



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

Appeal Number: PA/08744/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19<sup>th</sup> March 2018**

**Decision & Reasons  
Promulgated**

**On 28<sup>th</sup> March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**IK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Sellwood, of Counsel instructed by Wilson Solicitors

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

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant has appealed against a decision of Judge O'Malley of the First-tier Tribunal (the FtT) promulgated on 12<sup>th</sup> October 2017.
2. The Appellant is a male citizen of Afghanistan born in 1990. He arrived in the UK on 7<sup>th</sup> December 2015 and made an asylum and human rights claim. His asylum claim was based upon imputed political opinion. He

feared the Taliban as they had killed his two brothers. He feared that if returned to Afghanistan he would also be killed.

3. In brief the Appellant's claim is that he lived in the Asmar district of Kunar province, Afghanistan. His eldest brother HJ was president of the AH Foundation, a construction company that had work in the provinces of Kunar and Nooristan. The company worked in partnership with the Provincial Rehabilitation Teams (PRTs) of the foreign forces, working on infrastructure projects. The Taliban were opposed to those projects, and opposed to individuals working with the American and foreign forces.
4. HJ was shot and killed by the Taliban in Pakistan on 15<sup>th</sup> February 2016.
5. The running of the business was then taken over by the next eldest brother, HI, and from 2007 the Appellant was involved in the security side of the business. In 2008 HI founded and became president of his own company, the RCC.
6. In 2010 the Appellant's role in RCC increased and between 2010 and 2013 he supervised and monitored security guards. RCC worked on construction projects, and provided security for American convoys travelling through their areas.
7. Threats were made against RCC after an incident involving work being done on the Asmar to Ghaziabad road. The Taliban carried out attacks on the road, and the American forces retaliated by carrying out bombing raids which killed some of the Taliban, including a local leader. Construction of the road could not be completed because of the attacks.
8. After the death of the Taliban leader HI was pursued by the Taliban and threatened. He went into hiding in a house in Asadabad but on 7<sup>th</sup> October 2013 he was discovered by the Taliban and shot dead together with his cousin and a bodyguard.
9. After the death of HI, the Appellant took on the role of president of the RCC unofficially. Letters from the local Taliban were sent to his family home describing his deceased brothers as non-believers and threatening the Appellant. He fled the area. The Taliban visited the family home and questioned his father. The Appellant moved from place to place returning secretly to see his parents every two or three months.
10. When in Asadabad the Appellant received a telephone call from his father to say a further letter dated 15<sup>th</sup> October 2015 had been received, accusing him of spying, and blaming him for the death of the Taliban leader. The letter required him to present himself to a Taliban court.
11. The Appellant asked his MP for help, but was told that the MP could not provide protection against the Taliban. The Appellant then fled Afghanistan with the assistance of an agent, the cost of travel being funded by the Appellant's father. The Appellant's surviving brother MI, also left Afghanistan and is currently in Greece.

12. The Appellant arrived in the UK illegally on 7<sup>th</sup> December 2015 and subsequently made an asylum claim.
13. The asylum and human rights claim was refused by the Respondent on 4<sup>th</sup> August 2016, and the subsequent appeal was heard by the FtT on 22<sup>nd</sup> September 2017. The FtT heard evidence from the Appellant and two witnesses.
14. The FtT dismissed the appeal on asylum and Article 3 grounds. The FtT accepted that the companies referred to by the Appellant, AHF and RCC existed, and that his two brothers had held senior roles in the businesses. It was also accepted that the brothers had been killed. It was not accepted that the Appellant was involved in security in AHF or RCC as claimed, and it was not accepted that the brothers had been specifically targeted by the Taliban before they were killed. The FtT found that their deaths were deliberate and at paragraph 70 found that they “may be Taliban fatalities”. At paragraph 82 the FtT found that the Appellant had not been targeted by the Taliban, and that he would not be sought out on his return for any involvement in AHF or RCC, and found there was no specific interest in him.
15. However the FtT allowed the appeal on humanitarian protection grounds with specific reference to Article 15(c) of the Qualification Directive. The FtT took into account the country guidance in AK Afghanistan CG [2012] UKUT 00163 (IAC), and also took into account evidence submitted by the Appellant, which postdated AK, including a report from Dr Giustozzi which indicated an increased risk since AK was published. The FtT concluded that the Appellant would not be at risk as a result of any specific targeting by the Taliban, but taking into account the evidence submitted by the Appellant, which indicated an increase in widespread attacks affecting civilians across the country, found that there was no part of Afghanistan which would be sufficiently free from indiscriminate violence, and therefore concluded that the Appellant qualified for protection under Article 15(c) of the Qualification Directive.
16. The FtT also considered Article 8 of the 1950 European Convention on Human Rights, and in particular paragraph 276ADE(1)(vi). The FtT found that there would be very significant obstacles to the Appellant’s reintegration into Afghanistan, and allowed the appeal with reference to Article 8.
17. The FtT decision caused both parties to apply for permission to appeal. The Appellant applied for permission to appeal against the decision to refuse his appeal on asylum grounds. In summary it was contended that the FtT erred by failing to make findings on material facts such as whether the Appellant’s brothers were targeted and killed by the Taliban. Also there was a failure to take into account material evidence, that being documentary evidence submitted to prove past persecution, attempts to secure protection, and risk on return, and no findings were made on that evidence. It was also contended that the FtT had failed to give reasons

