



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/00506/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 31 July 2018

Decision and Reasons Promulgated
On: 13 September 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR S A
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms A Harvey, counsel, instructed by Sultan Lloyd Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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 their 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.
2. On 16 February 2018 I set aside the decision of the First-tier Tribunal promulgated on 17 May 2017, having found that it involved the making of an error on a point of law. I directed

that the decision be re-made in the Upper Tribunal. I issued directions relating to the filing of evidence.

3. Neither Ms Harvey nor Mr Mills represented the respective parties prior to the hearing on 31 July 2018.

Re-making the decision

4. Mr Mills submitted at the outset that the issues were the relocation of the appellant to Kabul as well as Article 15(c).
5. The parties accepted that the appellant had difficulties with the Taliban some ten years ago. The issue to be decided is whether it would be unduly harsh for him to return. Ms Harvey accepted that the appellant would not be at risk from the Taliban on return to Kabul having regard to paragraph (i) in the headnote of the recent country guidance decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC).
6. I have had regard to the bundles of evidence produced by the parties. The appellant produced a consolidated bundle in excess of 828 pages. This includes Dr Shuster's complete report, dated March 2015, and her December 2015 report.
7. The appellant attended the hearing and gave evidence. He had the benefit of a Pashto interpreter. He was born on 15 February 1998 and is thus 20 years old.
8. He adopted his witness statement dated 18 July 2016 at pages 3-5 of the bundle as well as a second "supplementary statement" dated 6 March 2018. In his earlier statement he felt that his life was at risk. He also claimed that his father would force him to attend school although he had fled for his life. He was scared of his father. He was unable to say "no" to his father.
9. He contends that it is clear from recent evidence that the Taliban do recruit children.
10. He has remained in the UK for over seven years as at the date of this hearing. He will be perceived as having been Westernised.
11. He is currently attending Northampton College studying carpentry. He wishes to become a professional carpenter. He has many friends here and he uses his English language skills to communicate with them. He has never been to any other part of Afghanistan apart from Logar Province and Kabul. If he were to return to Kabul it would be very difficult for him to live. He has now been out of his country of origin for seven years and the situation in Kabul has deteriorated. It is no longer safe. He has not been able to trace his extended family in Birmingham.
12. He is now living alone and independently but prior to this was living with his foster parents for three and a half years. He remains in contact with them. He is able to contact his personal advisor at any time should any problem occur. It would be unfair on him emotionally and physically to lose this support and return to Kabul. He will be alone without any support network, friends and paternal figures.

13. He has seen newspaper articles regarding his home area and the situation appears to have deteriorated. He has seen many people from the village who have been killed by the Taliban or fighting for the Taliban. He has also seen articles regarding the security situation in Kabul. Many have been killed there by bombs and fighting. The Taliban have the power to find anyone there.
14. He now speaks English and he believes he could easily be identified as being an individual who has returned to Afghanistan. He may be targeted and kidnapped because he is from the West. He is also vulnerable as he does not know Kabul and would not be able to keep himself safe. He would have no family support and would have no house, no food nor the means to support himself.
15. He said in reply to supplemental questions, that he was last in touch with his mother for about six months after he arrived in the UK; after that he lost contact. She went to her parents' home in Mera. His brothers and sister were with his mother at the time. His father went to work in Dubai. He does not know where his father is. He last spoke to his mother about 3–6 months after his arrival. When she moved to Pakistan there was no electricity. He spoke to her on his grandmother's mobile phone in Pakistan.
16. He was asked whether he has since tried to get in touch. Whilst he lived with his family here, they tried. He went to the Red Cross, but they did not succeed in tracing his family.
17. I was referred to a family tracing request for information dated 14 April 2012. He was asked whether he intends to take, or has already taken, any steps to trace his family in Afghanistan or whether the secretary of state can assist him in tracing his family. He was asked to complete the attached proforma and return it to the case worker. The form has been filled out. In it he set out his last permanent address in Afghanistan. This was an address in Logar Province. He stated that he does not know the current location and circumstances of his parents. The last he knew was that his father was in Saudi Arabia and his mother in Pakistan. He has had no contact with them. He said he has no reason why family tracing should not start straight away.
18. He noted in the form that he previously had a telephone number for his mother which he gave this to the Home Office, but it does not work any more. He agreed that there is no reason why family reunification should not be regarded as being in his best interests.
19. He claimed that he does not have any family in Kabul. Nor does he have any friends there. He is not familiar with Kabul. He was born in Kabul and was there as a child. He does not know where his father's parents are. He used to live far away from them in Afghanistan.
20. When asked what he would try to do if returned there, he said he is not familiar with Kabul. Also, it is not a safe place. There is daily bombing. Embassies are also targeted. You have to have savings in order to conduct business. He does not know anyone there. He does not even know where he would stay on the night of his arrival there.
21. In cross-examination he was reminded that when interviewed he had stated that he had an uncle in Birmingham. He was asked whether he has had contact with him. He said that he has not, even though he did try. His uncle moved to the UK long ago, about ten years ago,

