



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10998/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18<sup>th</sup> July 2019

Decision & Reasons Promulgated  
ON 1<sup>st</sup> August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

EMOD [K]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Bazini of Counsel instructed by AA Immigration Lawyers

For the Respondent: Mr E Tufan, HOPO

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge O'Keeffe made following a hearing on 12<sup>th</sup> October 2018.
2. The appellant is a citizen of Afghanistan born on 1<sup>st</sup> January 2000. He arrived in the UK in August 2015 and claimed asylum on 6<sup>th</sup> October 2015. He was refused and upon appeal Judge Lucas allowed the appeal to the extent that the respondent was required to reconsider the claim to comply with the statutory requirements with

regard to Section 55. Two years later, on 6<sup>th</sup> September 2018, the respondent refused the application again. Judge O’Keeffe dismissed the appeal on all grounds.

3. The matter then came before Deputy Upper Tribunal Judge Zucker who did not disturb Judge O’Keeffe’s conclusions with respect to the asylum claim but found that the judge had erred in law in concluding that the appellant did not enjoy family life with his uncle. Accordingly he had not properly engaged with the proportionality of the appellant’s removal. In particular he had not considered the argument put forward by Mr Bazini that it was relevant that the appellant had suffered a historic wrong as a minor without family connections in Afghanistan, and on that basis he ought to have been granted status.
4. Deputy Upper Tribunal Judge Zucker was not able to conclude the remaking of the decision because Mr Bazini wanted to call the appellant’s uncle to give evidence and reserved the matter to himself in the Upper Tribunal. It was then transferred to me. A copy of Judge Zucker’s determination is appended to this.

### **The Evidence**

5. The appellant, his uncle [AK] and the Learning and Project Co-ordinator for Kent Refugee Action Network, Ms [BC], all gave brief oral evidence which is uncontroversial. The appellant’s girlfriend also produced a witness statement but did not attend. He has been attending Canterbury College and has passed level two in English and maths and motor vehicle maintenance level one. He has been accepted for a one year engineering course at the college following which he wants to study civil engineering at university. He lives with his uncle and his wife and three cousins and he has a girlfriend. He did not know where the future lies, but said it was a serious relationship.
6. Mr Tufan asked him about the conditions to which he would be returning in Kabul. It was accepted by the original judge and not challenged by the respondent that his family left Afghanistan together and that they were separated during the journey and there was no immediate family protection available to him on return.
7. His uncle said that the appellant’s father, his brother, used to have a house in Kabul and in 2017 he went there in order to see what the situation was like. He visited the local government office and was told that they had no idea where his brother was and he discovered that the family home had been taken over by different people who were selling wood there. He was frightened to approach them because he thought that he might be attacked if he said that he had come from Europe and might be wanting to take back the house. Mr [AK] said that he used to go to Kabul more regularly when his father was alive but since he died in 2014 he had only been there on the one occasion. When asked whether the appellant could live in his grandfather’s house he said that it would be difficult to kick someone out. He also said that whilst it was possible for him to support the appellant in the UK he would have difficulty in sending money him in Afghanistan since he earned £25,000 a year and had three children of his own to support.

8. [BC] said that the appellant was a model student with a very good attitude and a good influence on his peers. However he was also quite naïve and she was not sure whether he would survive in South London, never mind Kabul since he was not streetwise.

### **Submissions**

9. Mr Tufan submitted that the appellant had not been in the UK for any length of time. He had made an unfounded asylum claim and his status he had always been precarious. Little weight should be given to the family life which he enjoyed with his uncle in these circumstances. He was a healthy young man with potentially two homes to return to in Kabul and would therefore be in a better situation than many returnees particularly since he had the benefit of a British education and could speak good English. He would also have access to government funds from the voluntary departure scheme.
10. Mr Bazini submitted that there were a number of factors which made the appellant's removal disproportionate. He had arrived as a minor when he was 15 years old and after a few months in foster care had lived with his uncle ever since. He had established a family life not only with his uncle but with his cousins particularly his male cousin with whom he shared a bedroom and their best interests needed to be taken into account.
11. The appellant had not been well served by the administration of the respondent. He referred me to the determination of Judge Lucas promulgated on 15<sup>th</sup> November 2016 which recorded that the respondent had failed to comply with directions and had not produced a bundle at the hearing. He wrote

“The Tribunal is troubled by the state of this case and in particular the failure of the respondent properly to respond to directions by producing an appeal bundle for this hearing. This presents the Tribunal with a practical difficulty in that it has therefore no access to the appellant's screening or asylum interviews or indeed any other documents contained within that bundle. This is of importance because in large part the appellant's claim is refused on the basis of inconsistency and lack of credibility of his answers in interview. It really is not acceptable for the respondent to place the Tribunal in this invidious position.

Of even more concern the Tribunal is not satisfied that the respondent properly has carried out her statutory duties under Section 55 with regard to reception facilities and the issue of tracing. It is mindful of the decision in KA (Afghanistan) and Others [2012] EWCA Civ 1014.

The respondent has stated that the appellant has failed to provide details of his family and their last address but this is not consistent with the evidence of the appellant and the identity document copied at page 9 of the appellant's bundle...

The Tribunal is therefore not content with the state of this case and also with the obligations imposed upon the respondent with regard to Section 55. There is a fundamental lack of precision and the Tribunal is not satisfied that the claim of the appellant has been properly considered.”