when describing the Appellant's evidence as being vague and inconsistent, and conclusions without reasons prevented the Appellant from knowing exactly why his claim failed.

18. The Respondent also applied for permission to appeal. The Respondent did not challenge the FtT findings in relation to Article 8. The Respondent challenged the finding in relation to humanitarian protection, contending that the FtT had made a material misdirection of law by failing to correctly interpret AK. The Respondent also contended that the FtT had erred by failing to resolve conflict in relation to credibility. The FtT had identified inconsistencies in the Appellant's account at paragraphs 73 and 76-78 but had not resolved those inconsistencies with the wider finding that the Appellant requires humanitarian protection.
19. Both the Appellant and Respondent were granted permission to appeal by Judge Brunnen.

### **Error of Law**

20. On 18<sup>th</sup> January 2018 I heard submissions from both parties in relation to error of law. The Appellant was represented by Ms Loughran of Counsel and the Respondent by Mr Walker a Senior Home Office Presenting Officer. Ms Loughran advised that following a consultation with Mr Walker, it was agreed that the FtT had not erred in law in concluding that the Appellant was entitled to humanitarian protection. It was also agreed that the FtT had erred in law in dismissing the asylum aspect of the appeal, for the reasons given in the grounds seeking permission to appeal.
21. Mr Walker confirmed that the Respondent no longer challenged the conclusion by the FtT that the Appellant was entitled to humanitarian protection. It was accepted that the Respondent had not challenged the decision by the FtT to allow the appeal on Article 8 grounds. Mr Walker confirmed that it was conceded that the FtT had erred in law in relation to dismissal of the asylum aspect of the appeal, as explained by Ms Loughran.
22. In view of the concession made on behalf of the Respondent, that the FtT did not err in law in concluding that the Appellant was entitled to humanitarian protection because there existed an Article 15(c) risk in Afghanistan, I made a formal finding that the FtT had not erred in law on that point.
23. As it was also conceded by the Respondent that the FtT had erred in law in dismissing the asylum appeal for the reasons given in the grounds contained within the application for permission to appeal, I found that the FtT had materially erred in law on that point, and therefore the decision must be set aside and remade.

24. The FtT conclusion that the Appellant was entitled to succeed in his appeal by reliance upon Article 8 had not been challenged and that finding was therefore preserved.
25. With reference to the asylum aspect of the appeal, I found that some findings had not been challenged and could be preserved. Those findings are that the Appellant had two brothers, and those brothers had senior roles in the business, that was known as AHF and then known as RCC. The business is in existence. These findings were made by the FtT at paragraph 66. Also preserved is the FtT finding at paragraph 70 that both the Appellant's brothers were killed, and their deaths were deliberate.
26. The hearing was adjourned for further evidence to be given, so that the asylum claim could be considered again.