before he himself arrived. He had known him when he lived in Afghanistan as a child. He was asked what he did to track his uncle down in Birmingham. He asked a classmate at college. He went to various mosques there to look for him. He asked anyone whether they knew where he lived. Birmingham however is a “big town”. He said that he ‘maybe went on five occasions to look for him’. His maternal uncle told him that his uncle lives in the UK.

22. He was born in Kabul and then he moved to Logar Province as a child. His family were from Kabul. His father had lived and grown up in Kabul. His father’s parents lived together with them. After that, they had no contact and moved to a different city. They left before them. They went to another city which he thinks is Gazni Province. After leaving Kabul for Logar Province he did not see his paternal grandparents again.
23. His maternal grandparents went to Pakistan. That was when he left Afghanistan. He did not go to Pakistan for residential purposes.

Submissions

24. On behalf of the respondent, Mr Mills submitted at the outset that this decision will be of little value as the appellant has leave to remain in the UK under Article 8. He will be entitled to qualify for indefinite leave to remain after the expiry of about six years.
25. The appellant is now over twenty and a half years old. He is in a different situation than when he was a minor. He is now an adult: having regard to the decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC), Kabul is a reasonable place for him to relocate to.
26. The appellant said that he went to Pakistan. He visited there. This has been a permanent location for his mother. This is an established home and is not a temporary location. It is difficult to accept that it would not be possible to trace them since they came there in November 2011.
27. There is no evidence that he made any reference to the Red Cross.
28. He came here knowing prior to his own arrival, that his uncle lived in Birmingham. He knows his name. He claims to have asked around for him. Whilst Birmingham is a large city, it is however not plausible that in all the years and with the assistance of others, he would not be able to trace his uncle in Birmingham if he had really tried.
29. With regard to his claim regarding being scared of his father, the latter however went to work in the Middle East for a number of years. There was accordingly a pattern of migration in his life. It is not credible that he would be unable to trace his father if he had attempted to.
30. He submitted that there are accordingly three family groups which he could trace in order to obtain support.
31. It is proposed to return the appellant to Kabul. Legally however he cannot be returned there. He referred to AS, supra. He submitted that a lot of argument in the appellant’s

case in AS turned on the evidence of Dr Shuster. The argument based on her report dated March 2015 is not available to the appellant following the decision in AS.

32. He referred to [54] in AS. The Tribunal overall found her evidence to be clear, comprehensive, well researched. The panel attached significant weight to her evidence which was found to be of great value in understanding the socio-economic conditions in Kabul. The only criticism related to the fact that the returnees that she has had direct or indirect exposure to, are a very small number of those who had been forcibly removed to Kabul in the last five years. This is out of hundreds of thousands forcibly returned from Pakistan, Iran and the West in the last 12 months alone and that those persons are likely to be in the most difficult situations to have sought assistance from AMSO, (because those returnees leading a relatively normal life without significant difficulties in Kabul would have no need to seek such assistance).
33. Mr Mills submitted that Dr Shuster would say that any young man returning without support would have difficulties, and be destitute. He referred to the headnote in AS and submitted that there would be no real risk for the average person. The panel at [37] referred to the language used in Januzi and AH (Sudan). In assessing the reasonableness of internal relocation, the language used is of standards or conditions generally prevailing in the home country and of whether a person can live a relatively normal life. There is no single standard or set of conditions which apply throughout a country but there are a range of examples of “normal” or conditions which are experienced either in particular parts of the country or throughout it by groups of people.
34. The appellant’s engagement with the Taliban was at least ten years ago. The appellant does not seek to rely on (i) in the headnote in AS. The argument therefore relates to sub-paragraphs (ii-v) in the headnote in AS.
35. He submitted that the appellant can live a reasonable standard of life: To take yourself below the baseline set in AS you need to show a degree of vulnerability or physical health which will not be capable of being treated.
36. The appellant is an average, young, healthy, fit and single male. He would be able to live and enjoy a reasonable standard of life.
37. The personal circumstances set out in (iii) of the headnote in AS must be considered: A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return. This may counter a particular vulnerability of an individual on return.
38. Mr Mills referred to the packages of support available as set out in AS, at [158-159] and [227]. There is a variety of support from different organisations, much of which suffered from a lack of take up from individuals, more than a lack of available resources. The Tribunal was however mindful that there is little firm evidence of what support was in reality being provided to returnees. Overall however, there is sufficient evidence to establish that there is a basic level of support, referred to by some as a “parachute package” which includes the offer of temporary accommodation, travel expenses and other cash on return or support

in kind for those with a plan to establish themselves in Kabul. This may only last a person for 4–6 weeks. That places returnees from the UK in a better position than other returnees, for example those from Iran and in particular IDPs.

