



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11257/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 31 July 2017

Promulgated

On 24 August 2017

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

T B

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Bandegani, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection and child welfare issues. I find that it is appropriate to continue the order. 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.

DECISION AND REASONS

1. The appellant appealed against the respondent's decision dated 07 October 2016 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Cameron ("the judge") dismissed the appeal in a decision promulgated on 03 March 2017. At the date of the First-tier Tribunal hearing the appellant was a minor.
3. The judge accepted that the appellant's brother was involved in local government in his home area of Takhar province and received threats from the Taliban against him and his family because of his position [55]. The judge did not accept the appellant's account of a particular incident at his school [60], but accepted that the appellant would be at risk in his home area as a result of his brother's position and that sufficient protection was not available [61].
4. The judge went on to consider the deteriorating security situation in Afghanistan as noted by the Court of Appeal in *R (HN & SA) (Afghanistan) v SSHD* [2016] EWCA Civ 123 [63]. He also considered the most recent country guidance decision in *AK (Article 15(c)) Afghanistan* CG [2012] UKUT 00163 and observed that the Home Office Country Information and Guidance report dated July 2016 noted an increase in civilian casualties since the country guidance decision [65]. The judge considered the up to date background evidence but concluded that it did not show that the current situation in Afghanistan was sufficiently serious to give rise to a risk solely on account of indiscriminate violence in Kabul [66].
5. The judge considered the appellant's age and the fact that he could not return to his home area [72]. He noted that the appellant was in regular contact with his family in Afghanistan. He accepted that "conditions in Kabul are not ideal" but concluded that he would be able to return to Kabul where he could "rely on assistance from his family in particular his brother who clearly has connections with the government" [75]. He concluded that even though the appellant was only 17 years old he would be able to relocate to Kabul "particularly given the assistance he would be able to receive from his brother" [77] and where he "would have the support of his family" [78]. In light of those findings the judge concluded that relocation to Kabul was a reasonable option.
6. The appellant appealed against the First-tier Tribunal decision and argued that the judge erred in his assessment of internal relocation. He failed to take into account the fact that the appellant's family remain in his home area and that he would be returned to Kabul as an unattended minor of Uzbek ethnicity. The judge failed to take into account the UNHCR Eligibility Guidelines (April 2016), which suggested that internal relocation to Kabul was only reasonable if a person had access to accommodation, essential services and opportunities to earn a living and the individual has access to

a traditional family network. At the hearing, it was argued that the judge's finding that his family would be able to support him was unsupported by evidence. The appellant's brother and other members of his family were being persecuted by the Taliban and the judge accepted that, despite his brother's position, there was insufficient protection. In the alternative, no clear findings were made as to how the appellant's brother was expected to provide adequate support and assistance to a young person in Kabul from their home area.

7. The respondent argues that the judge's findings on the availability of internal relocation were open to him on the evidence. It was open to the judge to conclude that his brother could support the appellant financially in Kabul. The decision did not suggest that the appellant's parents should relocate to Kabul, but it was an option "if they wished to do so" (rule 24 response). At the hearing, it was argued that the judge was entitled to rely on *AK (Afghanistan)* and that the Secretary of State's policy was not to remove a young person until they were 18 years old. The appellant had shown some maturity in travelling "half way around the world" to the UK.

Decision and reasons

Error of Law

8. After having considered the grounds of appeal, the written response and oral arguments at the hearing I concluded that the First-tier Tribunal decision involved the making of an error of law and set aside that part of the decision relating to internal relocation for the following reasons:
 - (i) The First-tier Tribunal failed to make any clear findings as to what support the family were expected to provide to the appellant, whether it was solely financial support or whether they were expected to relocate to Kabul in order to provide support.
 - (ii) If the family remained in the home area, which was the situation at the date of the hearing, no reasons were given to explain how the appellant's brother was going to provide support given that it was accepted that they were living in a difficult situation in the home area at risk of persecution.
 - (iii) Although the First-tier Tribunal noted that the appellant was 17 years old, no meaningful consideration was given to the impact of his age in assessing whether relocation to Kabul would be unduly harsh. In the absence of clear findings as to whether his family was also expected to relocate, the appellant would be returned alone. The respondent's policy is not to return an unaccompanied minor without adequate reception arrangements. At the date of the hearing there was no evidence to suggest that any such arrangements were available for the appellant in Kabul. The Tribunal failed to consider whether, as a child, the appellant might be at heightened individual risk even if the general security situation did

not reach the Article 15(c) threshold: see *AA (Unattended children) Afghanistan* CG [2012] UKUT 00016.

