



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04891/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25 June 2019

Decision & Reasons Promulgated
On 15 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

MASTER A S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel

For the Respondent: Mr C Avery, HOPO

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Courtney dismissing his appeal against the refusal of the respondent to grant him asylum in the UK.
2. The appellant is a citizen of Afghanistan, who claimed to have been born on 1 January 2000. He was given a deemed date of birth of 7 September 1998. He made a clandestine entry into the UK on 8 September 2015 and claimed asylum on 9 October 2015. His application was refused on 12 May 2017. He gave notice of appeal against

the decision on 23 May 2017. In a decision promulgated on 4 December 2017 First-tier Tribunal Judge Wright allowed the appeal but this decision was set aside in its entirety by the Upper Tribunal on 25 February 2018. The matter was remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues.

3. Judge Courtney heard the appellant's appeal on 20 March 2019. She heard oral evidence in Dari by the appellant and in English by his witness Ms Jo Weston.
4. At the end of the hearing the judge reserved her decision. The judge's decision and reasons was promulgated on 8 April 2019.
5. At this stage it is pertinent to quote from paragraph 6 of the judge's decision as follows:
 - “6. *In a letter dated 21 March 2019 the Appellant's representatives sought permission to serve “post hearing submissions on the developments of the appeal of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) once a determination has been published”. They stated that they had been informed by junior counsel that the decision in AS would be set aside. He had advised them that “The Court has not yet heard full submissions on relief, or given judgment, on whether and if so which parts of the CG can stand.” The Appellant's representatives informed me that at this stage they were not in a position to estimate when publication of the judgment would take place. That in itself would militate against postponing the promulgation of a decision in this matter, since it would require a delay of indeterminate length. In any event, as will be seen from my findings as set out at paragraph 46 below there is no need for Mr Safi to relocate to Kabul, so the findings in AS do not come into play. The country guidance in AK (Article 15(c) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive was unaffected by the decision in AS.”*
6. The appellant's claim is that he was born in Sherkheil village, Tagab District, Kapisa Province in Afghanistan and is of Tajik ethnic origin. He claimed to be at real risk of being persecuted on return on the basis of his imputed political opinion.
7. He claimed that his father ABS was a high-ranking police commander or alternatively a commander in the pro-government Arbaki, a tribal security system, who was involved in fighting against the Taliban. He used to be away from home for months at a time. In May 2015 the appellant's father's bodyguards informed his mother that her husband had been abducted from his post by the Taliban. Ten days after this they told her that he had been killed. A few days later the Taliban came to the house looking for the appellant, but he evaded them by hiding in the bathroom. They returned a second time four or five days later and searched the house, but the appellant was at the mosque. His mother told him that the Taliban had threatened his life.

8. Two days later the appellant's mother told him to go to the house of his maternal uncle RGS which was situated in the bazaar of Tamir, about 30 minutes away by car. A few days later the appellant was handed over to an agent. He left Afghanistan in June 2015 and travelled through Turkey, Hungary and France before arriving in the UK on 8 September 2015.
9. The judge noted that the appellant sought judicial review of Kent County Council's assessment made on 21 January 2016 that his date of birth was 7 September 1998. However in June 2017 the Upper Tribunal found that on the balance of probabilities, this was the appellant's actual date of birth. The judge said she had read the UT's decision and saw no reason to depart from its conclusions. She found that as at the date of the hearing the appellant was 20 years and 6 months' old. Even on his own estimation the appellant was now 19 and no longer a minor. The judge said that in making an assessment of the appellant's evidence as to the events that preceded his departure from Afghanistan, she had made due allowance for the fact that he was only 17 years of age when he left the country.
10. The judge noted that in his witness statement of 20 October 2017, the appellant said he had problems concentrating and understanding exactly what was being asked of him. He said he was asked too many questions and became very confused. He had never been to school and had never been asked so many questions like this. In general he did not feel mentally well. The judge noted that there was no psychiatric report submitted to corroborate these claims.
11. The judge also noted that the appellant denied having been fingerprinted in Hungary which his representative ascribed to the fact that he "*clearly struggled to recall significant events that occurred before he arrived in the UK*". The judge held that this could equally well have been a deliberate attempt at concealment. Having lived in the "jungle" outside Calais for a month, the judge thought it likely that he would have been aware that a prior encounter with the authorities of a safe country could damage his prospects of being granted asylum in the UK.
12. The judge proceeded to consider the credibility issues in the appellant's claim. She held that at the time of the screening interview on 26 January 2016 the appellant was 17 years of age. He made no mention of his father's death or of being threatened by the Taliban during that interview. Asked what was his reason for coming to the UK he replied "there is war and fighting in my area" [SCR IV paragraph 4.1]. Taxed with this omission in cross-examination the appellant said "they asked me to explain briefly". It was put to him that he had been asked if he was afraid that something bad would happen if he returned home and had said only that "my life is at risk due to the war". [SCR IV paragraph 4.2]. Ms Hall, the HOPO, asked why he had made no mention of the Taliban. The appellant said "I was asked what would happen to me if I go back and I said I'd be killed. They didn't ask me about my father or anything else". The HOPO objected "quite rightly, in the judge's opinion that it was he who possessed the information, not the interviewing officer, to which he responded "they said I'd have the opportunity to explain my case in detail, I was