39. He submitted that the appellant in AS himself argued that he would be Westernised [10]. It was however found that he would not be at real risk as a person who has been Westernised [248].
40. Mr Mills also referred to the headnote at sub-paragraph [vi] in AS: The panel stated that the country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 in relation to Article 15(c) of the Qualification Directive remains unaffected by the decision in AS.
41. He submitted that the appellant's Article 8 appeal was successful. He will accordingly be given 30 months' leave. He has been given discretionary leave since December 2011. All applications have been made in time. Accordingly s.3C applies. The appellant has already had six and a half years' discretionary leave. In terms of the relevant policy, if such a person lives here for six years without having been convicted of any offence he may be entitled to indefinite leave to remain. In the event that an application is made it is likely that the appellant would qualify¹.
42. On behalf of the appellant, Ms Harvey adopted her lengthy skeleton argument. She accepted that her submissions from paragraph 54 onwards were not relevant to the appeal as the appellant has Article 8 leave.
43. When the appellant arrived he was 13 years old. He had good prospects of discretionary leave until he was 17½. He remains in the care of the social services who support people in his position until they are 25 years old. There is every incentive for social services to attempt to find him a family.
44. The Home Office has failed to take any proper measures to trace his family. It is noted at paragraph 71 of the reasons for refusal that the appellant claimed that the secretary of state failed to trace his family members and that they had not met their obligations under Article 19 of the Reception Directive.
45. The secretary of state however contended that it appears that she has met her obligations based on the information provided. The appellant has lost contact with his mother. He has not tried to trace his father. He claimed that his father forced him to attend school.
46. It is evident from his foster mother's statement at page 35 that the appellant did not discuss his family very much. He has attempted to trace his mother. He has tried to find his uncle in Birmingham. He has taken several trips to Birmingham in this regard. He has attended mosques. Birmingham is a metropolis. It is difficult to find him there. She submitted that going to the mosques was a sensible thing to do when trying to trace his uncle, and 'is in no way implausible'.

¹ This is set out in the policy instructions relating to discretionary leave, version 7, section 10, dated August 2015. Mr Mills accepted that there is no criminal issue arising in this case.

47. She submitted that it is a leap to suggest that tracking him down would result in his being given support and remittances in Kabul. Even if his mother were found in Pakistan, this would not result in Kabul being a safe place.
48. She referred to the “legal test” set out at paragraph [37–39] of AS. She referred to headnote (v). The appellant in AS was born in 1986. He was accordingly a man in his thirties at the time. When referring to what is acceptable for a single male, regard must be had to the fact that the appellant is now barely 20 years old. Further, he arrived here as a child.
49. She submitted that the issue involves the risk on return. She referred to the evidence highlighted in AS. She adopted her skeleton from paragraphs 32 onwards. The cash packages last between four and six weeks. The quality of accommodation is also to be considered. This is set out at [215] in AS. She referred to the factors to be considered in a case such as this, as set out from paragraph 46 to paragraph 53 of her skeleton.
50. In summary, the appellant has no support network. He has no family or friends. The time out of Afghanistan affects his prospects of re-integration. He will have difficulties in finding a place in society. It will be to his disadvantage that he has been exposed to Westernisation as a child.
51. She submitted that having regard to the cumulative impact of these factors, the appellant is at potential risk on return to Afghanistan.

Assessment

52. I have had regard to the evidence produced in the appellant’s bundle including his witness statements and oral evidence.
53. It is common ground that the appellant is a national of Afghanistan who comes from Logar Province. He left Afghanistan when he was still a child. He contended that he had been kidnapped by the Taliban and that there has been fighting in his home area. His fear is that he is a young man who might be required to fight for the Taliban and he fears the risks associated with return there, and in particular that he has been in the UK for some seven years and is consequently perceived to be “Westernised.”
54. It is also common ground that he has lived in the UK since he was 13 years old. The appellant claimed that he has no family remaining in Afghanistan. He asserts that he last had contact with his family when his mother moved to Pakistan. His father is in Dubai.
55. Although it is contended by Mr Mills that the appellant has family in Afghanistan to whom he can return, there has been no tracing undertaken by the respondent. The appellant has never opposed any attempt to trace any family in Afghanistan.
56. The appellant is now about twenty and a half years old. He has lived in the UK since he was 11. His Article 8 appeal was upheld. He will accordingly be given 30 months’ leave. He

has already had discretionary leave since December 2011. All the applications have been made in time. In the event, he has already had six and a half years' discretionary leave.

