



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

Appeal Number: PA/07812/2018

THE IMMIGRATION ACTS

**Heard at: Field House
On: 8th January 2019**

**Decision & Reasons Promulgated
On: 15th February 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

MS

(anonymity direction made)

Respondent

**For the Appellant: Ms Cunha, Senior Home Office Presenting Officer
For the Respondent: Ms Harper, Counsel instructed by Luqmani Thompson and Partners Solicitors**

DECISION AND REASONS

1. The Respondent is a national of Afghanistan born in 2000. On the 24th August 2018 the First-tier Tribunal (Judge Manyarara) allowed his appeal on humanitarian protection and human rights grounds. The Secretary of State now has permission to appeal against that decision.

2. The Respondent MS arrived in this country in 2014 and claimed asylum. It is not in dispute that he was then a minor. He was subsequently refused asylum but granted 'discretionary leave' in line with the Secretary of State's published policy. MS appealed the decision to refuse protection but his appeal was dismissed by the First-tier Tribunal (Judge O'Garro) in its decision of the 10th November 2015. On the 22nd June 2017 MS made an application for further leave to remain. That was refused on the 25th May 2018. MS appealed on protection and human rights grounds. So it was that when the case came before the First-tier Tribunal (Judge Manyarara) for the second time the questions to be addressed by it were:
 - i) Whether MS was entitled to refugee status;
 - ii) If not whether he was entitled to humanitarian protection;
 - iii) Whether in either case his appeal must be allowed on human rights grounds.
3. It is convenient if I address the decision of the First-tier Tribunal, the grounds, reply and my findings with reference to those three questions.

Issue (i): is MS a refugee?

4. In its 2015 decision the First-tier Tribunal had decided not. Judge O'Garro found that the account advanced, that MS was at risk from the Taliban because his brother Hassanjan had joined the police force, was a fabrication.
5. In 2018 MS produced further evidence to try and satisfy Judge Manyarara that he had now discharged the burden of proof and shown himself to be at risk. This consisted primarily of an expert report by Mr Tim Foxley MBE, but there were also letters, said to have been sent by the Taliban to MS's uncle.
6. Judge Manyarara accepted, having properly directed himself to the appropriate tests, that Mr Foxley was an expert on security issues in Afghanistan [§45]. Having read his report in its entirety, however, the Tribunal was not satisfied that it added anything substantially new to the analysis undertaken by Judge O'Garro in 2015. Judge O'Garro had expressly accepted that the Taliban were active in MS's home area and that they would be prepared to target Afghan police officers or their families. She had however rejected the evidence that MS's brother had been a policeman, or that he was at risk as a result. Judge Manyarara did not consider that new evidence had been produced capable of justifying a departure from that finding, and so dismissed the appeal on asylum grounds. In respect of the letters, the Judge conducted a *Tanveer Ahmed* assessment, and having done so, declined to place any weight upon them.

7. MS has not challenged that finding. The decision that he is not a refugee stands.

Issue (ii): is MS entitled to humanitarian protection?

8. At the date of the decision of the First-tier Tribunal there were two country guidance decisions of potential relevance to this appeal. The first was AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC) in which it was held that the level of indiscriminate violence in the country, even in the worst affected provinces, was not such that Article 15 (c) of the Qualification Directive was generally engaged. The second was AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) in which the Tribunal re-evaluated the security situation in Kabul, and considered the city's reasonableness as a place of potential internal relocation. The Tribunal held that although the level of violence had increased it had not yet reached Article 15(c) levels; nor could it be said that in general, it would be unduly harsh for a healthy adult male to relocate to Kabul, although each case required consideration of the individual's personal circumstances.
9. The First-tier Tribunal directed itself to consider both of those decisions, as well as a number of other authorities relating to Article 15(c) and Afghanistan. It goes on however, to look beyond the general guidance given. In particular the Tribunal directs itself to the acknowledgement in AK that travel between Kabul and smaller towns and villages may be dangerous, with indiscriminate dangers such as pressure mines, Taliban presence and/or other insurgents. In AK the Tribunal held that such dangers would have to be evaluated on a case-by-case basis [§73]. Having regard to the (apparently uncontested) evidence that the Taliban are active in MS's home area the First-tier Tribunal concludes [at §71] that it would not be safe for MS to try and make the journey from Kabul to his home area.
10. The determination goes on:

"I find that the appellant however last lived in Afghanistan as a minor. It is clear that the background information shows that a person's personal circumstances are relevant to consideration of whether they would be able to live in Kabul. I therefore find that whilst the Appellant is a healthy young adult who has previously suffered from PTSD but does not have any active mental health issues, the appellant has last lived in Afghanistan as a child and he has no transferrable skills with which to establish an independent life for himself in Kabul without the risk of destitution. He does not have a support network in Kabul and his mother lives in an area that is known to have Taliban activity. I find that the appellant would face a risk if he were to try to travel to his home area from Kabul".

11. Having found that MS cannot safely return to his home, and that internal flight would be unduly harsh, the appeal is allowed on humanitarian protection grounds.
12. The Secretary of State submits that the Tribunal's conclusions are unsupported by reasoning. The Tribunal found no risk in the home area, and therefore any finding as to the reasonableness of internal flight would be immaterial: "the appellant would be returning to his family and therefore not be without familial support or risk of destitution". The Secretary of State further submits that the Tribunal appears here to have failed to take material evidence into account, namely the evidence of MS's elder brother who has returned to Afghanistan and travelled to see their mother in the village: if he is able to do it, it is not clear why MS is unable to do so.
13. In reply MS points out that the Tribunal conducted a careful review of the applicable country guidance. In AK the Upper Tribunal had advised decision-makers to look carefully at the safety of travel between city and country, and this is what the First-tier Tribunal did, finding at its paragraph 71 that it would not be safe to expect MS to travel between Kabul and his home area in Hisarak where, it is agreed, there remains considerable Taliban activity. The Secretary of State is mistaken (as indeed was First-tier Tribunal Judge Saffer who granted permission) if he believes that MS's brother travels to Hisarak. He does not. His evidence was that it is too dangerous for him to travel to Hisarak so he only goes as far as Jalalabad. His mother then travels from the village to see him there.
14. I am satisfied that the First-tier Tribunal was entitled, applying the guidance in AK, to consider the safety of the roads leading to MS's home village. I am further satisfied that there can be no quarrel with its finding that these roads are unsafe and would give rise to a risk of serious harm for MS: that the Taliban were active in that area had been accepted by Judge O'Garro, and if further support for her findings were needed it was to be found in the detailed report of Mr Foxley. As for the point that the Tribunal had failed to have regard to the details of the evidence from MS's elder brother it would appear that the drafter of the grounds did the same: his evidence was not that he travelled to Hisarak, but rather to Jalalabad. He had expressly stated [for instance in his witness statement dated 12th July 2017] that he has never returned to the village because it is too risky. His mother is not targeted because she is an elderly woman, and she travels to meet him wherever he is.
15. There being no challenge to the First-tier Tribunal's finding on internal flight, I am satisfied that its decision in respect of Article 15(c) is free of material error and I uphold that decision.

Article 8

16. Given my findings on humanitarian protection I can be brief. MS's representatives had presented a detailed and voluminous bundle dealing with the Article 8 private and family life that MS has developed since he arrived in this country aged 14. Although the determination does not refer in terms to that evidence, the Tribunal allowed the appeal on human rights grounds on the basis that there would be 'very significant obstacles' to MS's integration in Afghanistan, that finding being made on the basis of the same factual matrix pertinent to the issue of humanitarian protection. There is no discrete challenge to that conclusion and for that reason I uphold the Tribunal's reasoning on paragraph 276ADE(1)(vi) of the Immigration Rules.
17. I would add that if this decision were to be subject to onward appeal, the matter of Article 8 'outside of the rules' remains unresolved and would need to be considered in any final disposal.

Anonymity

18. MS seeks international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"Unless and until a tribunal or court directs otherwise, the Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

19. The decision of the First-tier Tribunal contains no material error of law and it is upheld.
20. There is an order for anonymity.

Upper Tribunal Judge Bruce
10th February 2019