Remaking the decision

9. At the date of the Upper Tribunal hearing the appellant was still a minor but was about to turn 18 years old the week after the hearing. I bear in mind that even if the appellant is now 18 years old age is not a 'bright line' issue. In *KA (Afghanistan) v SSHD* [2012] EWCA Civ 1014 the Court of Appeal observed that "persecution is not respectful of birthdays – apparent or assumed age is more important than chronological age". The appellant is liable to removal but is still a young person with the same vulnerabilities.
10. The fact that the appellant travelled overland to the UK is not necessarily an indicator of his maturity when arrangements were made by adult family members for him to be brought to the UK by an agent. As an unaccompanied minor the appellant is a looked after child under the care of the local authority and there is nothing in the evidence to suggest that he has formed an independent life.
11. The appellant is in contact with family members in Afghanistan. At the date of the hearing the appellant's parents and siblings remain in his home area. The First-tier Tribunal judge accepted that the appellant and his family members were at risk in their home area because of his brother's position in local government. In interview, the appellant said that his parents were old and had to stay locked in the house with a security guard outside [qu.129-130]. In a later statement dated 27 January 2017 the appellant said that his brother is forced to take security measures and travels to meetings in disguise because of the threats made against him [pg.20-21 AB].
12. Although the First-tier Tribunal judge declined to make a specific finding relating to his brother's position, he accepted that his brother was a member of the local government "and therefore does have some power" [74]. The appellant has been consistent in saying that his brother is the governor of a district in Takhar province. On the face of this evidence it seems likely that his brother has some influence in what is likely to be a small rural district in northern Afghanistan. However, it is not asserted that he is the governor of the province or that he holds a position that is likely to have national influence. To the appellant his brother might seem 'high ranking', but on the face of it he is only likely to have influence in a small local area. Even then, the judge accepted that his position was undermined by the local security situation to the extent that sufficient protection was not available.
13. The family continue to be at risk in Takhar province, but it is not known why they have not sought to relocate to another area of Afghanistan.

There is no evidence to suggest that the appellant's family has any connection with Kabul. They are of Uzbek ethnicity. The family home is in Takhar province and his brother can support the family through employment as a district governor. I find that it is reasonable to infer that it is likely that his family remain in Takhar province as a matter of necessity, despite the risk, because this is the area in which they have accommodation and the means to support the family financially. The evidence shows that they are, in effect, imprisoned in their own home for their own security. Given that it is accepted that they are at risk in their home area any attempt to travel from their home to Kabul could give rise to risk of serious harm. For this reason, it would be unreasonable to expect them to do so. There is no evidence to suggest that it is likely that they would be willing or able to relocate to Kabul if the appellant were returned there. Even though the appellant is in contact with his family members, no evidence has been produced to suggest that he could be returned to Kabul because adequate reception arrangements can be made there with his family.

14. At the date of the hearing I conclude that the appellant is likely to be returned to Kabul as an unattended child. In *AA (Afghanistan)* the Tribunal recognised that there might be additional risks to children in Afghanistan, but made a distinction between the level of risk posed to children who were living in a family and those who are unattended. The Tribunal concluded that the background evidence showed that unattached children might be exposed to risk of serious harm from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection, depending on the individual circumstances of the case. The Tribunal came to these conclusions on the evidence relating to the security situation in 2011 and it is accepted that the security situation has deteriorated since 2012.
15. The Home Office "Country Information and Guidance on Afghanistan" relating to the security and humanitarian situation (09 July 2016) acknowledges that there has been an increase in civilian casualties in Afghanistan since the decision in *AK (Afghanistan)* [3.1.2]. The US State Department reported a deterioration of the overall security situation in the second half of 2015 [6.1.2]. In March 2016 the UN Secretary-General reported that there was an "increasingly volatile security situation" in Afghanistan [6.1.3]. In May 2016 the UN Security Council's Working Group on Children and Armed Conflict found that there had been a significant increase in child casualties. In April 2016 the UN Secretary-General noted that children were disproportionately affected by the intensifying conflict in Afghanistan [6.3.1]. In 2015 the UN Secretary-General reported that the verified number of children abducted more than tripled compared with 2014 [6.5.2]. The report goes on to provide information about the number of security incidents and suicide attacks reported in Kabul in 2015 and 2016 [7.5].
16. Regarding the humanitarian situation, UN OCHA reported in November 2015 that increasing numbers of IDPs live in informal settlements in major urban centres. Displaced persons were more likely to be illiterate, to have

lower rates of school enrolment, lower household incomes and to be food insecure [8.1.3]. Kabul has seen the biggest population increase and has reportedly received close to 40 percent of all new conflict-induced IDPs in Afghanistan since 2002. Some estimates put 70 percent of the population of Kabul living in informal settlements. About 80 percent of those living in informal settlements in Kabul are reported to be severely or moderately food insecure [8.1.4]. Although there were reports of fairly large numbers of voluntary and non-voluntary returns to Afghanistan in 2015 the returnees mostly came from surrounding countries. Some were reported to have been motivated to return by 'push factors' arising from events in Pakistan, while others cited an improvement in the security situation [9.1.2 - 9.1.3]. The guidance also makes reference to a Refugee Support Network (RSN) report dated April 2016, which monitored the return of 25 returnees from the UK, many of whom were reported to have problems in findings work, continuing in education and had mental health problems [9.1.4].

