. At this point the appellant gave oral testimony and he stated that everyone knew his family. When he was a child he was taken into detention. He stated there were no other commanders in the village. He had been detained with his family for six months. He could not return to Laghman which was his home area and that he could not return to Kabul because he was at risk of the government. He knew that the authorities would find him because they had his father's pictures and he took their pictures from when they were detained in 2006. He then confirmed this was the only reason that he would be known.
21. Under cross-examination with Mr Bramble the appellant confirmed that he had last had contact with someone in Afghanistan in 2009. It was put to him that it was only his belief that if he went back people would try to persuade him to take on his father's role and he denied that this was the case. He was asked who were the last people who tried to persuade him to join Hezb-i-Islami and he stated the people working with his father and they tried to persuade him after the death of his father. It was put to the appellant that nowhere had it been stated by the appellant previously that he had been encouraged to join Hezb-i-Islami before he left and he stated no one had asked him.
22. He was then asked at what point he was asked and he replied "in 2009". It was put to him that why was he just not taken if he was scared of forcible recruitment and there was ample opportunity to take him.
23. He stated that his village was one hour from Kabul.
24. He was asked about when he was detained by the government as to why he was not killed in the six months and he merely responded that money was paid to bribe him to get him out and that he had been questioned during this time.

**Conclusions**

25. Judge Sharp at paragraph 29 of his determination took into account the fact that the appellant first gave his account when he was aged 15 and that he may well be more prone to making mistakes and errors. However, he found all essential core elements of the claim had remained consistent. He lived with his family and his father being a commander and his father was killed. He was taken out of the country by his father's friend after that friend had advised the family to flee to Pakistan where they stayed for two and a half years. He made his way out of Afghanistan with the assistance of the father's friend and he applied for asylum shortly after arriving in the UK.
26. The judge found in his determination at [32]:

*"Having taken into account all the evidence including that of the appellant's brother I am satisfied that the relatively low standard of proof required and bearing in mind the age of the appellant at the time he entered this country and was initially interviewed, that he has established that the core element of his account is true. I am satisfied that his father was a commander and was murdered most likely by the authorities and that both his brother at the time of the murder and he some two and a*

*half years later when he returned as a young man had reason to fear the authorities by reason of his association with his father."*

27. The judge continues at [33]:

*"However those matters relate to 2009. Much time has gone past since then. I am hearing this case some five years later. I must consider whether being the son of an assassinated Hizb-i-Islami commander he would still be at risk from the authorities should he return at the present time. He is now aged 20. He is a grown man. He has been educated in the UK."*

28. In effect the judge stated that:

*"Since 2009 but even then some time has passed since the actual murder itself. The appellant has been unable to produce any evidence that after all this time the authorities would still be looking for him. He claims to have lost all contact with his family."*

29. The judge continued:

*"Mr Cooray was not able to refer me to anything other than a limited number of pages in the substantial bundles produced on his behalf. I therefore cannot be satisfied that the authorities would be looking for the appellant should he return at this time."*

and at [34]:

*"I am satisfied that in the alternative that the appellant would be able to relocate to Kabul. Kabul is a substantial and vibrant city rebuilding itself after years of turmoil. Things may not be perfect there and in particular for minor children and sole women it may well be that it would be unsafe for them to return. However the appellant is a young, healthy, intelligent and articulate man who I am satisfied would be able to make his way in Kabul and take advantage of the opportunities that will exist in the city. There are a number of organisations within Kabul to assist returning refugees."*

30. The judge was criticised for failing to cite **AK v (Article 15(c)) Afghanistan CG [2012] UKUT 00163(First Tier Tribunal (Immigration and Asylum Chamber))** and I find this could be an error specifically with regard to risk as it is country guidance. Further although the judge referred to the risk from Hizb-e-Islami he gave very limited reasoning in respect of finding there was no risk and failed to cite **PM and Others (Kabul - Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089**. Nonetheless I preserve those findings the judge did make with respect to the appellant and I remake the decision with respect to the assessment of risk on return.

31. **Januzi (FC) v SSHD [2006] UKHL 5**, stated that in relation to the question of whether it would be unduly harsh for the claimant to be expected to live at a place of relocation within the country of his nationality, that the relevant comparisons are between those in the place of relocation and those that prevail elsewhere in his country of nationality. If the claimant could live a relatively normal life by the standards that prevailed in his country of nationality generally, and if he could reach the less hostile part without undue hardship or undue difficulty it would not be unreasonable to expect him to move there.