57. Mr Mills identified Home Office policy which provides that a person who has lived here for six years without having been convicted of any offence, may be entitled to indefinite leave to remain. Mr Mills contended that it is likely that the appellant will qualify under the policy. There is no contention that the appellant has committed any criminal offences.
58. When assessing the appellant's evidence I bore in mind that he is giving evidence in respect of events which he claimed caused him to flee when he was still a child. I have had regard to the respondent's asylum policy guidance on children's asylum claims, volume 2, dated 9 October 2017.
59. In assessing the appellant's credibility, and in particular his explanation of his fear of his father, I have had regard to his youth and do not consider that he should be expected to account for the motives and behaviour of an adult. That is particularly so having regard to the fact that his father was described as a non violent person, whom the appellant's foster mother described as "not a nice man".
60. With regard to the respondent's section 8 contentions, I bear in mind that he was a thirteen year old child when he came to the UK and accept that he would have followed the advice of people around him. I accordingly do not find that his alleged "behaviour" militates against a positive credibility finding.
61. In the circumstances, I found the appellant's evidence to be essentially credible.
62. I have considered the relevant background evidence relied on and produced in the appellant's bundle, none of which is in dispute. The abduction of civilians is well documented. This is contained in reports from the UN Assistance Mission in Afghanistan and the UN Office of the High Commissioner for Human Rights, as set out in the appellant's bundle at pages 204-205.
63. I have also had regard to the country guidance decision in AA (Unattended Children) Afghanistan CG [2012] UKUT 0016 (IAC), which is still applicable, following AS (Afghanistan).
64. The risks to children are set out in Dr Schuster's report dated 26 March 2015 where she describes the situation at that time. I have also had regard to her evidence in AS (Afghanistan). The Tribunal described her evidence as clear, comprehensive, well researched from both written sources and contacts in Afghanistan and based on her own in depth experience from living in Afghanistan, working with those who have been returned there, and through AMASO. Significant weight was accordingly attached to her evidence which the Tribunal found to be of great value.
65. I have noted the Tribunal's caveat that the returnees that she has had direct or indirect exposure to are a very small number of those who have been forcibly returned to Kabul in the last five years, out of the hundreds of thousands forcibly removed from Pakistan, Iran

and the West in the last 12 months alone and that those persons are likely to be in the most difficult situations and to have sought assistance from AMASO.

66. I have also had regard to the fact that the Taliban were recruiting child soldiers in 2015–2016 as referred to in the Human Rights Watch report at page 113–120 in the appellant’s bundle. The Taliban do target schools. Moreover, the evidence confirms that the appellant’s home area has seen violence.
67. I have also had regard to the consistent presence of the Taliban in the appellant’s home area, which as contended makes it difficult for the appellant simply to re–arrange his life to avoid them.
68. The evidence also reveals that as a young man of fighting age, he is at risk from the Taliban in his home area. His fears of persecution and of serious harm if returned to that area are accordingly well founded.
69. It has been contended by Mr Mills that even if there is a risk of persecution in his home area, the test is whether it would be unreasonable or unduly harsh for the appellant to relocate to Kabul. The standard of proof is that of a reasonable degree of likelihood.
70. Dr Schuster described the factors affecting internal relocation in March 2015 in some detail. She emphasised the problems and risks to those perceived as being Westernised. She updated her report in December 2015, as produced in the appellant’s bundle at pages 72–112 and in particular paragraphs 6, 12, and the introduction to B prior to paragraph 20. Her assertions regarding internal relocation are at paragraphs 66–88. She has relied on reports from her own field work. Her oral evidence to the Tribunal in AS is set out from [91] to [94] of AS.
71. I have also had regard to the UNHCR eligibility guidelines, which describe the difficulties faced by returnees. This includes the problem of “being Westernised”. This is highlighted as a category at risk.
72. In AS, the Tribunal identified the country guidance at (iii) of the headnote. When considering whether it will be reasonable for the appellant to internally relocate to Kabul, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation. These are also factors considered by the UNHCR in its eligibility guidelines. The factors include a person’s age, the nature and quality of the support network, his physical and mental health, his language, education and vocational skills
73. I have had regard to the Tribunal’s recording of the security and humanitarian situation in Afghanistan as set out at [116] to [199]. There are half a million internally displaced persons. There is severe and acute malnutrition in 20 of the 34 provinces. There are descriptions of violence, exploitation and sexual abuse.
74. Dr Schuster has also given detailed evidence in AS, on the availability as well as types of housing in Kabul at paragraphs [130 to 132]. About 45% of Afghans use unimproved water sources and 68% have no access to improved sanitation. Over a third of the population live

below the poverty line for the country. There is intense competition for jobs as described by Dr Schuster [149–151]