## **Re-Making the Decision**

### **Preliminary Issues**

27. At the commencement of the hearing I ascertained that the Tribunal had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. The Tribunal had received the Respondent's bundle with Annexes A-W, that had been before the FtT. The Tribunal also had the Appellant's consolidated bundle that had been before the FtT, with tabs A-E, and the Appellant's skeleton argument dated 30<sup>th</sup> March 2017.
28. Mr Kotas handed in an extract of the SIGAR (Special Inspector General for Afghanistan Reconstruction) report dated 30<sup>th</sup> July 2014 and indicated that he would be referring specifically to page 58. As the FtT findings that the Appellant was entitled to humanitarian protection, and his appeal also succeeded in relation to Article 8 were preserved, it was agreed that the only issue before the Tribunal related to asylum. Mr Sellwood confirmed that as only asylum was in issue, it was the first 21 paragraphs of his skeleton argument which were relevant.

### **The Oral Evidence**

29. The Appellant and both witnesses gave evidence with the assistance of an interpreter in Pushtu and there were no difficulties in communication.
30. The Appellant adopted as his evidence his witness statements dated 16<sup>th</sup> June 2016 and 24<sup>th</sup> August 2017.
31. Oral evidence was then given by SK who adopted his witness statements dated 23<sup>rd</sup> July 2015 and 29<sup>th</sup> March 2017. SK confirmed that he had grown up with the Appellant in Afghanistan. He left Afghanistan in late 2008. Both he and the Appellant believed that they were paternal cousins but DNA evidence, to their shock, has confirmed that this is not the case. SK has been granted refugee status.

32. Oral evidence was then given by HS who is a cousin of the Appellant. He has also been granted refugee status in the UK. He adopted as his evidence his witness statements dated 23<sup>rd</sup> July 2015 and 22<sup>nd</sup> September 2017.
33. The Appellant and witnesses were questioned by the representatives. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them here. If relevant I will refer to the oral evidence when I set out my conclusions and reasons.

### **The Oral Submissions**

34. I heard oral submissions from the representatives which are set out in full in my Record of Proceedings and briefly summarised below.
35. On behalf of the Respondent reliance was placed upon the reasons for refusal decision dated 4<sup>th</sup> August 2016. Mr Kotas submitted that the Tribunal had to decide three issues. Firstly has the Appellant proved that he worked as head of security for RCC. Secondly was he threatened by the Taliban. Thirdly would he be at risk on return.
36. It was submitted that it was inherently unlikely that the Appellant was head of security at RCC. He claimed to have taken on that role at 17 years of age while still at school. He had no formal qualifications and no experience. It was submitted that he had embellished his role.
37. I was asked to find that he had not been threatened by the Taliban and had not received threatening letters. The expert report at B77/78 did not address whether the letter was genuine and Mr Kotas described that report as containing multiple hearsay. I was asked to attach little weight. I was asked to note page 58 of the SIGAR report which referred to AHF, RCC, and the Appellant's elder brother as being debarred by the American army because of bribery and corruption. This had occurred on 5<sup>th</sup> June 2014, and it meant that RCC would not be awarded contracts by PRT for a period of five years ending on 29<sup>th</sup> September 2018.
38. I was asked to note that the Appellant had remained in Afghanistan for just over two years following the death of his brother in October 2013 without coming to harm.
39. Even if the Appellant's case was taken at its highest, Mr Kotas submitted that there was an internal relocation option to Kabul.
40. Mr Sellwood in making oral submissions placed reliance upon his skeleton argument. I was asked to consider whether the Appellant's account is coherent, whether there is any corroborating evidence, and whether the evidence fits with background evidence. All these points needed to be considered together.

41. It was submitted that RCC is a family business and there was a degree of nepotism giving the Appellant a position within the company. It is clear and accepted that the company exists.
42. I was asked to accept the Appellant had given a coherent, plausible and credible account and that there is voluminous evidence by way of corroboration contained within the Appellant's bundle. Documentation had been received from Afghanistan, and the original envelopes provided as proof of the origin of postage. I was asked to place weight upon the expert reports prepared by Dr Giustozzi.
43. In addition I was asked to note and accept the evidence given by the witnesses, who Mr Sellwood described as witnesses of truth, on the basis that both had been granted refugee status in the UK.
44. I was asked to place weight upon Dr Giustozzi's opinion, that the Appellant would be at risk on return as he had worked for a company who worked with the Americans and foreign forces. That would put him at risk from the Taliban. His brothers had been killed because of their involvement, through the business, with the Americans in particular. Dr Giustozzi confirmed that the Appellant would be at risk if he returned to his home area where the Taliban have a very considerable presence, there would be no sufficiency of protection, and no reasonable internal relocation option to Kabul. I was asked to place weight upon the expert reports, and to allow the appeal on asylum grounds. Mr Sellwood acknowledged that if the appeal was allowed on asylum grounds, the Appellant was not entitled to humanitarian protection.
45. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

