



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00572/2020 (V)

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 October 2020

Decision & Reasons Promulgated  
On 9 November 2020

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

BK  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Fazli, Counsel instructed by Sohaib Fatimi Solicitors

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

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and neither party expressed any concern with the process.

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan born in January 1993 who has been in the UK since 2015.

2. He claims that the Taliban targeted him whilst he was working at a college teaching students to use the internet and that because he did not agree to help them his family have been threatened and a friend killed; and a letter posted in the local mosque (in his home area of Maimana) calling him an infidel and telling people to report his whereabouts to the Taliban so that he could be killed.
3. The appellant applied for asylum on arrival in the UK in 2015. His application was refused. His ensuing appeal was heard by First-tier Tribunal Judge Hawden-Beal. In a decision promulgated on 7 October 2016 (hereafter “the previous decision”) his appeal was dismissed. Judge Hawden-Beal accepted that the appellant had been targeted by the Taliban and that he faced a risk in his home area but found that he could safely relocate to Kabul.
4. The appellant made further submissions which were rejected by the respondent. The appellant appealed and his appeal came before Judge of the First-tier Tribunal Hamilton (hereafter “the judge”) who, in a decision promulgated on 28 April 2020, dismissed the appeal. It is this decision that is now being appealed.

#### Decision of Judge of the First-tier Tribunal Hamilton

5. The appellant adduced documentary evidence and an expert report that post-date the previous decision.
6. The documents included: (a) a letter dated 5 April 2018 from the elders in his home area describing efforts to intervene on his behalf; (b) a letter dated 18 April 2018 from the imam of the mosque in his local area stating that unknown persons had placed a warning letter addressed to the appellant in the mosque; (c) a letter dated 24 April 2018 from a person who lives in the local area describing having seen the letter posted in the mosque; (d) a letter dated 18 April 2018 from a member of the city council confirming the appellant’s risk from the Taliban; and (e) a letter dated 11 April 2018 from the appellant’s father. I will refer to these documents as “the new documents”.
7. The expert report is by a recognised expert on Afghanistan, Dr Giustozzi. The aspects of the report relevant to this appeal are discussed below.
8. The judge directed himself to take the previous decision as a starting point. He noted that in the previous decision it had been accepted that the appellant faced a risk in his home area but not that he would be unable to safely relocate to Kabul.
9. The judge did not attach weight to any of the new documents and found the appellant to not be credible. He also found that, in any event, it was reasonable and not unduly harsh to expect the appellant to relocate to Kabul.

#### Grounds of Appeal

10. There are three grounds of appeal.

11. Firstly, it is argued that the judge erred in his approach to the previous decision by stating that it was implicit in that decision that certain findings of fact (concerning events in the appellant's home area) had been made. The grounds submit that it was not reasonable for the judge to assume findings had been made in the previous decision when there had not been an explicit finding.
12. Secondly, the grounds submit that the judge failed to adequately consider the new documents.
13. Thirdly, the grounds argue that the judge failed to give (or give adequate) reasons for not accepting the opinion of Dr Giustozzi.

### Analysis

14. My starting point in considering this appeal is that the applicable Country Guidance case makes clear that a person with the appellant's profile will not face a risk of persecution from the Taliban in Kabul. The first paragraph of the headnote to *AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130(IAC)* (which replicates the wording of *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)*) states:
 

"A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul."
15. *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)* (hereafter "the 2018 AS decision") contains the analysis relevant to this appeal because it is in this decision, and not the remade decision in 2020, that the risk from the Taliban in Kabul is considered. Although the 2018 AS decision was appealed, the appeal did not challenge this part of the decision.
16. The appellant was of interest to the Taliban because of his role in a college. This is far removed from being a senior government or security service official or spy, and it is fanciful to argue that he would be anything other than of lower-level interest for the Taliban.
17. The appellant's case depended on showing, therefore, that circumstances have changed since the 2018 AS decision (or the 2018 AS decision was wrong) in respect of whether a person of lower-level interest would be at risk of persecution from the Taliban in Kabul.
18. To depart from a country guidance case there must be strong grounds supported by cogent evidence: *SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940*. The "cogent evidence" relied upon by the appellant was a report from Dr Giustozzi.
19. Dr Giustozzi gave evidence in the 2018 AS decision on the risk from the Taliban in Kabul. His evidence in that case was that the Taliban keeps a blacklist of all those who are wanted by them. The 2018 AS decision rejected his evidence on this point, concluding (after a detailed consideration of the issue) that there was not sufficient

evidence to accept that a blacklist exists and that, even if it does, there was not a real risk of a person on such a list who is of lower level of interest to the Taliban being identified and targeted in Kabul.

20. Dr Giustozzi's report in this appeal acknowledged that his evidence about a blacklist had not been accepted in the 2018 *AS* decision. He sought to address this in paragraphs 23 - 27 of the report, where he described an interview with an officer in the National Directorate of Security in Kabul in June 2018 carried out by a researcher on his behalf, where the officer confirmed that the Taliban have a strong network of agents and a database storing information about those opposed to them. The officer told Dr Giustozzi's researcher that most people assassinated by the Taliban are of lower level interest to the Taliban.
21. This interview was the only evidence before the judge that could potentially justify a departure from *AS*. In the absence of other evidence post-dating the 2018 *AS* decision that corroborates the account given by the officer interviewed by Dr Giustozzi's researcher, it was open to the judge to conclude that there was not sufficient evidence before him to depart from *AS*. The appellant therefore cannot succeed on the third ground of appeal.
22. The new documents, if accepted, support the appellant's claim that he faces a grave risk in his home area. However, they do not show that he would face a risk in Kabul. Therefore, even if the judge erred, as claimed in the second ground of appeal, by not attaching weight to the new documents, that is not material because, even taking the appellant's evidence about the circumstances in his home area at its highest, this would not translate into a risk in Kabul, where, as *AS* makes clear, the appellant would not be at risk of being identified or located by the Taliban.
23. The first ground of appeal is immaterial for the same reason: it concerns findings of fact relevant to the risk faced by the appellant in his home area, not the risk of the Taliban being able to identify and locate him in Kabul.
24. In summary, the grounds of appeal do not establish a material error of law because (a) it was plainly consistent with *AS* to find that the appellant would not be at risk from the Taliban in Kabul (and the judge was entitled to not treat the evidence of Dr Giustozzi as sufficient to depart from *AS*); and (b) any error in the approach to the new documents and/or the previous decision was immaterial because it would not affect whether the appellant would be safe from the Taliban in Kabul (as opposed to his home area).

### **Notice of Decision**

The grounds of appeal do not identify a material error of law.

The decision stands and the 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 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.

Signed

*D Sheridan*

Upper Tribunal Judge Sheridan

Date 29 October 2020