75. She also sets out “day labouring work” in her evidence at [149 - 151]. To rent a room in Kabul there must be payment of six months in advance. The cheapest rates are \$100 a month. This would take over 136 days’ labouring to be able to afford a room even if every penny were saved. From Dr Schuster’s evidence, a person could earn at most something of the order of \$4.40 a day as a day labourer.
76. The respondent has contended that there are voluntary return packages and cash available, in the amounts of £200 and £500. Other reports assert that the package is up to £750.
77. Dr Schuster considered this and found that this could last a person who was astute between a month to six weeks. However, a person unfamiliar with the systems and prices in Kabul could be ripped off and the funds would only last them a week to ten days. I have had regard to the summary by the Tribunal in AS of the type of accommodation to which it is expected that people could go at [215].
78. The Tribunal in AS accepted the evidence that a package might only last between four to six weeks.
79. The “After Return” study documented what happened to young people who were returned to Afghanistan. This, as correctly submitted by Ms Harvey, belies the optimistic predictions of the respondent. The Tribunal in AS considered reports on returnees including After Return at [164–171].
80. It is correct, as accepted by Ms Harvey, that the appellant no longer falls to be treated as a child or to benefit from any special protection or care available to children. However, he is nevertheless still a very young adult and cannot easily be assimilated to the profile of “single male” considered in AS. That is particularly so when considering the fact that he left Afghanistan when he was only 13 years old.
81. The Tribunal in AS, acknowledged that there is no bright line rule at the age of 18 when a person in the United Kingdom is considered to be adult [231]. These issues do not fall away overnight but are more likely to gradually diminish. The Tribunal concluded that it is reasonable to infer that the older a person is when they leave, the more likely they are to be familiar with, for example, employment opportunities and living independently [232].
82. In considering the reasonableness of the appellant’s internal relocation to Kabul, I find that he has no connections with Kabul. He has always lived in Logar Province and did not travel from there. He left Afghanistan when he was 13 years old and his connections with Afghanistan have continued to be limited.
83. I also have regard to the description by the appellant’s foster mother, that he clearly has a learning difficulty. There are educational certificates in the bundle, some of which refer to both pass grades and failing grades.
84. I bear in mind as submitted that the appellant speaks Pashto. However, he had limited schooling prior to leaving at the age of 13. He only passed ESOL entry 2 on 14 July 2016,

five years after coming to the UK. It is therefore evident that the appellant does not pick up a new language rapidly.

85. He has obtained a BTec Level 2 certificate on 1 July 2012. He also achieved a pass in Applied Science. He obtained a BTec First Award in the Application of Science. He failed his GCSE Engineering. He started a general building maintenance course on 7 September 2015.
86. As submitted, it appears that the appellant will have to compete for low paid labouring jobs considered by the Tribunal in AS. He is now studying carpentry. This is a potentially useful skill but his studies are still at a rudimentary level and are not such as would put him in the position of being able to compete in a highly competitive market even for low skilled work in Afghanistan.
87. Even if his mother were found in Pakistan, it cannot be assumed that this would result in Kabul being a safe place for the appellant. The evidence relating to the possibility of tracking down the appellant's uncle which may then result in his being given support and remittances in Kabul, is at best speculative.
88. More fundamentally however, I note that the appellant in AS was born in 1986. He was accordingly a man already in his 30s at the date of the decision. The Tribunal considered in that appeal what is acceptable for a single male. As noted, the appellant's circumstances must be assessed on the basis that he is now just 20 years old. More significantly, he arrived here as a child.
89. The appellant is unlikely to have any support network. His prospects of re-integration into Afghanistan are affected having regard to the time he has been out of the country. He is likely to find it difficult to secure a place in society. This is particularly aggravated by the fact that he has been exposed to Westernisation as a child.
90. Having regard to the circumstances as a whole, I find that it would be unreasonable to expect the appellant to return to Kabul.
91. I find that the appellant has shown on the lower standard that he would be at real risk on return to Afghanistan.

Notice of Decision

I allow the appeal on asylum grounds.

Anonymity direction continued.

Signed Deputy Upper Tribunal Judge Mailer

Date 9 September 2018