



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

Appeal Number: RP/00110/2016

THE IMMIGRATION ACTS

Head at Newport

On 05 September 2017

**Decision & Reasons
Promulgated
On 31 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A K

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer

For the Respondent: Mr R O' Ryan Counsel instructed by Duncan Lewis and Co Solicitors

DECISION AND REASONS

Introduction

- 1. Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

2. The Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Respondent and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

3. The appeal to the Upper Tribunal is brought by the Secretary of State who was the respondent in the First-tier Tribunal. However, for ease of reference, we refer to the parties as they were known in the First-tier Tribunal.
4. The appellant is a national of Afghanistan, born in January 1997. He arrived in the United Kingdom on 23 March 2011. He applied for asylum on the same day. The application was refused and he was granted limited leave to remain in the United Kingdom until 1 June 2014, as a minor. He appealed the refusal of asylum. On 14 December 2011, the appeal was successful. The appellant was granted leave as a refugee until 13 December 2016.
5. On 9 June 2014 at North Cambridgeshire Juvenile Court the appellant was convicted of battery and was given a referral order of 4 months. On 19 November 2015 at Peterborough Crown Court the appellant was convicted of wounding/inflicting grievous bodily harm and on 9 December 2015 he was sentenced to 12 months' detention in a Young Offenders Institute.
6. On 17 August 2016, a decision was made to deport the appellant under section 32 (5) of the UK Border Act 2007. In the same letter, the respondent ceased the appellant's refugee status on the basis that the circumstances in which the refugee was recognised had ceased to exist and that he could no longer continue to refuse the protection of the country of his nationality or because such protection has now become available where it was once not.
7. The appellant appealed to the First-tier Tribunal. On 7 June 27 judge Andrew allowed the appellant's appeal on the basis that the respondent had failed make good the cessation issue, and accordingly the appellant remained refugee and so excluded from deportation.
8. On 22 June 2017, the respondent was granted permission to appeal by the First-Tier Tribunal on the grounds that the judge finding that cessation of refugee status cannot be founded upon an alteration of circumstances such that an appellant would, at the time of purported cessation, have available in the country of return a safe haven of reasonable internal flight, which had not been available at the time of grant of refugee status, was a point of law as yet undecided and the alternative view would be fairly arguable. The judge's finding in the alternative that internal relocation would not be reasonable was arguably not fully reasoned.

- 9.** Mr Kotas submitted that in concluding that cessation could not be founded on internal relocation the judge relied on UNHCR guidance. Mr Melvin asked whether or not the UNHCR guidance is relevant. It was not the definitive answer. The judge should have exercised caution in placing reliance on the UNHCR assessment. The case of SB (cessation and exclusion) Haiti [2005] UKAIT 00036 at 25 to 27 emphasises the appropriate reservations about the UNHCR guidelines. Their assessment that internal relocation is not relevant to the question of cessation considerably overstates the convention requirement. Ultimately the question for the judge was whether or not someone is a refugee, and internal relocation is a part of that.
- 10.** Mr Kotas submitted that the appellant had been granted asylum on the basis that his minority put him at risk in Kabul, following the authority of the case of LQ, to the point that at that time he was a member of a particular social group, namely an orphan who was a minor. He was no longer a minor. The appellant's claim was of a localised fear from the Taliban and it was not a fear of the State. The country guidance case was to the point that internal relocation would operate because Kabul is determined safe. The contrary opinion of UNHCR can carry little weight given that it is an assessment which goes outside of the UNHCR remit. The UT says as an adult internal relocation is not unduly harsh. At paragraph 28 of the judge's decision he states that he is looking at the question of whether or not it would be unduly harsh to expect the appellant to relocate, in the alternative. The difficulty with taking the case as its highest is that if he is erred before it is difficult to be sure that he has given proper consideration to the question in the alternative. For example, he has not dealt with the availability of the integration package mentioned at 31 of the reasons for refusal in the context of providing assistance on return to Kabul. Similarly, the reasons for refusal deal with the position of the appellant's mental health and the availability of treatment in Kabul. When looking at the issue of mental health the judge must take account of J 2006 EWCA in assessing whether or not the illness can be managed, and in particular whether it relates to worry about immigration status. The judge gives a cursory consideration and has failed to provide properly articulated reasons directed at the disputed issues.
- 11.** Mr O'Ryan said that his overarching submission is that the respondent has approached the question of cessation from the wrong starting point. In the decision of 17 August 2016, the respondent considered the question as if a fresh application. She decided the position on risk on return as at that date. In doing so the respondent failed to give recognition of the burden on the Secretary of State to establish fundamental change. The respondent continues to reflect that erroneous approach when in the grounds to the Upper Tribunal the judges criticised for failing to deal with paragraph 28 of the reasons for refusal letter where reference is made to paragraph 3390 of the Immigration Rules, the paragraph referencing internal relocation which is relevant in the context of a fresh claim.

