



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

Appeal Number: AA/02264/2014

**THE IMMIGRATION ACTS**

**Heard at Sheldon Court, Birmingham**

**Decision & Reasons  
Promulgated  
On 9 January 2015**

**On 22 December 2014**

**Given 22 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**H K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr Mills, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Afghanistan, date of birth 4 June 1994, appealed against the Respondent's decision dated 24 March 2014 to

refuse to vary leave to remain and to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellant had been granted limited leave to remain until 4 December 2011 on a discretionary basis outside of the Immigration Rules. An in-time application was made under paragraph 327 of the Immigration Rules HC 395 as amended for that variation of leave. In the light of the reasons given and contained within the Reasons for Refusal Letter the Appellant appealed and the matter came before First-tier Tribunal Judge Dove QC on 4 July 2014. The judge had dealt with an asylum claim and gone on to consider whether the Appellant met the requirements of either Appendix FM of the Immigration Rules or under the provisions of paragraph 276ADE of the Rules.
3. In respect of the appeal, issues were also raised concerning the claimed connection between the Appellant and a child born of a relationship with a Miss K.
4. The judge dismissed the appeal and although nothing was said I assume the judge dismissed the appeal against the removal directions.
5. Permission to appeal that decision was given by First-tier Tribunal Judge Levin on 3 July 2014,
6. On behalf of the Appellant's solicitors, Sultan Lloyd through a Mr Bedford, settled grounds of appeal.
7. Recently the Appellant attended on the offices of Sultan Lloyds who sought payment far in excess of the Appellant's means, and being unable to obtain funding from elsewhere he is now unrepresented, and Sultan Lloyd have withdrawn their name from the office file as the Appellant's representative.

8. As such, the Appellant has attended the hearing but it is fair to say he has some ability in the English language, but plainly is not able to do more than simply state, as he does, his wish that he has to return to Afghanistan with his young son or alternatively remain in order to be with his son.
9. The grounds settled by Mr Bedford of 15 July 2015 essentially seek to reargue the issues of return and the associated risks as well as the issue of the family life and the connections that the Appellant had with his new born son.
10. It would appear that things have moved on since the hearing before the judge in that the Appellant has a new relationship and his new partner attended the hearing to support him.
11. The Appellant also sought to inform me that whatever may have been the position at the date when First-tier Tribunal Judge Dove dealt with the matter things had moved on and he now has greater contact with his young son.
12. There is nothing to indicate any factual disputes arising from the judge's decision. Essentially the challenge on which permission was given was confined to the issue that the judge had failed to consider and make any findings as to whether the Appellant had any remaining ties to Afghanistan under paragraph 276ADE (iv) of the immigration rules. Mr Mills accepted that on a reading of the judge's determination there is no analysis of the issue of subsisting ties with Afghanistan and it is arguable that the judge's consideration in paragraph 30 was taking the view that there was nothing to disadvantage the Appellant on a return. From that it may reasonably be inferred that the judge was properly considering whether the Appellant had lost contact with his country of origin to the extent that it was unreasonable for him to be returned to Kabul, not least because he would be returning, albeit as a young man, in circumstances where he had not been for many a year.

13. It seemed to me that the failure to refer to that matter was an error but in the light of the circumstances it was not material to the overall outcome, not least when the judge taking similar considerations into account reached the view that he did in respect of Article 8 of the ECHR: Those considerations were largely the same or similar. No issue was taken concerning the factual matters that the judge had concluded on the Appellant's private life both in the United Kingdom and in Afghanistan. The judge also took into account the information then before him on the Appellant's contact with the child and its significance in terms of the implications for removal.
14. What is claimed is that there has since been a substantial change in the Appellant's circumstances and, if so, that may provide the Appellant with an opportunity to make a further application.
15. In these circumstances I do not find in relation to the assessment of asylum or indeed subsidiary protection or Articles 2, 3 and 8 ECHR or under the immigration rules there is any material error of law. The original Tribunal decision stands.

### **Anonymity**

I find that this is a case where it is appropriate to make an anonymity order and I so direct.

### **DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

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 their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 7 January 2015

Deputy Upper Tribunal Judge Davey