



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01852/2019

THE IMMIGRATION ACTS

Heard at Manchester
On 23rd July 2019

Decision & Reasons Promulgated
On 05th August 2019

Before

Upper Tribunal Judge Chalkley

Between

M R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rafique of Counsel

For the Respondent: Mr Chris Bains, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 3rd May, 1996 and is a citizen of Afghanistan. He arrived in the United Kingdom clandestinely on 10th October, 2018 and made a claim to the respondent for asylum on the same day. He was refused asylum in a decision letter dated 14th February, 2019 and appealed to the First-tier Tribunal.
2. His appeal was heard by First-tier Tribunal Judge Herwald in Manchester on 17th April, 2019. The Immigration Judge found the appellant to be entirely plausible and accepted his claim. He found that the appellant had not discharged the burden of

proof of having a well-founded fear of persecution for a Convention reason because he did not accept that the appellant could not relocate internally in Afghanistan and live safely without fear.

The Appellant's Claim

3. The appellant is an Afghan Muslim whose father is dead. He lived with his mother, four brothers and sisters. Having left school at the age of 15 a friend recommended him for the position of a security guard with the American Construction Logistics and Service company. He joined the company as a guard on 1st March, 1996. The ACLS held contracts with American forces in many Afghan provinces and employed some twenty Afghans as far as the appellant was aware. The appellant's job was at the front gate of the head office building in Kabul.
4. In early 2018 the appellant went to a funeral where he met a man called Mulla [E]. This man used to be a local imam but now was known to be the regional commander of the Taliban. This man threatened the appellant and said that the appellant would be killed if he continued working for the Americans.
5. Four men came with this man in June 2018 and started to beat the appellant. He was told that he had been authorised for execution by terrorists. The only way out for the appellant was to help the Taliban. To save his life the appellant agreed.
6. On 6th June 2018 while he was working between the hours of 8 a.m. and 5 p.m. a man whom the appellant was expecting visited him. He was from the Taliban and the appellant was expected to show him around the compound as a form of reconnoitre on behalf of the Taliban. The mullah then visited the appellant on 10th June 2018 at the appellant's house and positioned four men in the house. The appellant had told his friend who had recommended him for the position about the Taliban and he and his friend decided that they would inform their employer about what had happened. In turn they advised the National Directorate of Security. After several weeks the appellant received a call from Mulla and following a second call the appellant contacted the NDS again who arranged for a raid on the Taliban. Unfortunately, Mulla [E] escaped. During the raid one Taliban member was killed, one was wounded and two were arrested. The appellant received a telephone call later in the day and was told that he would be punished for his deceit.
7. In his witness statement the appellant claimed that he believed it was 10th June, 2018 when his employers told him that his presence was a risk to the company and they therefore terminated his contract. As a result, the appellant arranged with his uncle to leave Afghanistan.
8. The appellant, dissatisfied with the judge's decision appealed, and in granting permission First-tier Tribunal Judge Keane found that it was arguably irrational for the judge to find that internal relocation was an option available to the appellant, given that the appellant had come to the adverse attention of a regional Taliban

commander known as Mulla [E] in early 2018. The judge found that it would not be unreasonable to expect the appellant to return to Jalalabad, but did not explain how he could safely make his way to Jalalabad from Kabul.

9. Mr Rafique argued that Afghanistan was still volatile and that it would be very difficult for the appellant to travel from Kabul to Jalalabad in safety. He would be questioned wherever he went and would soon come to the attention of the Taliban. The decision in *AK (Article 15(c)) Afghanistan* [2012] UKUT 163 does not rule out relocation to a safe area. He emphasised that it would be unsafe and dangerous for the appellant to be returned to Afghanistan and urged me to allow the appellant's appeal.
10. For the respondent, Mr Bains suggested that Jalalabad and other areas under the control of the Afghanistan government would be perfectly safe for the appellant. He would need to travel from Kabul to Jalalabad and could, presumably, do so by car. He would be entitled to an assisted return package worth up to approximately £1,500 and could arrange for his safe passage to Jalalabad, perhaps with the assistance of his uncle who lives in Afghanistan, using some of the assisted return package. There should be no difficulties at all as to his reintegration into society in Afghanistan. His mother and maternal uncle still live there and while there was no need for the appellant to go to his home area, there was certainly nothing to prevent members of his family assisting him in travelling to an alternative government controlled area, where he would be at no risk on return from the Taliban leader he fled. I reserved my determination.
11. Immigration Judge Herwald found the appellant's account to be entirely credible. It is clear from the determination that the judge was impressed that he had been told the truth by the appellant and accepted that on return to Afghanistan the appellant would be at risk were he to go back to his home. At paragraph 19 of the determination the judge said this

"The respondent said that it was possible for the appellant to relocate internally given the detailed country guidance cases referred to above and I reach the same conclusion. The respondent refers, for example, to the town of Ghazni, more than 150 kilometres from Kabul, on which city the appellant's fears are centred. Ghazni is clearly outwith Taliban control according to *AK* referred to above. I do not accept that the Taliban has any sort of power and influence the appellant asserts throughout the country. In particular the refusal letter at paragraph 60 refers to background information which confirms this Home Office assertion. Furthermore it would not therefore be unreasonable to expect him to return to the town of Jalalabad where the government controls the city and all surrounding areas and which is again more than 150 kilometres from Kabul. The population of the city is around 240,000. The appellant has shown great fortitude and ability to travel through Europe (having been fingerprinted in Italy) and although his representatives said that he would be destitute on return, I do not find this to be the case. I am satisfied from the appellant's own account that his maternal uncle is presently supporting the family and could therefore assist the appellant on his return. That maternal uncle also raised an enormous amount of

money very quickly to enable the appellant to leave Afghanistan. I find it noteworthy that the appellant did not consider relocating within Afghanistan but instead travelled across the world to the United Kingdom for safety.

In the case of *Januzi and Others* [2016] UKHL 5 it was decided that the test whether or not it will be unreasonable for an asylum seeker to relocate to a safe haven within his own country is not whether the quality of life there fails to meet the basic norms of civil, political and socioeconomic human rights, but whether he would face conditions such as utter destitution or exposure to cruel or inhumane treatment threatening his most basic rights. The case of *AH and Others* [2007] UKHL 49 reminds me that if the appellant will face a standard of living in the safe haven which a significant proportion of his countrymen have to endure then (absent individual characteristics making the appellant physically vulnerable) it will not be unduly harsh for him to relocate there. In this case, I am satisfied that the appellant may reasonably be expected to relocate within his homeland”.

- 12.. Given that the appellant could apply for an assisted returns package which would provide him with some money, to at least enable him to travel to Jalalabad or some other safe area in Afghanistan, and enable him to find accommodation before obtaining employment, I have concluded that the First-tier Tribunal Judge did not err in his determination. I uphold it. The appellant’s appeal is dismissed.

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 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.

Richard Chalkley

Upper Tribunal Judge Chalkley
26th July 2019

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley
26th July 2019