46. I have taken into account all the oral and documentary evidence placed before me, together with the submissions made by both representatives. I take into account the lower standard of proof that applies, which can be described as a reasonable degree of likelihood. The burden is on the Appellant. I accept that it is important that I view the Appellant's account in the context of conditions in Afghanistan.
47. I have considered the evidence in the round, and considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules. With reference to documentary evidence, I have followed the guidance in Tanveer Ahmed Pakistan [2002] UKIAT 00439, in that it is for the individual producing a document to show that it can be relied upon, and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
48. There are preserved findings from the FtT. These include the conclusion that the Appellant is entitled to humanitarian protection because of the risk of indiscriminate violence, paragraphs 94-95 of the FtT decision

setting out that conclusion. In addition the Appellant's appeal is allowed with reference to Article 8 on the basis of paragraph 276ADE(1)(vi), paragraph 99 of the FtT decision setting out that conclusion.

49. There are also preserved findings in relation to the asylum aspect of the appeal. These are that the businesses known as AHF and RCC were in existence, and RCC is still in existence. The Appellant's two elder brothers held senior roles in those businesses. The Appellant's two elder brothers were killed and their deaths were deliberate.
50. There is an abundance of documentary evidence to prove the activities of RCC. It is a company involved in construction, and it worked with the American and foreign forces. This is confirmed not only by the documentary evidence, but by the Appellant and both witnesses who gave evidence at the Tribunal hearing. In relation to those witnesses, I accept that both have been granted refugee status, HS was granted refugee status by the Respondent, and SK was granted refugee status after a successful appeal. I accept that both witnesses knew the Appellant and his family well before the witnesses left Afghanistan in 2008.
51. I accept the Appellant's evidence that his nephew AK is now the president of RCC. The Appellant remains in contact with him, and last spoke to him by telephone when AK was in Dubai. AK is waiting to receive a visa to entitle him to travel to the United States.
52. The existence of RCC as a company undertaking reconstruction projects is confirmed in the SIGAR report which makes specific reference to the company, and the Appellant's brother who was killed in 2013. I accept the Appellant's evidence that he was unaware that the company had been disbarred from being awarded contracts by the Kunar PRT in June 2014. The Appellant stated in paragraph 33 of his witness statement dated 16<sup>th</sup> June 2016, that after the death of his brother in October 2013 and following the serious threats from the Taliban, the operations of RCC started to be conducted from Kabul only, and the company stopped taking on any new contracts after the death of the Appellant's brother although there was still income coming in from existing projects.
53. I find that the Appellant did work for RCC. I do not find that he was head of security at 17 years of age. I accept that RCC was formed in 2008. In his initial witness statement at paragraph 18 the Appellant explained that in 2007 his family had not started their own company, because they were working under the name of the AH Foundation which was an NGO. His role at that time was to oversee the guards who were guarding the construction site, and he was monitoring whether they were doing their jobs properly. In my view that is an accurate summary of his activities.
54. Both witnesses who gave evidence at the hearing confirmed that they were aware of the Appellant having a security role prior to them leaving Afghanistan. This in my view corroborates what the Appellant has stated, and I do regard the witnesses as credible.



