



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

**Appeal Number: PA/08733/2016**

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport  
On 23 October 2017**

**Decisions and Reasons  
Promulgated  
On 01 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L MURRAY**

**Between**

**A K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Foster, Counsel instructed by Hoole & Co  
For the Respondent: Mr Diwyncz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Afghanistan. His claims for asylum and humanitarian protection were refused by the Respondent on 5 August 2016. He was granted discretionary leave to remain until he reached the age of 17.5. The Appellant appealed against the decision to refuse him asylum and

humanitarian protection under section 82 (1) of the Nationality, Immigration and Asylum Act 2002 (NIAA). His appeal was dismissed on all grounds by First-tier Tribunal Judge M M Thomas in a decision promulgated on 10 May 2017. The Appellant sought permission to appeal against that decision and permission was granted by Upper Tribunal Judge Finch on renewal of the application to the Upper Tribunal.

2. The Appellant argues in the grounds of appeal that the First-tier Tribunal erred in law in the approach to his claim to be at risk of persecution due to being westernized; erred in the treatment of the risk to him under Article 3 ECHR and erred in the consideration of paragraph 276 ADE (1) (vi) of the Immigration Rules.
3. Permission was granted on the grounds that the First-tier Tribunal arguably failed to focus on the risk the Appellant may face in Kandahar as a young man whose father had worked as an interpreter for Government forces in the current situation in that area of Afghanistan. Further, in considering the question of whether it would be a breach of Article 3 to remove the Appellant, it was considered arguable that the First-tier Tribunal failed to take into account the fact that the Appellant would not have any relatives to rely on in Kabul and had never been there. Permission was granted also because the Judge arguably failed to consider objective evidence which indicated that he was likely to face serious challenges in obtaining employment and accommodation in Kabul despite being young and having obtained some skills here.
4. The Respondent's Rule 24 Response states that the First-tier Tribunal Judge directed herself appropriately, considered the Appellant's evidence and assessed whether the Appellant's father's role as an interpreter in the past would put the Appellant at risk giving adequate reasons for the findings made. The Judge also adequately considered Article 3 and Article 15 (c) and found that the Appellant would not be at risk.

## **The Hearing**

5. Ms Foster relied on her grounds of appeal. She submitted that in considering the risk to the Appellant the Judge failed to consider the current situation in the province of Laghman and when the Judge considered the risk of destitution she failed to consider the consequences of the fact of the absence any connections. In relation to imputed political opinion, the First-tier Tribunal proceeded on the basis that the Appellant's father was murdered at paragraph 31 and 32 and concluded that the account was not credible on the basis that the Appellant was able to live in the family home and had family there. The error came because there was no consideration of Laghman Province. She referred me to paragraph 7.2.1 of CIG at page 221 of the Appellant's bundle. The Judge did not specifically refer to the province. Of the Taliban controlled areas the two of the most volatile were Kunar and Nangarhar and Laghman was directly next to them and there was a real risk that it had a strong Taliban presence. The court had proceeded on

the basis that the Appellant's father was killed by the Taliban. Where an individual was targeted there was no protection. This was a material error which made a difference to the result.

6. The next ground was the consideration under Article 3 of relocation. Internal flight was assessed in relation to Kabul. It was accepted by the First-tier Tribunal that the lack of family networks for single men could have an impact. The 'After returns' document confirmed this. The Appellant had no family connections in Kabul and had never been there. The country guidance showed that a single, young, westernized man could be at risk of destitution. The Judge concluded at paragraph 61 that he had lived independently and this was one sentence that showed a disregard for the situation in the country guidance which showed that there would be serious problems and the mere fact that his 'pathway plans' showed he was independent was not enough. It was a material error and did make a difference.
7. Mr Diwnycz relied on the Rule 24 response and made no concessions. He agreed that there should be a remittal if an error were found.