32. **AK** confirmed that the security situation in Afghanistan was such that relocation to Kabul was still an option. It would depend on the individual circumstances of the Appellant. It is necessary to take into account the level of violence in the city and the difficulties experienced by that city's poor and also the many Internally Displaced Persons there but these considerations would not in general make return to Kabul unsafe or unreasonable.
33. The judge found that the security situation was indeed such in Kabul that the appellant could be returned there. I can accept that the passage of time alone may not attenuate risk, as the judge found that the appellant had reason to fear 'when he returned' in 2009 but the judge considered whether the appellant would be at risk in his village or in Kabul and he found that the appellant could relocate to Kabul. He considered whether he was at risk from the authorities or 'the danger he claims'.
34. Although the judge did not cite **AK**, it confirms that there is a level of safety in Kabul depending on the circumstances of the appellant. The judge also made findings on the individual circumstances of the appellant and found that the appellant was 'now aged 20' and a 'grown man'. Considering the two dimensions, that of time and space, the passage of time and geographical distance of Kabul, would allow the appellant to reside in safety in Kabul. As the judge pointed out there was no specific information which indicated that the appellant would be targeted.
35. I do not accept that **AA (unattended children) Afghanistan CG [2012] UKUT 00016 IAC** applies to the appellant now. I can accept that there is no bright line but he is now the age of 20 years old and has undergone the process of relocation and adapting to a different country and this will have had a maturing effect on him. As found by Judge Sharp he is intelligent and articulate. Nor do I accept that if the respondent has failed to track down the family this has prejudiced his case in any way. He claims his father was murdered and his brother in the UK. His brother has yet to be granted status in the UK. He too was given discretionary leave. Indeed the appellant's case is that he specifically did not want his family contacted.
36. This appellant does not fall within the UNHCR guidelines as someone particularly vulnerable. This Appellant is an adult male, who has been able to obtain visas, travel and enter the United Kingdom.
37. The country background material produced does not undermine the overall recent findings within **AK as follows**

...

*(ii) Despite a rise in the number of civilian deaths and casualties and (particularly in the 2010-2011 period) an expansion of the geographical scope of the armed conflict in **Afghanistan**, the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.*

*(iii) Nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may now be taken to include Ghazni but not to include Kabul), at such a level.*

*(iv) Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing "safety" and reasonableness") not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable..*

38. Much of the documentation produced by the appellant's representatives referred to pre 2011 situations. **AK** at paragraph 226 found those parts of Kabul city where returnees are most likely to live are 'the poorest areas of the city or its environs' and have been less affected by indiscriminate violence, stating that the 'great majority [of attacks] have concentrated on areas where the government or international organisations have their offices or where their employees frequent'.
39. Further, at paragraph 225, the Tribunal also found that there was little evidence of significant numbers of the urban poor and IDP population in Kabul suffering destitution or inability to survive at subsistence levels. It further noted that, whilst the importance of return and reintegration packages for UK returnees to Kabul should not be exaggerated, they did, nevertheless, place returnees in a better position than that of IDPs
40. As the judge stated Kabul is a 'vibrant city rebuilding itself after years of turmoil' and the appellant is 'a young healthy intelligent and articulate man who I am satisfied would be able to make his way in Kabul and take advantage of the opportunities that will exist in the city'. As indicated in this determination I find the appellant is resourceful and is an adult male with no significant health difficulties. I do not find he is at risk under the UNHCR guidelines. As stated Kabul is a busy and vibrant city and I do not accept that he would be recognised as a newcomer bearing in mind the ever changing population.
41. I considered the appellant's claim that the Hizb-e-Islami would forcibly recruit him and I do not accept that this is the case. The country background material produced by the appellant indicated that in Laghman the Shura compete with the Hizb-e-Islami and I find that the time of the insurgents would be spent fighting each other rather than searching for someone who was not in fact a member of the Hizb-e-Islami, had been absent from the area for 5 years and where there is indeed protection in the form of the government as indicated above.
42. His father was murdered many years ago and a member of the local Hizb-e-Islami actively assisted the appellant with his passage out of Afghanistan, not once but twice. This person was described as a member of Hizb-e-Islami and there is nothing to suggest that any retribution was taken against him for assisting the appellant with his removal from Afghanistan. If the appellant were truly wanted for recruitment by the Hizb-e-Islami I find that he would have been recruited prior to leaving for Pakistan and prior to leaving for the UK.
43. He would not be returning to an area under the control of an AGE or an area where there is struggle for control (obviously bearing in mind the securitised nature of Kabul) and although he may be of fighting age I do not find he would be at risk in Kabul of forced recruitment. I take into account **AK**, the country background

material and the lack of any information in this specific matter about the reach of the Hizb-e-Islami into Kabul.