- 12.** Mr O’Ryan defended the judge’s decision on the basis that at paragraph 23 the judge correctly self directs referring to the case of Abdulla and Others Bundesrepublik Deutschland Case The 175/08 and Others the Grand Chamber dealing with article 11 (l) (e) of the qualification directive framing the question in the context of whether there had been a change of circumstances of a significant and non-temporary nature in the 3rd country.
- 13.** It was perfectly proper for the judge to look at the UNHCR guidance relating to the meaning of the legal provisions in respect of cessation. That is an entirely different exercise to the UNHCR providing views about country conditions and practicalities of return. There is nothing in the UNHCR guidance about matters relevant to cessation which is specific to the practicalities of return. In those circumstances it was wrong to take criticism of the reliability of UNHCR country position and apply it as a reason to be critical of their interpretation or view on the law. So far the case of SB is concerned paragraphs referred to by Mr Melvin do not include any definitive analysis of the law and cessation and they make no reference to the question of the guidelines, and in particular to paragraph 17 of the UNHCR guidelines to which the judge in this case refers.
- 14.** Mr O’Ryan sought to rely on an unreported decision of Upper Tribunal Judge Hanson promulgated on 17th of May 2016. That is not appropriate not least because it was not intended to have effect beyond the specific dispute it presented, but also because, as Mr O’Ryan recognised, some of the wording is difficult. Further although the UNHCR guidelines are referred to, there is no resolution of a dispute as to the weight to be attached to the guidance. The case was quite different and did not involve a situation where the guidance was arguably at odds with Article 1 C of the refugee convention. In addition, it was a case to which the Qualification Directive was not applicable because of its date.
- 15.** Mr O’Ryan argued that any misdirection in adopting the UNHCR guidelines would not be material because the judge considers at paragraph 28 that internal relocation would be unduly harsh. I should remember that none of the appellant’s evidence was contested. There was no cross-examination of the appellant or his supporting witnesses. If it were a proposition that there were other relatives in Kabul or elsewhere that it was not put. The appellant’s evidence that he was an orphan without family to turn to was accepted by judge Iqbal who allowed his appeal in 2011. Similarly, the evidence of the appellant psychological state within the bundle the First-tier including evidence of his suicide attempts. The judge tells me what she makes of that evidence, and in the context of the way in which the case was put, i.e. the absence of dispute of the evidence, that was sufficient. Mr Melvin’s bare assertion about the integration package is an inadequate basis upon which to undermine the judge’s conclusion. There was no evidence of the integration package, it was impossible for the judge to know what it was because there was no material to engage with. It is trite that the unduly harsh test is not amount to only and Article 3 risk.

- 16.** Mr Kotas asked me to place no weight on the decision of Upper Tribunal Judge Hanson because it was trite law that judges can come to different conclusions. No error of law was found in the decision and it did not contain a definitive position in respect of this discreet area of law. In this case the position is governed by the immigration rules. The circumstances upon which the appellant was granted asylum ceased to exist he had been a minor, now he was an adult. Plainly the circumstances upon which he was granted asylum had ceased to exist.

