



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

Appeal Number: AA/09177/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 June 2015**

**Determination Promulgated
On 12 June 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE ARCHER**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M S

(ANONYMITY DIRECTION IN FORCE)

Respondent

Representation:

For the Appellant: Ms S Vidyadharan, Home Office Presenting Officer

For the Respondent: Ms S B Smith, Counsel instructed by Lambeth Law Centre

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. We make this order because the respondent is an asylum seeker and publishing his identify might endanger his safety.
2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Phull allowing the appeal of the present respondent, who I

will call “the claimant”, against the decision of the Secretary of State on 4 October 2014 to refuse him further leave to remain in the United Kingdom and to remove him. It is his case that he is a refugee or otherwise entitled to international protection.

3. His appeal was allowed by Judge Phull on asylum grounds and on human rights grounds including a rather strange finding to allow it under Article 8 in a way that does not, with respect, make a great deal of sense to us. That is not important in the context of the appeal as a whole or our decision as a whole which is that the decision to allow the appeal on asylum grounds was permissible in law.
4. I think we may be permitted a rather generalised observation that a very large number of young men who have sought asylum in the United Kingdom can be returned safely to Kabul where they are not refugees. It is also well-recognised by this Tribunal that this is not true of all the young men who have been seeking asylum in the United Kingdom but something has to exist in such a case to separate them from the general and to show that a particular claimant faces a real risk.
5. The First-tier Tribunal Judge found that there were two areas of risk for this claimant.
6. Firstly, he is a refugee because he is the son of a police officer and the Taliban are anxious to punish people for being related to police officers no doubt with the intention of discouraging other people from being police officers. We do not think that it is disputed that if the appellant is at risk for that reason he is a refugee.
7. The second reason, which is much less common but is a feature of this case, is that the claimant is also involved in a blood feud. If he is at risk for that reason he might not be a refugee but might be entitled to protection because blood feuds in Afghanistan are nasty and long-lasting and may very well constitute a risk to the claimant's rights that are protected by Article 3 of the European Convention on Human Rights.
8. Judge Phull was satisfied that in the event of the appellant's return to Afghanistan he would be at risk in Kabul because news of his arrival might travel to those who bear him harm. With respect to Judge Phull, her reasons for reaching that conclusion are not explained as well as they might have been in the Decision which is why we had to have this hearing. We are quite satisfied having reflected on the Decision with the assistance of representatives for the parties that it was a decision open to Judge Phull on the evidence before her.
9. We make the point that the fact that the claimant is at risk because of a blood feud enhances his risk from the Taliban. We say that because, unlike the Taliban who, although they might be expected to take action against the son of a police officer whose presence they discover, would not necessarily have the resources or inclination to go round looking, the

claimant's uncle, we are satisfied, would be overtly looking for him because that is the nature of blood feuds in Afghanistan society.

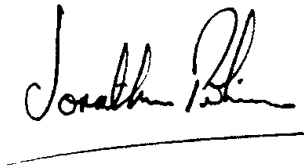
10. We find it a reasonable inference from the evidence that if news reached the uncle it would also reach the Taliban because it is the kind of information that would travel in the home village from the uncle's family to the Taliban who we are quite satisfied would be active there.
11. This creates an enhanced risk that puts him in a more dangerous category than somebody who was simply related to a police officer. This was clearly in the judge's mind.
12. We now ask ourselves how the judge could conclude properly that the claimant would be at risk in Kabul which is an hour and a half travel distance away from the claimant's home area.
13. There are two things that are readily identifiable. The first is an expert's report which was before the judge and was accepted by her. Paragraph 40 of that report refers expressly to "interactions between strangers meeting for the first time inevitably begin with establishing identity and trying to find common acquaintances or family members". The expert explained how trust is broken down in Afghanistan because of the difficult times and it is the nature of that society for people to ask questions to place each other in a particular social perspective.
14. We remind ourselves that if the claimant were returned he would be looking for accommodation and he would be looking for work. Whilst he would undoubtedly be entitled to some help he would have to make contact with people who would be asking questions about his identity. It is not something he could keep secret and therefore the judge was entitled to conclude that it is something that would become known and there is a real risk of it being known by people who would do him harm.
15. The second associated point is from the country guidance given in **AA (unattended children) Afghanistan) CG 2012 UKUT 00016 (IAC)** where particularly the Tribunal approves of the evidence of Dr Giustozzi who is a person well-known to the Tribunal as an expert about Afghanistan and adjoining states. The Tribunal said, "we also take into account his evidence that tracking somebody down from the provinces in Kabul is not difficult". This is precisely the point that was made in appeal before us.
16. We want to emphasise that our ruling is not to be understood as a general ruling that the sons of police officers cannot be returned to Kabul. Each case is fact specific and there is in this case an additional and, we find, significant aggravating factor of his being actively pursued because of a blood feud.
17. All we are saying is that when we look at the decision carefully the weak elements that were properly identified by the Secretary of State do not amount to material errors of law.

18. The reasons for the judge's decision are plain if we step back and consider the Decision fairly. The Secretary of State knows why she lost and the reasons given are sufficient in law.
19. We dismiss the Secretary of State's appeal. That is our decision.

Notice of Decision

20. The Secretary of State's appeal is dismissed

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 10 June 2015