only telling them briefly". In the judge's judgment, the assertion that his father had been killed by the Taliban was a fundamental aspect of the appellant's claim and would have been mentioned at the outset. The fact that it was not was indicative of an account that had been augmented to bolster his prospects of success.

13. The judge considered the skeleton argument by Ms O'Reilley the appellant's representative that the inconsistencies alleged by the respondent were not inconsistencies. Ms O'Reilley contended that it was unreasonable to expect the appellant to be able to give precise numbers and dates at the time of his asylum interview (conducted nineteen months after his arrival in the UK) which matched exactly what he had said in his witness statement. Ms O'Reilley cited the *IDI Processing an asylum application from a child* which highlighted the need to take account of a child's age and maturity, mental or emotional trauma experienced by the child; education level; fear of mistrust of authorities; feelings of shame; and painful memories. The judge said she noted that at the time of his asylum interview on 27th April 2017, the appellant was 18½ years old and no longer technically a child.
14. The judge noted that when asked during his substantive interview if his father was in charge of people, the appellant replied in the affirmative and estimated the numbers at between 10 and 20 men. However in his witness statement of 17 February 2016 he stated that his father had 30 to 40 people working under him. In his witness statement of 20 October 2017 the appellant said he never asked his father so he was guessing. The judge found that there was a significant discrepancy in the figures and in her view this was indicative of an invented account.
15. The judge also noted that there was a discrepancy as to the number of times the bodyguard had come to the house to share the news of his father's demise. The judge held that the appellant had not proffered an explanation for his inconsistency over whether his father's bodyguards would accompany him home and then leave or stay to protect him. He had not explained why he referred to one single bodyguard in his witness statement but at interview said that he did not see the bodyguards and so did not know if it was just one man who came to the house.
16. The judge said she did not expect the appellant's evidence to be completely consistent and recognised that each retelling of an event can vary given the passage of time, the use of interpreters and imperfect recall. She also appreciated the pitfalls of over-reliance on small discrepancies which may arise from nuances. Having said that, she did not consider that the discrepancies identified in the refusal letter were minor ones.
17. The judge held that despite the fact that the appellant claimed his father was a senior police commander, or alternatively a commander in the pro-government Arbaki, his family appears to have made no attempt to seek protection when he was allegedly threatened by the Taliban. The judge said this would have been the logical first port of call, rather than immediately despatching a teenager on a hazardous journey to a

foreign country. The judge held that the appellant's failure to seek help from the Afghan authorities undermined the credibility of his claim.