Discussion

- 17.** The appellant's appeal against the refusal of asylum was allowed in 2011. Judge Iqbal found that the appellant was at risk in his home area. The judge accepted the appellant's account that his father was a Mullah, who joined the Taliban, and was killed in the fighting between the Taliban and the authorities. The judge found that the appellant came from Kunar, that the Taliban actively sought to recruit him, and had kidnapped him to that end. The judge accepted the appellant's account of having escaped from the Taliban, and that his refusal to be recruited resulted in the Taliban targeting him, and killing his mother and his brother. The judge found Kunar is a stronghold of the Taliban, that he remained at risk from the Taliban, and that he would have no protection from the authorities in that area.
- 18.** Having found that the appellant was at risk in his home area the judge considered the question of internal relocation to Kabul. The judge begins by noting the age of the appellant, and noting that the appellant had complied with the tracing requirements, found him to be an orphan. Applying the case of LQ the judge concluded he would be at risk on return to Kabul as a member of a particular social group.
- 19.** In considering those findings Judge Andrew noted that the respondent brought forward no evidence to show that Kunar province has undergone any significant positive change since the grant of asylum in 2011. What evidence there was tended to go the other way. Judge Andrew concluded that the respondent had not established that the cessation provisions applied in respect of the circumstances in connection with which he's been recognised as a refugee had ceased to exist in his home area.
- 20.** Turning to the issue of internal relocation Judge Andrew concluded that the issue had no application in light of the UNHCR guidance. In this regard I find that the judge erred. The revocation provisions of the Immigration Rules are set out in the reasons for refusal letter, and are in the Rules at 338 A and 339 A. In the event they replicate the provisions of the Qualification Directive Article 11, and Article 1C (5) of the Refugee Convention. In short: the person
- (a) "can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist,

continue to refuse to avail himself or herself of the protection of the country of nationality”.

- 21.** On the face of the wording the consideration is of the circumstances which gave rise to the entitlement. The case of capital Abdulla involved a dispute about the assessment of country conditions and their durability. It is not authority that the language of the refugee convention does not bear its ordinary meaning. With regard to the UNHCR guidance whilst it purports to address the issue it so exceeds the ambit of the provision, and stands alone, it cannot have the determinative weight afforded it by the Judge. There is no basis upon which to limit the consideration of the “circumstances” to those of the home area. Internal relocation is always part of the consideration of a person’s qualification for refugee status. To exclude internal relocation from the cessation consideration would be inconsistent with the wording of the Article and inconsistent with the core purpose of surrogate protection.
- 22.** The final issue for me to decide is if the Judge’s decision on internal relocation was affected by error. I can see no basis to conclude that it was. Previously Judge Iqbal had decided that Kabul was not a safe location because the appellant would face a real risk of persecution there. Judge Andrew plainly started from the premise of the reasonableness of relocation, identifying only matters that went to the issue of harshness, so recognising the validity of the respondent’s point that the Kabul was safe. I am therefore satisfied that the earlier error has not vitiated the basis upon which this part of the claim was assessed.
- 23.** Mr Kotas relied on a failure to specifically deal with the offer of an integration package mentioned at paragraph 31 of the reasons for refusal letter as being mentioned in paragraph 25 of the notice of intention to cease refugee status. I find no merit in the point. It was not specifically in the grounds but in any event as Mr O ‘Ryan points out the evidence to support the assertion was not brought forward and was not before the judge. It is not said that the HOPO on the day relied on it in submissions to answer the otherwise unchallenged evidence of the appellant. Although the grounds rely on the appellant having said that in 2011 he had a brother in Afghanistan and an uncle. I note that the judge found the uncle had refused to help him and so was not available to him in any event. Mr Kotas did not pursue the point before me. He was right to leave it because the appellant’s case to the judge was that there was no one to turn to in Afghanistan and he was not challenged on that evidence.
- 24.** Although the consideration is markedly brief, it is not cursory. The appellant had put in considerable evidence which had not been contested. The judge expresses the significance of the fact that the witness evidence was not challenged. The grounds do not argue that the conclusion was not open to the Judge on that evidence. There was no misdirection in respect internal relocation. In the context of the dispute as it unfolded before the judge on the day I am satisfied that this is a sufficiently reasoned

conclusion, fully explaining to the respondent why the judge concluded in the appellant's favour.

Decision

25. The decision of the First-tier Tribunal allowing the appeal reveals no material error of law and stands.

Signed Date 27 October 2017
Deputy Upper Tribunal Judge Davidge