17. The UNHCR Eligibility Guidelines (April 2016) make a clear distinction between their assessment of internal flight for those at risk of persecution and in relation to their broader mandate criteria. Regarding internal relocation for individuals at risk of persecution the UNHCR states the following [pg.85]:

“Where the proposed area of relocation is an urban area where the applicant has no access to preidentified accommodation and livelihood options, and where he or she cannot reasonably be expected to be able to fall back on meaningful support networks, the applicant would likely find him- or herself in a situation comparable to that of other urban IDPs. To assess the reasonableness of such an outcome, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation, and the living conditions of IDPs in that location. Relevant considerations in this regard include the fact that IDPs are considered to be among the most vulnerable groups in Afghanistan, many of whom are beyond the reach of humanitarian organizations; as well as available information to the effect that urban IDPs are more vulnerable than the non-displaced urban poor, as they are particularly affected by unemployment; limited access to water and sanitation; and food insecurity. The limited availability of adequate housing must also be taken into account, including in particular for IDPs, with land allocation schemes reportedly often ill-managed and marred with corruption (see also Section II.E).

The particular circumstances of children as well as the legal obligations of States under the Convention on the Rights of the Child - in particular the obligations to ensure that the best interests of the child are a primary consideration in all decision-making affecting children and to give due weight to the views of the child in light of his or her age and maturity - need to be taken into account in assessing the reasonableness of an IFA/IRA involving children. Adjudicators need to give due consideration to the fact that what is considered merely inconvenient for adults may constitute undue hardship for a child. These considerations take on additional importance in relation to unaccompanied and separated children.” [pg.85]

18. The UNHCR Guidelines also state that ethnic divisions remain strong and refers to the “Peoples under Threat Index” compiled by the Minority Rights Group International, which lists Afghanistan as the fourth most dangerous country in the world for ethnic minorities because of targeted attacks on individuals because of their ethnicity. The index specifically references to

Uzbeks, amongst others, as ethnic minorities at risk [pg.74]. In considering the availability of internal relocation the UNHCR Guidelines also state [pg.84]:

“Applicants may be able to fall back on the support of members of their extended family or members of their larger ethnic group. However, the existence of such traditional support networks can be assumed to weigh in favour of the reasonableness of a proposed IFA/IRA only when the members of the applicant’s extended family or wider ethnic group are assessed to be willing and able to provide genuine support to the applicant in practice, taking into account Afghanistan’s low humanitarian and developmental indicators and the wider economic constraints affecting large segments of the population. Moreover, the presence of members of the same ethnic background as the applicant in the proposed area of relocation cannot by itself be taken as evidence that the applicant would be able to benefit from meaningful support from such communities in the absence of specific pre-existing social relations connecting the applicant to individual members of the ethnic community in question. The extent to which applicants are able to rely on family networks in the proposed area of relocation also has to be considered in light of the reported stigma and discrimination against those who return to Afghanistan after spending time abroad.”

19. I have assessed whether internal relocation is a reasonable option or would be unduly harsh within the meaning outlined in *AE and FE v SSHD* [2003] INLR 475, *Januzi v SSHD* [2006] 2 WLR 397 and *SSHD v AH (Sudan)* [2007] UKHL 49. I take into account the fact that the appellant is in contact with family members in Afghanistan, but for the reasons given above, I conclude that at the date of the hearing he would be returned to Kabul as an unattended child. The appellant has no family or other connections in Kabul. The appellant was dependent on his brother before he left Afghanistan, but he was living in the family home where support could be provided at little additional cost. Although his brother might be able to provide some financial assistance, it is unclear whether he has the means to pay for the full cost of accommodation and support in Kabul. The evidence shows that, as a child, the appellant is likely to be disproportionately affected by the ongoing conflict and security situation. There is evidence to show continuing security incidents in Kabul where the Taliban and other insurgents are still capable of launching attacks. The appellant comes from a minority ethnic group and there is no evidence to suggest that support could be provided by other members of the group in Kabul. The overall picture is of a deteriorating security situation since the Tribunal decisions in *AK (Afghanistan)* and *AA (Afghanistan)*. The fact of the appellant attaining his majority is not a ‘bright line’ issue that would suddenly render him less vulnerable. I am satisfied that an overall assessment of the appellant’s individual circumstances shows that internal relocation to Kabul is likely to be unduly harsh.
20. For the reasons given above, I find that the appellant has a well-founded fear of persecution for reasons of attributed political opinion and or his membership of a particular social group (family). I conclude that removal of the appellant would breach the United Kingdom’s obligations under the Refugee Convention and would be unlawful under section 6 of the Human Rights Act 1998.

Decision

The First-tier Tribunal decision involved the making of an error of law

The decision is remade and the appeal ALLOWED

Signed  Date 24 August 2017
Upper Tribunal Judge Canavan