



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/13372/2010**

THE IMMIGRATION ACTS

**Heard at Manchester
On May 4, 2018**

**Decision & Reasons
Promulgated
On May 11, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MUHAMAD ISHAQ
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bedford, Counsel, instructed by Braitch RB Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant is a national of Afghanistan who is now 25 years of age. He entered the United Kingdom clandestinely on May 7, 2009 when he was 16 years of age. He attended a screening interview and substantive interview on June 4, 2009 and August 7, 2009 respectively. The respondent refused that application on October 12, 2009 but granted him discretionary leave to remain as an unaccompanied minor until July 1, 2010. Although he appealed this decision his appeal was dismissed by Judge of the First-tier Tribunal Chambers on December 16, 2009. The appellant appealed this decision to the Upper Tribunal and subsequently to the Court of Appeal but permission to appeal was refused.

3. Whilst this appeal was pending the appellant applied for further leave to remain and this was refused by the respondent. His appeal came before Judge of the First-tier Tribunal Frankish on May 25, 2011 but his appeal was dismissed.
4. Thereafter the appellant appealed to the Upper Tribunal and on August 15, 2011 Senior Immigration Judge Renton dismissed his appeal although preserved positive findings of fact that the appellant had been persecuted in Afghanistan by the Taliban and that his account of how he had left the country and subsequently arrived in the United Kingdom was consistent with the objective material.
5. Judicial review proceedings were then lodged which ultimately led to the appellant withdrawing the application on October 22, 2012 on the basis that his appeal would be remitted back to the Upper Tribunal for reconsideration with the preserved findings of fact.
6. Unfortunately, nothing appeared to happen on that appeal and on October 19, 2015 the Administrative Court allowed the appeal on the basis that the decision of Judge Frankish contained an error in law remitted the matter back to the Tribunal for further reconsideration.
7. There was then a further delay until September 12, 2017 when Vice President Ockelton granted permission to appeal. Upper Tribunal Judge C Lane found there was an error in law in a decision promulgated on November 2, 2017 and it is via this route the matter appeared before me on the above date.
8. As a preliminary issue I raised with the two representatives what remained in issue and what was agreed. Both representatives agreed that paragraphs 20 and 21 of Senior Immigration Judge Renton's decision were retained and would be the starting point when considering risk on return.
9. The representatives then addressed a secondary issue relating to whether the appellant was entitled to indefinite leave to remain. His solicitors had written to the respondent notifying him that the appellant intended to invite the Tribunal to grant him indefinite leave to remain on the basis that he had been granted discretionary leave to remain before July 9, 2012 and having accrued six years continuous discretionary leave he was entitled to indefinite leave.
10. With the assistance of Mr McVeety the correct policy was identified and this confirmed that if the appellant had been granted discretionary leave prior to July 9, 2012 (it is accepted he was) then as long as he could demonstrate six years continuous discretionary leave then he would be entitled to apply for indefinite leave to remain.
11. However, his claim to have had six years continuous discretionary leave centred around the fact that he relied on section 3C leave. Again, with the assistance of Mr McVeety the respondent's policy on section 3C leave was

obtained and that made clear that judicial review proceedings did not extend section 3C leave regardless of whether the application was successful. Mr Bedford accepted that the appellant could not therefore apply for indefinite leave under this provision.

12. The two representatives agreed that the ultimate issue would be whether it was unduly harsh for him to relocate to Kabul and to consider his article 8 ECHR claim.
13. The appellant gave evidence through an interpreter although it was apparent that he had a good understanding of English but had chosen, as is his right, to give evidence through an interpreter. He adopted his recent statement dated March 10, 2018 and confirmed that he had effectively been living with a former Afghani national who had been granted indefinite leave to remain as a refugee. He had been living with him since he came to this country and it appears that Social Services were initially involved in a placement. He explained that for the last three years he had been legally working as a grill chef in a takeaway working approximately 21 hours a week. He spoke both Pushto and English and he had obtained an ESOL qualification. He explained that he had an eight-year-old child who was a British citizen but that he had not seen his son for over four years. He had not been able to contact any family in Afghanistan and he last spoke to his family when he was in Afghanistan. Where he used to live the Taliban had taken over the area and people who had remained there were involved in farming as an occupation.
14. Under cross-examination he agreed that his English was good but that he had no other academic qualifications. He had not contacted the Red Cross to locate his family but he had asked other friends who had returned to Afghanistan to look for his family and he also tried to locate his family through Facebook. To date he had been unsuccessful.
15. I asked the appellant a number of questions centred around his private life and he confirmed that he worked during the evenings and spent the rest of his time playing cricket for a local club for which he was an opening batsman. He would spend time with friends, watching football and playing games on the Xbox. He had no other family in the United Kingdom although he had made a lot of friends since he had been here.

SUBMISSIONS

16. Mr McVeety submitted that the starting point in this case was that his claim of persecution had been accepted and he would therefore be unable to return to his home area. In considering the risk on return he submitted that the appellant could only be returned to Kabul and the issue was whether it was unduly harsh to require him to relocate to that area.
17. Reliance was placed on the recent country guidance decision of AS (Safety in Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) and in particular paragraphs 230 and 231 of that decision. He accepted the appellant had

come to the United Kingdom when he was around 14 years of age taking into account the length of time it took him to arrive here. He accepted that the appellant had stated he had no family in Kabul and that he had never visited that city. He also accepted that the appellant claimed he had not had any contact with his family since leaving the country. There is no suggestion his physical or mental health would raise any cause for concern and the fact he had given evidence through the interpreter demonstrated that he spoke the local language and he had limited educational and vocational skills. Ultimately, he submitted it was a matter for the Tribunal to decide whether it would be unduly harsh to require him to return.