## Discussion

8. Ground 1 asserts that the First-tier Tribunal erred in law at paragraphs 39 to 47 of the decision in failing to engage with the argument advanced that the Appellant had been shaped by living in the UK since the age of 14 and identified as Westernized. It is said that no finding is made on this nor consideration given to the risk that might flow in Afghanistan. Rather, the fact that he was of working age was advanced as establishing that there would be no real risk. It is said that the Judge, although referring to the 'After Return' report at [58] of the decision, did not identify its contents and it was not referred to in the section of the determination concerned with risks on return consequent to Westernization. It is also said that it is implicit that the First-tier Tribunal was aware that there were real risks to the Appellant if he did not change his behaviour and conduct but failed to consider whether the Appellant should be required to amend an immutable characteristic (**HJ (Iran) v SSHD [2010] UKSC 31**).
9. The First-tier Tribunal Judge deals with the Appellant's contention that he would be at risk because he would be perceived as a person who is westernized at paragraphs 39 to 46 of her decision. She set out the characteristics that were identified by the Appellant to make him likely to be at risk on return. She took account of the evidence to which she was referred by both parties at pages 195 and 196 of the Appellant's bundle. She analysed that evidence at paragraph 42 of the decision. That evidence was from the Country Policy and Information Note Afghanistan: Fear of anti-government elements (AGEs) from December 2016. She then took into account the Appellant's care plans and pathway plans completed by social services during the time he had been in their care and noted that it was confirmed that the Appellant met regularly with other Afghan nationals for

Mosque, sports and at college. She noted that the Appellant attended mosque on a weekly basis and was aware of his cultural heritage and concluded that he had retained his cultural identity.

10. Her reasons for finding that the Appellant was not at risk of persecution on grounds of asserted westernisation were that he lived in Afghanistan until he was 14 years old and therefore had lived within the Afghan society and culture during a significant part of his formative years; he knew what the cultural norms and parameters would be and he was keenly aware of the difference between the British and Afghan cultures. She found this to be of key significance and found that he was very aware of how he would need to adapt his conduct and behaviour to fit in again; he observed cultural holidays and festivals and continued to speak his own language.
11. The argument advanced before the First-tier Tribunal was that the Appellant would be perceived as being westernized (paragraph 8 of the skeleton argument). The Judge engaged with this argument. All of the reasons given by the First-tier Tribunal were grounded in the evidence both in relation to the Appellant's personal characteristics and the situation in Afghanistan and amount to adequate reasons for finding that he would not be at risk because as being westernized. The grounds assert that fact that the Appellant is of working age is advanced as establishing that there would be no risk. However, at paragraph 45 of the decision, the Judge is referring to the section of the CIG at page 195 of the Appellant's bundle which deals with persons perceived as westernized and states in this context that men of working age are more likely to be able to return alone and reintegrate successfully. It cannot be said therefore that the Judge erred in taking this into account as an irrelevant consideration. I also find that the First-tier Tribunal did not conclude that the Appellant was at risk of persecution due to being westernized but could act discreetly to avoid this risk but rather found that he had retained his cultural identity and therefore would not be at risk. The findings do not offend against the principle in **HJ (Iran) v SSHD [2010] UKSC 31**.
12. The grounds further criticize the First-tier Tribunal for failing to specifically refer at paragraph 45 of the decision to the issues identified in the 'After return' report at page 337 of the Appellant's bundle. The First-tier Tribunal found, at paragraph 45 that she could not identify an issue with reintegration on grounds of perceived westernization for the reasons she set out at paragraph 43 and 44 where she had found that he retained his cultural identity. This finding was made with reference to the CIG report which stated that men of working age were more likely to be able to integrate successfully. The Judge dealt fully with the 'After return' report when considering whether return to Kabul would be a viable internal relocation alternative at paragraph 58 of her decision. It is clear that at paragraph 45 of her decision she was dealing with the issue of the perception of being westernized and took into account the evidence to which she was referred to by both parties as recorded at paragraph 41 of the decision.