18. The judge found it implausible that the Taliban would overlook the bathroom when conducting a search of the premises on the first occasion they came looking for him. The judge found merit in Ms Hall's submission that it was impossible that the appellant's family would allow him to continue his normal routine by continuing to attend the mosque if the Taliban were in search of him.
19. The judge found that the appellant's account of what happened to him in Afghanistan was lacking in credibility. She did not consider that it has been shown to the requisite low standard of proof that the appellant has been targeted by the Taliban and will be at risk of harassment or violence on return.
20. The judge found that the appellant was not at risk of forcible recruitment by the Taliban. She relied on the country guidance of **HK and Others (minors - indiscriminate violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)**.
21. In the light of her conclusions at paragraphs 41 and 42, the judge found that there were no substantial grounds for believing that the appellant was in need of protection for a Convention reason against ill-treatment at the hands of non-state actors in Afghanistan. Furthermore, the appellant was not a person whose return to his country of origin would violate his protected human rights under Article 3 of the ECHR.
22. In the light of her rejection of his asylum claim, the judge held that the appellant's claim for humanitarian protection depends on him establishing that there is a reasonable degree of likelihood a serious threat to his civilian life by reason of indiscriminate violence and that there is no alternative to international protection by way of relocation to a part of the country of origin where there is no real risk of suffering serious harm and where the applicant can reasonably be expected to stay.
23. The judge relied on **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 IAC** in which the Tribunal found that despite a rise in the number of civilian deaths and casualties, and an expansion of the geographical scope of the armed conflict in Afghanistan, the level of indiscriminate violence taken as a whole had not reached such a high level as to mean that a civilian, solely by being present in the country faced a real risk which threatened his life or person. The judge stated that the relevant Practice Direction states that determinations bearing the letters CG shall be treated as an authoritative finding on the issue identified in the determination. She said **AK Afghanistan** is a decision which ought to be followed unless there is later background material which undermines it. The judge considered the following background material:

"50. Ms O'Reilly highlighted the UNHCR Eligibility Guidelines (30 August 2018) which stated that "The security situation in Afghanistan remains

volatile, with civilians continuing to bear the brunt of the conflict..... The conflict continues to affect all parts of the country. Since the Government's decision to defend population centres and strategic rural areas, fighting between AGEs and the Afghan government has intensified. AGEs are reported to have engaged in an increasing number of attacks deliberately targeting civilians, particularly suicide improvised explosive devices (IED) and complex attacks. AGEs improvised explosive devices (IED) and complex attacks. AGEs continue to carry out large-scale attacks in Kabul and other cities, and to consolidate their control across rural areas. Concerns have been expressed about the ANDSF's capability and effectiveness in ensuring security and stability across Afghanistan" [AB page 127]. Ms O'Reilly also drew my attention to a UNAMA press release dated 24 February 2019 which stated that "More civilians were killed in the Afghan conflict last year than at any time since records have been kept", documenting 3,804 civilian deaths in 2018 [AB page 67]. In their report UNAMA "acknowledges the efforts taken by the Afghan national security forces, international military forces, and Taliban to protect civilians from harm caused. However, given the scale and scope of civilian casualties that has continued at very high levels for years, it emphasizes that more needs to be done."

51. *The Appellant's representatives say that their client comes from a particularly volatile part of Afghanistan. The EASO COI Report Afghanistan Security Situation (May 2018) states that "the Taliban have a 'high' 'active and physical presence' (districts attacked at least twice a week' in Tagab [AB page 213]. In 2017 UNAMA documented 101 civilian victims in Kapisa (34 deaths and 67 injured), a 19% decrease compared to 2016.*
52. *The CPIN Afghanistan: Security and humanitarian situation (April 2018) acknowledges that "Since the promulgation of AK in May 2012 the overall number of civilian deaths and injuries in Afghanistan documented by UNAMA has increased. The number of civilian casualties in 2016 (11,418 – 3,498 deaths and 7,920 injured) has increased by 32% compared to 2011 (7,842) – the highest since recording began in 2009; and a 3% increase in total civilian casualties compared to 2015 [§2.3.14]. The worst affected areas were the southern and eastern provinces of Helmand, Nangarhar, Kandaha, Kunar and Ghazni, which experiences 50% of all security related incidents. The Taliban increased their activities in northern and north-eastern Afghanistan and Farah in the west, as well as putting pressure on the Government's control of the provincial capitals of Farah (Farah province), Kunduz (Kunduz province), Lashkar Gah (Helmand province) and Tirin Kot (Uruzgan province) [§2.3.15]. Reflecting the worsening security situation, the first six months of 2017 saw the highest numbers of civilian casualties recorded in Kabul province due to suicide and complex attacks in Kabul city. However, nearly 60% of civilian casualties in Kabul city were caused by a single suicide attack in May 2017, and the number of high profile attacks in the city in 2016 decreased from 2015 [§2.3.16]. the proportion of civilian casualties in Afghanistan remains low with around*

0.03% of the population injured or killed each year (taking the 2016 UNAMA numbers against a population estimate of around 30 million). The proportion of civilian casualties recorded in Kabul city in the first six months of 2017 equates to 0.02% of the city's population [§2.3.17]."

