



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/09173/2019

THE IMMIGRATION ACTS

**Heard at Birmingham
On 17th November 2020**

**Decision & Reasons
Promulgated
On 23rd November 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

RU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam, Fountain Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Although no anonymity direction was made by the First-tier Tribunal (“FtT”), as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, RU is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

1. The hearing before me on 17th November 2020 took the form of a remote hearing using skype for business. Neither party objected. Although the appellant did not join the hearing, Mr Islam confirmed the appellant is aware of the hearing and is content for the hearing to proceed in his absence. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Background

2. The appellant is a national of Afghanistan. He arrived in the United Kingdom on 11 July 2017 and claimed asylum on 13 July 2017. The claim was refused by the respondent on 6 September 2019 and the appellant's appeal against that decision was dismissed for reasons set out in a decision of First-tier Tribunal Judge E Smith, promulgated on 2 December 2019.
3. The background to the claim for international protection is set out at paragraphs [6] to [9] of the decision of Judge Smith. The appellant attended the hearing of his appeal and gave evidence with the assistance of an interpreter. The findings and conclusions of Judge Smith are set out

at paragraphs [20] to [40] of the decision. At paragraph [26] of the decision, Judge Smith summarised the findings upon the core of the appellant's account in the following way:

"Taking both limbs together and factoring in the discrepancies in his account of the bombing and of those he states accused him I am satisfied the appellant has not established that he is wanted by the Taliban because his family were regarded as informants or that his entire family were killed or his house destroyed. It follows that there is no reason why the appellant could not return to his home area [Tagab District in the Kapisa Province]. In the alternative he could relocate to Kabul"

4. The appellant advanced three grounds of appeal. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 28th February 2020 on the third ground only. In so doing he said:

"It is arguable that the judge erred in his approach to the article 15(c) risk in the appellant's home area and/or Kabul, given the most recent UNHCR report. Permission is accordingly granted on this ground."

5. Mr Islam relied upon the written submissions sent to the Tribunal by Fountain Solicitors on 1st July 2020. He submits that in reaching the conclusion that the appellant can return to his home area, or, in the alternative, relocate to Kabul, Judge Smith failed to consider the humanitarian and security situation in Afghanistan. In particular, Judge Smith failed to have regard to the background material that confirms the high risk of indiscriminate violence to which the appellant would be exposed in the Tagab District, and in Kabul. He refers to the EASO Country of Origin Report of June 2019 that states at paragraph 2.17.2 that the Tagab District is currently contested between the Afghan government and the Taliban. Furthermore, Mr Islam submits the appellant had relied upon the matters set out in the UNHCR 'Eligibility Guidelines for Assessing the International Protection needs of Asylum-Seekers from Afghanistan, August 2018', but the background material was not considered by Judge Smith when he considered the Article 15(c) risk upon return to Afghanistan.

6. The appellant acknowledges that the decision of the Upper Tribunal in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC) has now been promulgated, but Mr Islam submits, Article 15(c) QD encompasses a “sliding scale” whereby, the more the appellant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required. He submits the appellant’s individual characteristics, namely his poor mental health, young age at the time of his departure from Afghanistan, the lack of support upon return to Afghanistan, lack of education and the lack of identification documents are sufficient to establish the threshold to be met for the grant of subsidiary protection.
7. The failure by Judge Smith to refer to the UNHCR ‘Eligibility Guidelines for Assessing the International Protection needs of Asylum-Seekers from Afghanistan, August 2018’, is in my judgment immaterial.
8. In AS (Safety of Kabul) (CG) [2020] UKUT 130, the Upper Tribunal considered a wealth of evidence regarding the Article 15(c) risk, including the 2018 UNHCR Guidelines, the 2019 UNHCR Submissions, the 2019 COI UNHCR Report, and EASO’s Legal Analysis and Recommendations. The Upper Tribunal carefully considered the UNHCR evidence and agreed with the critique of the SSHD’s counsel as set out in paragraphs [188] to [193] of the decision. The Upper Tribunal also addressed EASO’s Legal Analysis and Recommendations at paragraphs [193] to [198] of its decision.
9. At paragraph [210], the Upper Tribunal acknowledged it had reached a conclusion that is different to that expressed by UNHCR in the 2019 UNHCR submissions where (in contrast to the 2018 UNCHR Guidelines and 2019 UNHCR COI Report) it is stated in terms that UNHCR believes Kabul is not an internal flight alternative.
10. Having carefully considered the claim being advanced by the appellant, Judge Smith found that the appellant has not established that he is wanted

by the Taliban because his family were regarded as informants, or that his entire family were killed or his house destroyed. Judge Smith therefore rejected the core of the appellant's claim and it was open to him to conclude that there is no reason why the appellant could not return to his home area.

11. In my judgment, Judge Smith considered the evidence before the Tribunal and carefully considered the profile of the appellant. At paragraph [28] of his decision, Judge Smith noted the importance of the specific nature of the appellant's case. He considered whether the appellant would be at any greater risk than a member of the general public and was satisfied that the appellant would not. He noted the appellant is relatively young, is not connected to the Taliban and has no reason to fear the Taliban. The appellant is, on the unchallenged findings made, a single man now aged 21 with no apparent health issues. He is not at risk from the Taliban or the authorities in Afghanistan and he gave evidence before the FtT with the assistance of an interpreter. He has been able to support himself in the UK and has demonstrated the personality, capacity and intelligence to manage independently. Judge Smith rejected the appellant's claim that his entire family were killed.
12. At paragraph [41] of its decision in *AS (Safety of Kabul) (CG) [2020] UKUT 130* the Upper Tribunal confirmed that whilst the "sliding scale" will clearly be relevant in a case concerning subsidiary protection under Article 2(e) Qualification Directive, in appeals concerning internal relocation, the sliding-scale considerations are subsumed within the assessment of reasonableness.
13. It is clear in my judgement that in reaching his decision, Judge Smith considered the age at which the appellant left Afghanistan, and his personal profile and characteristics. Judge Smith noted, at paragraph [17] of his decision that the events referred to by the appellant occurred when the appellant was a minor, but he was an adult when he arrived in the UK.

I am quite satisfied that in reaching his decision, Judge Smith carefully considered the appellant's individual circumstances and whether he would have support, and be able to navigate the challenges of Kabul should that be necessary.

14. The decision of Judge Smith is to be read looking at the substance of his reasoning and not with a fine-tooth comb in an effort to identify errors. The focus of Judge Smith was on the principal issues in dispute between the parties. In my judgement the conclusions reached by Judge Smith on the facts as he found them, that the appellant can return to his home area, or alternatively, that internal relocation to Kabul is available to the appellant, were conclusions that were open to the Judge on the evidence and findings made.
15. It follows that in my judgement, there was no material error in the decision of Judge Smith capable of affecting the outcome of the appeal and the appeal is dismissed.

DECISION

16. The appeal is dismissed and the decision of First-tier Tribunal Judge Smith promulgated on 2nd December 2019 shall stand.

V. Mandalia

Date 18th November 2020

Upper Tribunal Judge Mandalia