55. There is at A62 of the Appellant's bundle a list of key personnel in RCC as at 2011. The Appellant is named as a security officer, having one year experience. It is his case that his role changed in 2010 and he became more involved, and I find that this document can be relied upon, and supports that account.
56. I am therefore satisfied, for the reasons given above, that the Appellant worked for RCC, and as described by the witnesses, it was his family business, and that he had a role monitoring the security guards. This was before the death of his brother in October 2013.
57. I am satisfied that the company undertook work with the Americans and foreign forces, and the background evidence and Dr Giustozzi's expert report, confirms that individuals working for such companies, would be regarded by the Taliban as collaborators. This I find would put them at risk.
58. The Appellant's elder brothers were both shot. It is accepted that both had senior roles with a company which would be regarded by the Taliban as collaborating with the foreign forces. I find, to the lower standard of proof, that the Appellant's brothers were killed by the Taliban.
59. I accept that the Appellant received threats from the Taliban following the death of his brother in October 2013. I do place weight upon Dr Giustozzi's reports, and note at B78 of the Appellant's bundle, the report dated 13<sup>th</sup> March 2017, which confirms that Dr Giustozzi's colleague spoke with the Taliban's intelligence head for Kunar province and it was confirmed that the Appellant is on the Taliban's "blacklist". This is because he was said to be working with NATO and foreign forces. His two brothers were described as working for the American PRT, and were referred to as having been abducted by the Taliban which is incorrect, as neither were abducted but both were killed. Notwithstanding this error, I find that reliance can be placed upon the report. The letter from the Taliban that prompted the Appellant to leave Afghanistan is dated 15<sup>th</sup> October 2015 and is contained at D31-D32 of the Appellant's bundle. I find that weight can be attached to this. This is a letter that has been considered in the round. The background evidence, including Dr Giustozzi's expert report confirms that the Taliban do send letters of this nature to individuals regarded as collaborators. The Taliban would regard the Appellant as a collaborator because of the activities carried out by RCC. I therefore conclude that following the death of the Appellant's brother in October 2013, the Appellant did receive threats from the Taliban, and in particular received a letter dated 15<sup>th</sup> October 2015 ordering him to attend a Taliban court.
60. Having found that the Appellant worked for RCC, and did receive Taliban threats, I now must consider whether he would be at risk on return. I have placed considerable weight upon Dr Giustozzi's report dated 14<sup>th</sup> March 2017. Dr Giustozzi is a recognised expert in this field. His report is

comprehensive. I set out below paragraph 46 which is the final paragraph of the report, in which Dr Giustozzi summarises his conclusions;

“46. In summary, the account provided by Mr K is plausible. Mr K would be at risk from the Taliban having been warned by them and having not heeded to their warnings. The Taliban have confirmed that Mr K is on their blacklist (see separate verification report). The risk would be greatest in Mr K’s home province of Kunar, where Taliban presence is pervasive, except in areas occupied by the Islamic State. The Taliban have more limited capabilities in Kabul, but Mr K will also be at risk there, particularly if he had to settle in one of the neighbourhoods populated by eastern Pashtuns like himself.”

61. I also note the Respondent’s country information and guidance on Afghanistan in relation to persons supporting or perceived to support the government and/or international forces published in February 2015. At paragraph 1.3.12 it is confirmed that those at risk would not be able to seek effective protection in areas controlled by the anti-government elements (AGE).
62. At paragraph 1.3.13 it is stated that in Kabul and other cities and towns controlled by the government, in general the authorities may be willing to offer protection but they are unlikely to be able to offer effective protection given the structural weaknesses in the security forces, including a lack of resources, training and adequate equipment, poor vetting of recruits, weak command and control structures together with corruption and official impunity for serious abuses.
63. The above information is similar in content to the views expressed by Dr Giustozzi.
64. My conclusion is that the Appellant has proved to a reasonable degree of likelihood, that he would be at risk if he returned to his home province of Kunar, and that there does not exist in Afghanistan a sufficiency of protection, or a reasonable internal relocation option. He has therefore proved that he has a well-founded fear of persecution from the Taliban. On that basis he is entitled to a grant of asylum.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds.

As the Appellant is a refugee he is not entitled to humanitarian protection.

The appeal is allowed on human rights grounds in relation to Article 8 of the 1950 Convention.

**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. This direction is made because the Appellant has made a claim for international protection.

Signed

Date 20<sup>th</sup> March 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

No fee has been paid or is payable. There is no fee award.

Signed

Date 20<sup>th</sup> March 2018

Deputy Upper Tribunal Judge M A Hall