



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/02834/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> February 2016**

**Decision & Reasons  
Promulgated  
On 29<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**A R A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss L Hooper, Counsel, instructed by Sutovic & Hartigan  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a citizen of Afghanistan whose date of birth is given as 1<sup>st</sup> January 1997. He was discovered concealed in a lorry on his arrival in the UK on 27<sup>th</sup> October 2010 on which day he applied for asylum. That application was refused on 22<sup>nd</sup> December 2010, but on that date the Appellant was granted discretionary leave to remain on the basis of his

age until 22<sup>nd</sup> December 2013. On 15<sup>th</sup> January 2014 the Appellant applied for a variation of that leave to remain on human rights grounds. That application was refused on 2<sup>nd</sup> February 2015 for the reasons given in the Respondent's letter of that date.

2. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Rowlands (the Judge) sitting at Hatton Cross on 22<sup>nd</sup> June 2015. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 23<sup>rd</sup> July 2015. The Appellant sought leave to appeal that decision, and on 16<sup>th</sup> October 2015 such permission was granted.

### **Error of Law**

3. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. I note that leave to appeal was granted by Upper Tribunal Judge Grubb only on the ground that the Judge had failed to consider whether the Appellant would be at risk on return under the provisions of Article 15(c) of the Directive.
4. When I heard this appeal the Appellant was 19 years of age. The Judge accepted that the Appellant was an Afghan from the Hisarak District of Jalalabad Province. The Appellant's mother, two brothers, and four younger sisters still live there. Otherwise, the Judge found the Appellant's evidence to be lacking in credibility and he was not satisfied that the Appellant was at risk on return from the Taliban as a consequence of his father's earlier activities. The Judge was satisfied that it was safe for the Appellant to return to Jalalabad and also as an alternative to Kabul.
5. At the hearing before me, Miss Hooper argued that the Judge had erred in law in coming to this conclusion. She argued that the findings of fact made by the Judge at paragraphs 43 and 44 of the Decision were not based on the objective evidence. There was evidence before the Judge that it was not safe for the Appellant to return to his home area. It was therefore perverse for the Judge to find that it was "perfectly safe" for the Appellant to return to Jalalabad. The Judge failed to explain adequately his reasons for this finding. There was no proper analysis of the circumstances in the Appellant's home area. In particular, the Judge did not take into account the contents of the European Asylum Support Office (EASO) Report which was before him.
6. In response, Mr Clarke submitted that there had been no such error of law. He acknowledged that the Judge had not considered risk on return in the context of Article 15(c), but argued that this was not a material error of law. Regardless of the situation in Jalalabad, the Judge had made a clear finding that it was safe and reasonable for the Appellant to return to Kabul. That decision was not challenged by the Appellant.
7. At the hearing I reserved my decision which I now give.
8. I find no error of law in the decision of the Judge which I therefore do not set aside. The terms of the appeal to the Upper Tribunal are restricted to

a consideration of how the Judge dealt with the argument that the Appellant was at risk on return in the terms of Article 15(c). It is true that the Judge made no finding in this respect and that must be an error of law. It is trite law that a Judge must deal with all the Grounds of Appeal, and the issue of Article 15(c) was raised before the Judge in paragraphs 33 to 43 inclusive of the Appellant's Skeleton Argument. I must now decide if such an error is material so that the decision of the Judge should be set aside.

9. Because of its limited terms, this appeal is not a review of the Judge's findings as to credibility and fact. Therefore any error of law will only be material if the facts as found by the Judge indicate that the Appellant is at risk according to Article 15(c). The current Country Guidance case on the issue is **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**. There it was held that those returning to Afghanistan would only be at risk in terms of Article 15(c) if their circumstances revealed an enhanced risk. As the Judge found that it was safe for the Appellant to return to both Jalalabad and Kabul, he found that there was no such enhanced risk. If he had considered Article 15(c) the Judge would have been bound to follow the decision in **AK** and would accordingly have found that the Appellant was not in need of humanitarian protection. It was not argued before the Judge that **AK** had been wrongly decided, or was no longer current. It must be the case therefore that any error of law relating to the Article 15(c) issue is not material and I so find.

### **Notice of Decision**

10. The making of the decision of the First-tier Tribunal did not involve the making a material error of law on a point of law.
11. I do not set aside that decision.
12. The appeal to the Upper Tribunal is dismissed.

### **Anonymity**

The First-tier Tribunal made an order for anonymity which I continue.

Signed

Date

Deputy Upper Tribunal Judge Renton