44. **RQ (Afghan National Army - Hizb-i-Islami - risk) Afghanistan CG [2008] UKAIT 00013** found that there could be safety in Kabul for former soldiers from the risk of Hizb-e-Islami and *the safety of internal relocation to Kabul is a question of fact based on the particular history of an individual appellant and of the warlord or faction known to be seeking to harm him*. There was no overall picture of those seeking to target the appellant and further he himself was not a former soldier.
45. Nor do I find he would be at risk from the government or he has an association with the Hizb-e-Islami such that he has fought for them which would create a profile of risk. Indeed he has removed himself from Afghanistan rather than join this group and the UNHCR guidelines considered that those suspected of supporting AGEs may be in need of protection but this depended on their profile. It was accepted by Judge Sharp that the appellant's father had been a Commander in the Hizb-e-Islami but I note the appellant has de facto distanced himself from engagement with the Hizb-e-Islami and indeed spent time being educated in a Western country and applying for asylum. He does not present as someone having committed any crimes whilst fighting. Indeed he can show that he has resisted forced recruitment by the Hizb-e-Islami. The suggestion is that he would be associated by the government with his father's politics but I do not accept that this would be the perception of him now bearing in mind the time elapsed and his background in the west. He will be no different to many of the population in Afghanistan and there is nothing to suggest that he would be the target of indiscriminate violence.
46. A Landinfo report dated 9<sup>th</sup> September 2011 by Dr A Giustozzi was produced. This confirmed that the Afghan conflict had not targeted civilians and such casualties had decreased. Further this recorded under 'Attitude towards civilians of the parties in the conflict' that 'episodes of targeting of civilians because of their association with one of the parties in the conflict have been rare'.
47. The appellant claimed that the government would have an interest in him because he was kept in detention for six months. Not only was he a minor at this time but also he was released. If he were of real interest I do not accept he would be released. In his oral evidence the appellant stated that the government would be able to identify him because of pictures taken at the time of detention. I have no doubt that the appellant will have changed considerably since that time but even if he did have pictures taken, and he was released on a bribe, his subsequent actions will have removed him from a perception of association with the Hizb-e-Islami. He has taken no part in any armed struggle against the government.
48. **PM and Others (Kabul - Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089** accepted the principle that time could attenuate risk and although acknowledging that it is not the role of the ISAF to protect individuals, that there is an Afghan army and a police force and security services, that Kabul is not an entirely lawless place and a police force and security services exist in Kabul. **PM** addressed the question of whether those associated with the Hizb-e-Islami would be at risk from the authorities and at [135] concluded



*'It has been suggested that someone who has been involved with Hizb-i-Islami will always be regarded as a member. There is no satisfactory evidence to that effect. There is evidence to the contrary as illustrated by the MPs who are ex-Hizb-i-Islami. The fact that the appellants have been out of the country for so long suggests, on a common sense basis and in the light of the above, that their past conduct, without more, will not cause them serious difficulty.*

And at paragraph 136 the Tribunal continued

*'In summary, we have concluded that it has not been demonstrated that returnees such as the appellants [those with an association with Hizb-e-Islami] would be at real risk in Kabul. It is possible, but no more, that after they have been there for a period, their existence would become known to the security forces. The evidence is that they would not be suspected of directly knowing anything about what is going on in the insurgency although after a period, in common with all others, they may be asked questions about what they know from their relatives and friends and their own personal networks. ...Clearly, if such a returnee elects to become active for Hizb-i-Islami the situation may be different, but these appellants are not being returned on the basis that that is what they will do. After all, they came here to avoid that'.*

49. The appellant was not a member of Hizb-e-Islami and indeed has shown that he does not wish to be. I do not accept that the authorities will presume thus that he wishes to take the place of his father. I conclude that the appellant can safely return to Kabul and is not in need of asylum (although this is not in issue) humanitarian protection or protection further to Articles 2 and 3 of the European Convention for the reasoning given above.
50. I find no error of law in the assessment by Judge Sharp in relation to Article 8. The judge did not consider the Immigration Rules including Appendix FM or paragraph 276 ADE but there was no challenge on this basis by the respondent. The judge pursued the assessment following Razgar v SSHD [2004] UKHL 27. The judge found [35] that the appellant had re-established contact with his brother after not having seen him for a number of years and 'furthermore the parties are not living together'. He found that that had no more than a brotherly relationship and that they did not have a family life together.
51. The private life of the appellant was considered. The judge accepted that the appellant had a private life and addressed proportionality. The judge's findings at [38] were brief but touched on the relevant issues. The appellant would be returning to his country of origin, his private life had been built up during a period of uncertainty in the UK and although he entered as a minor his asylum claims had been rejected. The appellant had not put forward more cogent reasons or family life or relationships as to why he should not be removed. Clearly the judge was aware of the background of the case and that the appellant had only been in the UK since 2009 and was given temporary discretionary leave only. The judge took into account the relationship he had with his brother but found they could keep in contact through

modern methods. The judge had also found that the appellant could safely return to Kabul. The reasons are adequate with respect to Article 8 and I find no error in this respect of the determination and it shall stand.

52. I have remade the determination with respect to assessment of risk on return in relation to Humanitarian Protection and protection with respect to Articles 2 and 3 of the European Convention and I dismiss the appellant's appeal on all grounds.

Signed

Date 5<sup>th</sup> September 2014

Deputy Upper Tribunal Judge Rimington