24. In the light of the objective evidence, the judge accepted that there has been a deterioration in the overall country conditions, but the materials submitted were not such as to show that **AK Afghanistan** has been fundamentally overtaken. The judge said it was held in **AK** that those returning to Afghanistan would only be at risk in terms of Article 15(c) if their circumstances revealed an enhanced risk. The judge considered Ms O'Reilly's contention that her client was vulnerable for the reasons set out at paragraph 53. She also contended that the appellant does not have a family support network in Afghanistan and will be exposed to the kind of risks detailed in the country guidance case of **AA (unattended children) Afghanistan CG [2012] UKUT 00016**.
25. The judge considered the appellant's family circumstances at paragraphs 54 to 60. She held that the appellant has failed to tell the truth about his family circumstances. She saw no reason to believe that his parents and siblings are not still living in Sherkheil village, nor that a family member (either his father or his uncle RGS) cannot travel to Kabul to meet him and accompany him to his own home area.
26. The judge did not accept that the appellant has ongoing mental health issues as contended by his representatives. She reached this conclusion following consideration of the medical evidence that was before her.
27. The judge concluded that the appellant is of an age and physical maturity which militates against him being vulnerable to sexual exploitation. She held that it has not been shown that he has any mental impairment that would take him out of the general guidance given in **AK Afghanistan**. He will have the support of his family in Sherkheil village. She considered that he can return to his province of origin, where he will have a social network to help him adapt to life back in Afghanistan. In her judgment the appellant is not entitled to a grant of humanitarian protection under the Qualification Directive.
28. The judge considered the appellant's Article 8 claim and found that it has not been shown that the consequences of removal for the appellant's help would be of such gravity as potentially to engage the operation of Article 8. In her judgment there was nothing to justify a finding of compelling circumstances not recognised under the Rules. She dismissed the appellant's appeal under Article 8. Again these findings have not been challenged and shall stand.
29. Permission was granted by FfTJ Robertson to the appellant to challenge the judge's decision on the first ground that the judge placed inappropriate weight on the brief answers the appellant provided in his screening interview when assessing his credibility. It was argued in the grounds that a screening interview is not used to explore the substance of the claim, as submitted in the evidence of the SSHD in the

case of AN & FA (Children) R, (On the Application of) v Secretary of State for the Home Department [2012] EWCA 1636.

30. FtTJ Robertson said that there was less arguable merit in ground 2 in the absence of establishing that the first ground has resulted in a finding of a material error of law. Ground 2 argued that the judge failed to make findings on post-hearing submissions regarding the recent grant of permission to appeal the CG case, AS (Safety of Kabul) by the Court of Appeal in part because of the crucial factual error regarding the level of violence in Kabul.
31. Mr Bandegani majored on the second ground and gave very little attention to the first ground. In relation to the first ground he said the judge should not have taken into account the appellant's answers in the screening interview. This error by the judge materially affected her global findings.
32. On the first ground of appeal, I accept Mr Avery's submission that the judge made the right assessment. The judge found that the appellant had lied. She did not accept anything the appellant said. I find that the judge placed appropriate weight on the screening interview for the reasons given by her. The judge's credibility findings are set out at paragraphs 32 to 41. At paragraph 32 that the judge considered the appellant's screening interview which was conducted at the time when he was 17 years old. I find that the judge was right to place weight on the fact that only the appellant possessed the information about his father and since it was the basis for his claim to asylum, the omission fundamentally affected his credibility. The judge further devoted paragraphs 33 to 40 to what she considered to be serious discrepancies in the appellant's witness statement and his substantive interview. I find that these findings were properly made and sound. I found no error of law in the judge's credibility findings.
33. I now turn to the issue of Article 15(c) which formed the major argument by Mr Bandegani. I have already cited paragraph 6 of the judge's decision where she was asked to consider in a letter by the appellant's representatives dated 21 March 2019 developments in the appeal of AS. I have seen a copy of the letter from the appellant's solicitors. The letter did not identify the reasons why the Court of Appeal set AS aside. Mr Bandegani said he was in the court room on 12 March 2019 at the time when the Court of Appeal announced in open court that the Upper Tribunal had erred in their decision in AS by assessing the violence in Kabul as being 1 in 10,000 instead of 1 in 1,000. He said AS was now back with the Upper Tribunal for the Upper Tribunal to decide the scope of the hearing taking into account what the Court of Appeal said in it. Mr Bandegani did not have a copy of the Court of Appeal's judgment.
34. Mr. Bandegani said that in AS the Tribunal was dealing with whether it was reasonable or safe to relocate to Kabul by reference to Article 15(c). He said by reference to AK the judge did not provide good reasons for disposing of the case in the way that she did. By giving consideration to AK, the judge was looking at the

