



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08401/2015

THE IMMIGRATION ACTS

Heard at Field House
On 1 March 2016

Decision Promulgated
On 18 March 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

Secretary of State for the Home Department

and

MOM
[Anonymity direction made]

Appellant

Claimant

Representation:

For the claimant: Ms R Head, instructed by Lawrence Lupin Solicitors
For the appellant: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is his appeal of the Secretary of State against the decision of First-tier Tribunal Judge Dhanji promulgated 19.11.15, allowing on asylum grounds the claimant's appeal against the decision of the Secretary of State, dated 13.5.15, to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 27.10.15.
2. First-tier Tribunal Judge McCarthy refused permission to appeal on 15.12.15. However when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kebede granted permission to appeal on 12.1.16.

3. Thus the matter came before me on 1.3.16 as an appeal in the Upper Tribunal.

Error of Law

4. At the hearing before me I found no error of law in the making of the decision of the First-tier Tribunal sufficient to require the decision of Judge Dhanji to be set aside. I gave my decision at the hearing, reserving my reasons, which I now give.
5. The relevant background can be briefly summarised as follows. The appellant, a citizen of Afghanistan, claimed arrival arrived in the UK in 2010, refused in 2014. His appeal against refusal was dismissed by First-tier Tribunal Judge Scott in May 2014. That judge found credible his claim to have been targeted by and at risk from the Taliban, but considered that he could relocate to Kabul, where there would be a sufficiency of protection, and that it was not unreasonable to expect him to do so.
6. Further submissions by the appellant that internal relocation was not a viable option, relying on the expert report of Dr Giustozzi, was treated as a fresh claim, resulting in the refusal decision of 13.5.15, giving rise to the appeal to the First-tier Tribunal heard by Judge Dhanji on 27.10.15.
7. The grounds of application for permission to appeal assert that the First-tier Tribunal Judge failed to give adequate reasons for finding that it would not be reasonable to expect the appellant to relocate within Afghanistan and failed to have regard to the country guideline decision of AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) and failed to give sufficient reasons to depart from that guidance. In particular, reliance is placed on the statement in AK that in assessing whether internal relocation to Kabul is a viable 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."
8. In granting permission to appeal, Judge Kebede found arguable merit in the assertion that in concluding that it would be unduly harsh to expect the claimant to relocate to Kabul the judge's reasoning for departing from the country guidance of AK was insufficient.
9. However, it is clear from a reading of the decision from §8 onwards and in particular §8.5 that the judge was fully aware of the binding effect of the country guidance in AK. The judge noted that the Upper Tribunal stressed that it would still always be necessary to examine an applicant's individual circumstances. At §8.7, the judge noted that a country guidance case must be treated as authority on the relevant issue where a subsequent appeal relates to that issue and depends on the same or similar evidence. The judge very carefully set out, "The question, therefore, when assessing the evidence referred to above, is whether it justifies a departure from the country guidance case, on the basis, as has been argued by the appellant, that the country situation has materially deteriorated since that decision and since the evidence the evidence considered by the Upper Tribunal in that case."

10. It is also relevant to note that this is not an article 15(c) case, but turned rather on whether, pursuant to Januzi v SSHD [2006] UKHL 5, the appellant could show that it would be unduly harsh to expect him to relocate to Kabul in all the circumstances, the issue identified by the judge at §8.9 and from which Mr Nath did not demur.
11. It is clear the judge not only took into account the expert report of Dr Giustozzi, but noted that there was further evidence not before the Tribunal in AK, and went on to summarise that evidence in some detail.
12. At §8.17 the judge the judge noted that he had not been “pointed in any specific way to what precisely the appellant says has changed since the evidence considered by the Upper Tribunal in AK,” but continued, “However, I am satisfied from the country evidence before me including, but not limited to the evidence I have referred to above, that there has been a significant deterioration in the situation in Kabul since AK, and that it is extremely difficult for those who are returned there and who do not have close family ties, accommodation and employment opportunities to sustain themselves. The appellant is such a person.” The judge went on to explain why the claimant would be in particular difficulties on return or relocation to Kabul. In conclusion, the judge “found, in short, that expecting the appellant to relocate would not be reasonable. Applying the principles in Januzi, I find that internal relocation to Kabul, for the appellant, would be unduly harsh.”
13. A reading of the decision in its entirety makes clear that the judge has justified departure from AK. A different judge may have taken a different view of the country background evidence presented and may have found no basis to depart from AK, but it cannot be said that Judge Dhanji failed to correctly identify the law and the issues, or failed to provide a careful assessment of the evidence, or failed to provide cogent reasons for departing from the country guidance on the particular circumstances of this appellant. The conclusions reached were entirely open to the judge and fully justified by the reasons given. In the circumstances I find no error of law in this decision.

Conclusions:

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains allowed on asylum grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

15 February 2017

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order.

Given the circumstances, I continue that anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus no fee award can be made



Signed

Deputy Upper Tribunal Judge Pickup

Dated

15 February 2017