



IAC-FH-CK-V1

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

Appeal Number: AA/06900/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18 March 2016**

**Decision & Reasons Promulgated
On 28 April 2016**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H Y

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant:

Mr D Clarke, Home Office Presenting Officer

For the Respondent:

Ms A Radford, Counsel, instructed by Turpin & Miller LLP
(Fountain House)

DECISION AND REASONS

1. The appellant, the Secretary of State, has been granted permission to appeal the determination of First-tier Tribunal Judge Page allowing the appeal of the respondent under Article 15(c) of the Qualification Directive on the basis that the change in the country situation in Afghanistan indicates that the respondent should be granted humanitarian protection until it can be demonstrated that he could be returned there safely. The judge also allowed the appeal under paragraph

276ADE(1)(vii) on the basis that having allowed the appeal under Article 15(c), as the respondent is a vulnerable person who came to the UK as an unaccompanied minor, he would face serious obstacles to safe integration into Afghanistan on return.

2. The respondent is a national of Afghanistan born on [] 1997. His previous asylum appeal was dismissed in the determination of Judge Roopnarine-Davies on 25 November 2011. The judge found that the respondent's asylum claim was not credible. The judge held, so far as the humanitarian protection issues were concerned, that it had not been shown that either in Kabul or Laghman the level of violence was such that without anything to render the respondent a particular target, there was a real risk to his life or personal safety there. So the judge dismissed the respondent's appeal on asylum grounds and on humanitarian protection grounds. Nevertheless, being a minor, the respondent was granted discretionary leave until 17 September 2014, until he had reached the age of 17½ years, in accordance with the respondent's policy.
3. The respondent reached the age of majority on 17 March 2015, and made a further application for leave to remain on asylum grounds. The basis of his claim was that he feared returning to Afghanistan because he would be taken by the Taliban and forced to work for them. He also feared that he would be killed by the Taliban for leaving Afghanistan when the Taliban had requested him to join them. In refusing the respondent's application, the Secretary of State held that it would not be unduly harsh for him to be returned to his home area in Afghanistan in Laghman province. Alternatively, the respondent could relocate to another area within Afghanistan, for example, Kabul. The Secretary of State also found that the respondent failed to meet the requirements of 276ADE(i)(vi) in that he had failed to establish that there were very significant obstacles to his integration into Afghanistan if he returned there.
4. In reaching his conclusions the judge agreed with the conclusions reached by Judge Roopnarine-Davies insofar as the credibility issues were concerned. The respondent's asylum claim was found to be lacking in credibility and there was no difference to that claim.
5. In reaching his conclusions the judge held as follows:

"21. However, as Mr Joseph has submitted in his skeleton argument dated 4 December 2015, the security situation in Afghanistan has changed much - and for the worse. I have revisited the judge's conclusions in the light of the objective evidence that Mr Joseph has relied on and it is plain that the situation has deteriorated substantially since 2011. The appellant's appeal under Article 15(c) of the Qualification Directive is based on the compelling evidence published since the country guidance to show that the appellant has an arguable case for subsidiary protection under Article 15(c). At paragraph 12 of Mr Joseph's skeleton argument he refers to the objective evidence to show that between 1 January and 30 June 2015 there were 4,921 civilian casualties (1,592 civilian deaths and 3,329 injured). This is recorded in the OHCHR/UNAMA Afghanistan Mid-Year Report 2015: Protection of Civilians in Armed Conflict, dated 4 August 2015, this is to be found at pages 40-122 of the appellant's bundle. For 1 January to 30 June 2015, UNAMA documented 196 abduction

incidents, almost all carried out by anti-government elements, which resulted in 76 civilian casualties (62 deaths and 14 injured), marking a 37% increase in the number of such incidents and a 117% increase in casualties relating to abductions compared to the same period in 2014.