12. Accordingly the judge remitted the case back to the respondent because, inter alia, the decision was fundamentally flawed since the respondent had not considered her duties under Section 55. Had she done so the appellant would have been entitled to succeed since he would have been found to have been at real risk of persecution as an unattached child who had lost all contact with his family (AA (unattended children) Afghanistan CG [2012] UKUT 16).
13. Mr Bazini did not seek to argue that this required a grant of status but he did submit that the historic wrong was a relevant factor in the assessment of proportionality. The situation was compounded by the subsequent two year delay in the consideration of the appellant’s case during which time the appellant’s family and private life developed further. The appellant integrated into British society and has a girlfriend here and attends the mosque rarely. It was unrealistic to suggest that he would be able to take over his home in Kabul as a 19 year old from the United Kingdom. Moreover the latest UNHCR advice unequivocally concluded that an internal flight alternative was not generally available in Kabul.

### **Findings and Conclusions**

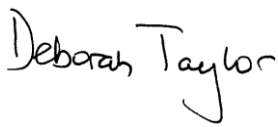
14. Mr Tufan did not seek to argue that there was not family life in this case. That follows from Judge Zucker’s determination which records that the Presenting Officer before him accepted that it was plainly wrong that it had not been demonstrated that the appellant enjoyed family life in the UK. The judge found that the uncle had been providing everything for the appellant here and indeed acknowledged that family life between adult relatives does not cease immediately at adulthood. Judge Zucker recorded that there was no bright line between childhood and adulthood and said that there was no evidence that the appellant was living an independent life.
15. Mr Tufan’s case is that little weight ought to be accorded to the appellant’s family life since it was established at a time when his status had always been precarious and there were no unjustifiably harsh consequences for this appellant were he to be returned to Kabul as a fit and healthy young man with potentially two houses at his disposal and the benefit of a British education.
16. Against that, it is quite clear that the family life which the appellant presently enjoys with his uncle and his uncle’s children will come to an complete end upon his removal. His uncle said that he regards the appellant as his own child and he is like a brother to his children. He gives him everything that he needs. His evidence was not challenged by Mr Tufan and there is no basis upon which it could reasonably concluded that the appellant is not regarded as an integral part of the family. I conclude that it is clear that his uncle aunt and cousins would be significantly affected by the appellant’s departure.

17. I was impressed by the fact that Ms [C] took the trouble to come to the Tribunal to support him. He is clearly an ambitious young man and it is hard to see how he could pursue his wish to become a civil engineer if he were to be returned. Her comment that he would struggle to survive in South London was striking.
18. The appellant's integration in the family and his ability to pursue his studies have been facilitated by the respondent's mishandling of his case, first by reaching an unlawful decision which, had it been made correctly, would have entitled the appellant to refugee status and second, by a delay of two years which allowed the appellant to deepen his ties in the UK.
19. I do not accept Mr Tufan's submission that the appellant potentially has two houses to return to. The basis of the uncle's evidence was that they have been occupied by others and the uncle himself felt nervous about approaching the new occupants. It is pure speculation to believe that the appellant, who has been described by Ms [C] as naïve and lacking street knowledge, could approach the occupants of those houses and proceed to evict them and live in one of them himself.
20. The appellant would be returning as someone who has no connections to Kabul having no family there and having left at the age of 15. He has a Greek girlfriend and does not attend mosque regularly. He has adopted a western lifestyle.
21. The latest UNHCR report dated 30<sup>th</sup> August 2018 reports on negative trends in relation to the security situation for civilians in Kabul. UNAMA reported 993 civilian casualties in Kabul province during the first six months of 2018 and stated that they were mainly from indiscriminate attacks in Kabul city. UNHCR noted that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalised violence that affects the city.
22. The report states that in assessing whether Kabul provides a reasonable internal flight alternative it must be established that an applicant would have access to shelter, essential services and livelihood opportunities. There has been a significant population increase in the city. Kabul city region has 5,000,000 residents, 60% of which are in the city in the wake of large scale returns to Afghanistan from Iran and Pakistan. In January 2017 it was reported that 55% of households in Kabul were severely food insecure. It is on that basis that UNHCR considers that given the current security, human rights and humanitarian situation in Kabul an IFA/IRA is generally not available in the city. This is clearly relevant to the proportionality of a return, the question being not only what the appellant will leave here but what he would be going to.
23. The evidence is that the appellant is regarded as an older brother to his uncle's children, is fully integrated into the UK, and has pursued his studies here with diligence and success. His formative years have been here. He speaks English and is not dependent financially on the State. The fact that he has been able to establish himself in this position is at least in part due to the respondent's mishandling of his case at an earlier stage; if the Secretary of State had handled this matter in the way it

could reasonably have been expected of him, the appellant would have been granted refugee status as an unattached child.

24. Whilst his private and family life have developed when his situation here has been precarious and therefore should be given little weight that does not mean no weight. In the light of the above, and in the context of the situation to which he would be returning in Kabul without any family support I conclude that removal in this case would be disproportionate.
25. The appellant's appeal is allowed on human rights grounds.

No anonymity direction is made.

A handwritten signature in black ink that reads "Deborah Taylor". The signature is written in a cursive style with a large initial 'D' and a long tail on the 'y'.

Signed

Date 24 July 2019

Deputy Upper Tribunal Judge Taylor