18. Mr Bedford submitted that the appellant could only be returned to Kabul and when considering the issue of return he submitted that where there was a risk the burden fell upon the respondent to dispel any doubts. He referred to paragraph 16 of AM (Zimbabwe) c SSHD [2018] EWCA Civ 64 and paragraph 91 of KK and Others v Sweden 59166/12.
19. Mr Bedford pointed out that whilst the appellant may have lived in a village up to the age of 14 this was not the place the respondent was seeking to return him to. He had never been to Kabul and had no family living there. He had not had any contact with his family since he left Afghanistan.
20. Since being in the United Kingdom he had established a private life as evidenced by his statement and oral evidence and he had been living with the same person ever since he arrived having been placed there initially by Social Services. The Upper Tribunal was revisiting the decision of Judge Frankish which had originally been made in 2011. He submitted that taking into account factors set out in the country guidance case in paragraphs 232 to 235 it would be unduly harsh, on the facts of this case, to refuse his application for asylum.
21. Alternatively, he submitted the appellant had been here since May 2009 and had established a private life. There had been a long delay in dealing with his claim and he submitted there were no adverse factors to take into account under section 117B of the Nationality, Immigration and Asylum Act 2002. He invited me to allow the appeal.

FINDINGS

22. This case has a horrendous history in that I am tasked with remaking a decision that was originally made by Judge Frankish almost 7 years ago. It appears that delays occurred in the Administrative Court and that this case was not processed as it should have been. There were two significant delays which led this case to only now coming before the court. Those delays were not brought about by this appellant and in the interim period he has established a private life not only within his local community but he also is an active member of his local cricket club and he has lawfully obtained employment.

23. Senior Immigration Judge Renton confirmed that his claim was credible and his claim was that he had been forced out of Afghanistan by the Taliban. He lived in an area where no returns are being made and the respondent's current policy is to return to Kabul.
24. The appellant gave oral evidence and I accept his account that he has not had any contact with any family since leaving his country. His family did not live in Kabul but lived in an area dominated by Taliban and other forces. It is reasonably likely that he would have lost contact with his family and whilst he did not utilise the Red Cross to try and locate his family I am reminded by Mr McVeety that the Red Cross have actually suspended such enquiries although perhaps if the enquiry had been made many years ago the situation may have been different. He is of course now an adult so the issue of tracing is a somewhat moot point.
25. The appellant has never been to Kabul and I accept his evidence that he has no family in the city.
26. The Tribunal recently affirmed that there is no article 15c situation in Kabul. However, whilst generally it is safe and reasonable for a single healthy man to internally relocate to Kabul the Tribunal emphasised that a case-by-case consideration was required under Article 8 of the Qualification Directive.
27. The Tribunal made clear that the age at which a person left Afghanistan was relevant as to whether this included their formative years. The older a person is when they leave the more likely they are to be familiar with employment opportunities and living independently.
28. In this appeal the appellant was only 14 years of age and living with his family when he left. He did not live in Kabul and lived in a farming location. He clearly would not have been familiar with living independently although it is possible he may have assisted his family on any land they farmed.
29. The Tribunal also stated that a person who has connections in Kabul or access to financial resources will be able to internally relocate to Kabul easier. The absence of such a support network puts this appellant in a vulnerable situation.
30. The appellant is in good health and has demonstrated an ability to work and it is arguable that if he had some form of a support network then he may well be able to obtain employment in Kabul. The Tribunal accepted in AS that the objective evidence suggested there was available low or unskilled jobs involving manual labour there.
31. The appellant demonstrated an ability to speak Pushto although he had limited educational skills. The ability to play cricket would not, in my view, strengthen his ability to support himself.
32. Both representatives agreed that this was a case where the Tribunal would have to consider all the factors and then reach a decision on the evidence.

33. The case is finely balanced with there being a number of factors such as his health, ability to work and knowledge of language supporting return although they had to be balanced against the fact he has no family or connections in either Kabul or Afghanistan and he left Afghanistan when he was 14 years of age.
34. Paragraph 3390 the Immigration Rules makes clear that an appellant will not succeed with a refugee claim if he can reasonably be expected to relocate to another area.
35. Applying the case law of Januzi and AH (Sudan) and taking into account the latest guidance as set out in AS I find that if the appellant were returned to Kabul he would be at risk of persecution due to his lack of connections in Kabul, lack of a support network from family or other people and especially having regard to the fact that he has been living in this country for nine years. I therefore find that returning the appellant to Kabul would be both unreasonable and unduly harsh.
36. As regards his article 8 claim the same factors apply. There are no adverse factors under section 117B of the 2002 Act. Mr McVeety did not argue that the appellant had been here unlawfully. He may not have been entitled to indefinite leave to remain but it is clear that he was not the person who has been frustrating the legal procedure. He speaks English and whilst that is not a deciding factor it is a factor which counts in his favour albeit as a neutral factor as does the fact he has demonstrated an ability to work. In the circumstances, it would be disproportionate to return him to Kabul given the case history and his personal circumstances.

DECISION

37. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
38. I have set aside the original decision and I remake the decision allowing the appeal on asylum grounds and human rights grounds.

Signed

Date 04/05/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as no fee was paid.

Signed

Date 04/05/2018

SPAR

Deputy Upper Tribunal Judge Alis