13. Ground two asserts that the First-tier Tribunal Judge erred in her consideration of Article 3 ECHR. In particular it is asserted that the Judge determined that the Appellant was from a large family and there was no difficulty in returning to Laghman province despite continuing fighting in the province, the activities of the Taliban in the region and the Appellant being unaware of where his family resided. It is also argued that the First-tier Tribunal placed insufficient weight on the present circumstances in Afghanistan exemplified by the failure to consider the 'After Return' report. It is further argued that the failure to consider this objective material is unreasonable and a failure to identify relevant facts and such failure flows into the erroneous assessment of undue harshness and internal relocation.
14. The Appellant was 18 years old at the date of the hearing. The First-tier Tribunal dealt firstly with Article 15 (c) of the Qualification Directive at paragraphs 49 to 62 of the decision and then with Article 3 at paragraph 65 of the decision. Her finding in respect of Article 3 that the Appellant would not face a real risk of serious harm flowed from her previous findings in respect of risk. The Appellant argued that there was a serious and individual threat to his life by reason of indiscriminate violence relying on evidence of the security situation in Afghanistan, including Kabul. The Tribunal assessed the relevant case law at paragraphs 53 and 54. She addressed his argument that the sliding scale principles should be applied on the basis of his personal circumstances at paragraph 57. She specifically referred to the 'After Return' document relied on by the Appellant and the sections she was referred to regarding employability and the lack of personal support or contacts that could impact on this. She assessed the Appellant's maturity and employability with reference to the evidence from his social workers and found on the basis of this evidence that the Appellant was not a person lacking in maturity but had engaged with social services in establishing his independence and building on his employability. She also assessed his educational achievements. The findings in relation to his maturity were adequately reasoned and took into account the relevant evidence to which she had been referred.
15. She further found at paragraph 61 that he would have family support and, contrary to the assertion in the grounds of appeal, that he knew where they lived. This finding in turn, was based on her finding at paragraphs 37 and 38 that she did not find it credible that he had no family in Afghanistan because at the time of his screening interview he had said he had extensive family in Afghanistan but had only made efforts to trace two family members through the Red Cross. She further found that the likelihood was that in view of the costs incurred in arranging his exit from Afghanistan, familial connection would be denied. These findings in relation to the existence of family were neither perverse nor inadequately reasoned.
16. The First-tier Tribunal considered the evidence she was referred to in relation to Kabul at paragraph 55 of the decision, addressed the relevant case law at paragraph 56, and assessed his ability to integrate into that city at paragraph 61. In so doing she took into account his ability to live independently, manage his personal care and budgeting, his absence of

health issues and that in the most recent pathway plan dated 30 November 2016, on a scale of 0 to 10, 10 being where social services would not be required, he scored 9.

17. On the basis of these findings, she concluded that there were no personal characteristics or circumstances that gave rise to a 'serious or individual' threat to his life or person and he would not be at risk for the purposes of Article 15 (c) and that as he would be able to reintegrate and adopt to life in Afghanistan it would not be unduly harsh or unreasonable for him to return even if there was no family support.
18. Ms Foster argued that the First-tier Tribunal did not address the risk to the Appellant in Laghman province. It does not appear from the skeleton argument before the First-tier Tribunal or the record of proceedings that she was addressed on a risk to the Appellant in that province as a matter to take into account in assessing Article 3 nor was she directed to any background evidence in relation to that province. The passage to which Ms Foster referred me at paragraph 7.2.1 of the CIG at page 221 of the Appellant's bundle does not deal with the situation in that province nor is it stated to be either under the control of the Taliban or to be one of the most volatile provinces. In any event, the Upper Tribunal in **AK** held that outside Taliban controlled districts internal relocation would not in general be unreasonable. The First-tier Tribunal made a specific finding that the Appellant knew where his family was and in all the circumstances I find that there was no error of law in the First-tier Tribunal's decision in this regard.
19. I find that on a reading of the decision as a whole, it cannot be said that the Judge failed to take into account any relevant evidence or misconstrued that evidence. She had adequate regard to the Appellant's personal circumstances in coming to her conclusions, analysed the background material she was referred, addressed the relevant case law and gave sufficient reasons for her findings in respect of future risk and under the Qualification Directive, Article 3 and internal flight.
20. Ground 3 asserts that the First-tier Tribunal erred in its consideration of paragraph 276ADE (1) (vi) in determining that the paragraph could not apply to him. It is said that the heart of his claim identified the very significant obstacles to integration if he returned home. It is also said that the First-tier Tribunal materially erred in law in the assessment of his Article 8 rights in the light of his friendships in the UK.
21. The Appellant did not rely on paragraph 276ADE (1) in his skeleton argument and the record of proceedings discloses no argument in this regard made by Counsel at the hearing. The First-tier Tribunal concluded at paragraph 67 that the Appellant did not meet any of the requirements of paragraph 276 ADE without considering whether there were very significant obstacles to his integration into Afghanistan. However, given the fact that it was not argued before her and her findings in relation to risk and relocation it is not arguable that the Appellant could have met the test propounded in **SSHD v Kamara** [2016] EWCA Civ 813 and **Treebhawon and Others**

**(NIAA 2002 Part 5A - compelling circumstances test)** [2017] UKUT 00013 (IAC). Further, the First-tier Tribunal conducted a full proportionality exercise, taking account of the friendships that the Appellant had established in the UK and the factors weighing against and in favour of removal. Her findings were open to her on the evidence, adequately reasoned, took all material factors into account and her assessment of where to strike the balance was lawful.

**Conclusions:**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

**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 his 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 01 December 2017



Deputy Upper Tribunal Judge L J Murray