evidence which the Upper Tribunal looked at in 2012. The judge was only looking to see whether AK remained good law. He said the judge did not apply the most up-to-date country guidance and did not assess whether there was a degree of violence in his home area. He said AK only looks at Kabul and not the Parwan Province where the appellant comes from. He said in the appellant's bundle there was evidence that spoke to the issue of indiscriminate violence in the Parwan Province. In any event the judge was put on notice that safety in Kabul was not available. He submitted that there was no specific finding by the judge that the appellant would be returned to Kabul.

35. Mr Avery submitted that Mr Bandegani did not have a copy of the Court of Appeal's judgment setting AS aside. In their letter to the judge, the Court of Appeal had not promulgated its decision in AS. The judge did not have a reason as to why AS was being set aside and sent back to the Tribunal. Consequently the judge was entitled to proceed by applying AK which was a relevant country guidance case, that was the position before AS. Mr Avery submitted that just because AS has been overturned by the Court of Appeal does not mean that the appellant will suffer an Article 15(c) risk in Kabul especially when he will be in Kabul for a very brief period as his family can pick him up from there and take him back to his home province. He submitted that AK was valid at the time and the judge made the right assessment.
36. Mr Bandegani in reply referred me to the UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan dated 30 August 2018, which he said was before the judge. In its report the UNHCR considered that given the current security, human rights and humanitarian situation in Kabul, an internal flight alternative is generally not available in the city. Mr Bandegani submitted that the old UNHCR eligibility document did not caution return to Kabul. However in the light of AS where the Court of Appeal has set aside the CG case because of the statistical evidence of violence in Kabul, return to Kabul is not a safe option for the appellant.
37. I accept the submissions made by Mr. Avery and find that the judge did not err in law in proceeding with determining the appellant's appeal by relying on the CG case of AK for the reasons given by her. The judge's reasons for relying on AK are set out at paragraph 48. The judge relied on the relevant Practice Direction which states that determinations bearing the letters CG shall be treated as an authoritative finding on the issue identified in the determination. As AS has been set aside by the Court of Appeal, I find that the judge did not err in law in following AK unless, as she said, there was later background material which undermined it. The judge proceeded to consider the background material that was drawn to her attention by the appellant's counsel. I find that what Mr Bandegani heard in court which was not transmitted to the judge was not sufficient to undermine the judge's reliance on AK.
38. Mr. Bandegani sought to argue that the judge did not assess whether there was a degree of violence in the appellant's home area. I find that in the light of the objective evidence, the judge accepted that there has been a deterioration in the

overall country conditions but found that the material submitted was not such as to show that **AK** has been fundamentally overtaken.

39. The case of **AS** was about the safety or reasonableness of relocation to Kabul. The judge held that there was no need for the appellant to relocate to Kabul; that he would be safe in his home area. Therefore, I accept Mr Avery's submission that the appellant would be in Kabul for only a temporary period prior to his family picking him up from Kabul and returning home with him to Parwan Province.
40. I find that the judge's decision was exemplary in all respects. The judge's decision discloses no error of law.
41. The judge's decision dismissing the appellant's appeal shall stand.

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.

Signed

Date: 10 July 2019

Deputy Upper Tribunal Judge Eshun