22. Apparent dissent within and between anti-government element groups contributed to the emergence of groups pledging allegiance to the terrorist organisation known as Daesh. UNAMA also observed that the emergence of groups claiming to be affiliated with Daesh raises serious concerns for the civilian population as a whole. I remind myself of the low standard of proof that I must apply in this appeal and this disturbing new objective evidence causes me to doubt the safety of the findings of the Upper Tribunal in **R (on the application of Naziri and Others) IJR [2015] UKUT 00437**. The Upper Tribunal did not have the UNAMA Report dated 4 August 2015 in evidence but did have the UNAMA Report published in February 2015.
 23. The substance of the respondent's decision in under appeal, not the authority of the Upper Tribunal. The respondent has given weight to what the respondent considered to be the 'current country guidance case' of **AK (Article 15(c) Afghanistan CG [2012] UKUT**. In that country guidance case the Tribunal found that the level of indiscriminate violence in Afghanistan taken as a whole was not at such a high level to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faced a real risk which threatened his life or person. The appellant in this appeal has relied on the more recent cases and Mr Joseph has presented a compelling argument that the escalation in civil strife in Afghanistan is such that the country guidance cases need to be revisited in the light of changing conditions there. I am satisfied to the lower standard of proof that the appellant would face a real risk of indiscriminate harm should he be returned to Afghanistan; particularly as a young vulnerable person who has been out of the country since he was 14 years old."
6. Ms Radford's argued that there was no difficulty in understanding the judge's thought process when he reached the finding that the civil strife in Afghanistan has escalated and the security situation has increased to such an extent that the respondent would face a real risk of indiscriminate harm should he be returned to Afghanistan, particularly as a young and vulnerable person who had been out of the country since he was 14 years old. She submitted that in view of the objective evidence from UNAMA dated 4 August 2015, which postdated the UNAMA Report published in February 2015 which the Upper Tribunal in **Naziri** had relied on, the judge's decision not to rely on **Naziri** disclosed no error of law.
 7. I was not persuaded by Ms Radford's submissions.
 8. I accept as held by the Upper Tribunal in **DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC)** that a judge may depart from existing country guidance in the circumstances described in Practice Direction 12.2 and 12.4 and the UT (IAC) Guidance Note 2011, No. 2, paragraphs 11 and 12. The basic principle is that a judge has to show why a country guidance case does not apply to the case in question.

9. Naziri is not a country guidance decision. At [63] the Upper Tribunal held that in the United Kingdom, the leading decision of the higher courts dealing with Article 15(c) remains QD (Iraq) v Secretary of State for the Home Department [2011] 1 WLR 689. QD helpfully explains how Elgafaji should be applied. In addition they had the guidance set out in HM and others (Article 15(c)) Iraq CG [2012] UKUT 409 (IAC).
10. The judge was right in saying that the Upper Tribunal in Naziri had the UNAMA Report published in February 2015 and not the UNAMA report dated 4 August 2015. However the Upper Tribunal noted at [35] that “one of the central themes of the report is the increasing toll of the conflict on civilians” which is reflected in the rise of civilian casualties. I find that as the judge appears to have also relied on this central theme in light of the UNAMA Report of August 2015 to reach his conclusions, it was difficult to understand why he doubted the safety of the findings in Naziri.
11. The judge did not rely on any of the cases cited at [9] above. He relied on AK. The judge held that the respondent would face a real risk of indiscriminate harm should he be returned to Afghanistan, particularly as a young vulnerable person who has been out of the country since he was 14 years old. The judge failed to consider other factors, such as whether the respondent has family in Afghanistan, either in Kabul or Laghman province, who can provide him with a home, security and support and whether he will be able to find employment. Failure to consider such matters was an error of law.
12. I find that the judge erred in law in finding that the respondent met the requirement of paragraph 276ADE(1)(vi). The judge based his decision on his finding on the Article 15(c) issue. As the judge failed to identify the evidence which led him to find that the respondent would face serious obstacles to safe integration into Afghanistan on return his decision is not safe, his decision cannot stand.
13. I find that the judge erred in law for the reasons given. His decision cannot stand. The judge’s decision is set aside in order to be remade.
14. As Ms Radford, submitted that the respondent would have to give evidence about his personal circumstances, I agreed that this case should go back to the First Tier Tribunal be heard by a First-tier Judge other than FtTJ Page.

Signed

Date

Upper Tribunal Judge Eshun