



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

Appeal Number: PA/09356/2017 (A)

**THE IMMIGRATION ACTS**

**Heard at Field House via BT Meet  
Me  
On 3 August 2020**

**Decision & Reasons Promulgated  
  
On 11 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**M Q  
[Anonymity direction made]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Nicolaou, Counsel instructed by Duncan Lewis solicitors

For the Respondent: Ms S Cunha, Senior Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

This appeal is brought on protection grounds. Accordingly, it is appropriate that the Appellant's details be protected. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant 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.

### **DECISION AND DIRECTIONS**

1. By a decision promulgated on 30 July 2019, the Tribunal (the President and Upper Tribunal Judge Norton-Taylor) found an error of law in the First-tier Tribunal's decision promulgated on 28 December 2017. The Tribunal set aside the First-tier Tribunal's decision and gave directions for a resumed hearing before the Upper Tribunal. The appeal was originally linked with appeal reference PA/542/2018 in order to consider an issue raised in the grounds concerning an asserted obligation for the Respondent to make specific enquiries in cases raising an Article 3 ECHR ground based on health problems. This ground was also raised in appeal PA/542/2018 and is one which was thought to merit guidance to be given by a Presidential panel.
2. The hearing of this appeal was however adjourned at the start of the day listed for the hearing before the Tribunal for reasons given in the Tribunal's adjournment decision and directions dated 14 October 2019. The hearing of this appeal was stayed pending the country guidance decision in AS (Afghanistan). A direction was given that a case management review hearing be listed on the first available date after fourteen days from the promulgation of that decision.
3. The country guidance decision has now been reported (AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC)). In addition, the legal issue for which the case was initially listed for guidance to be given has now been resolved by the Tribunal's decision in AXB (Art 3 health; obligations; suicide) Jamaica [2019] UKUT 397 (IAC). The case of Paposhvili v Belgium which was under consideration in that case has also now been considered by the Supreme Court in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17.
4. The appeal came before me again therefore on 3 August for a case management review.
5. Ms Nicolaou submitted that the appeal ought now to be remitted to the First-tier Tribunal for re-making of the decision. As she pointed out, the appeal was retained in the Upper Tribunal for guidance to be given on the Paposhvili issue. That guidance has now been given. Furthermore, the Tribunal has also now given very recent country guidance in relation to Afghanistan and Kabul more specifically. The Appellant does not therefore contend that there are complex legal issues to be determined but rather says that the substance of his entire claim needs to be examined in the context of those decisions.
6. Ms Nicolaou outlined the issues which are to be resolved as follows:

- (1) The credibility of the Appellant's asylum claim. The Appellant relies on the Convention reason of political opinion/ imputed political opinion but may also wish to argue that he is a member of a particular social group following the Tribunal's decision in DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC). That will add yet a further issue to the asylum claim which has not previously been considered or determined.
  - (2) Mental health issues. In addition to the issue whether the Appellant is a member of a particular social group, the mental health issues have to be considered in the context of an Article 3 claim as well as for their relevance to internal relocation. Although the Appellant comes from Kabul province, the Appellant contends that requiring him to relocate to Kabul city engages the internal relocation issue which has to be considered against the most recent country guidance in AS (Afghanistan).
  - (3) Article 8 ECHR. This is being argued in the context of very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules and more widely.
  - (4) Whether there is a risk of serious harm under Article 15 Qualification Directive. Although Ms Nicolaou accepted that this has been dealt with in the most recent country guidance, she also submitted that there might be further background evidence on which reliance may be placed but in any event that the Appellant's particular vulnerability due to his mental health needs to be considered.
7. Ms Nicolaou indicated that the Appellant has recently been assessed by the Helen Bamber Foundation and that an updated report is expected in September 2020. That will also consider the Appellant's ability to give oral evidence. Ms Cunha accepted that if the Appellant were able to give oral evidence that it might change the complexion of the case (as he was not able to give evidence before the First-tier Tribunal previously) and that, if that were the position, it would be appropriate to remit the appeal. Otherwise she expressed concern about the delay which may arise from a remittal. I note that the appeal has been in the system since 2017, principally because the 2017 decision which was set aside by the Presidential panel in July 2019 was challenged up to the High Court and permission was granted only following a "Cart" judicial review. There has been no previous remittal.
8. Ms Cunha suggested that it might be appropriate to await the outcome of the further medical evidence to see if the Appellant is going to give evidence before a decision is taken whether to remit. Ms Nicolaou opposed that suggestion. In any event, I did not consider it appropriate to convene a further case management review after that evidence is filed in circumstances where there are concerns about delay.

9. Ms Nicolaou also indicated that the Appellant's representatives are currently evaluating the evidence following the recent country guidance decision and may need to obtain further updating evidence or reconsider the contents of bundles and documents following that review. Although Ms Cunha did not presently consider it necessary for the Respondent to submit further evidence, she indicated that this could not be ruled out in response to whatever further evidence is presented by the Appellant. As she rightly pointed out, the Respondent will need an opportunity to consider that evidence and it would be appropriate to order skeleton arguments prior to the hearing to ensure that both parties have the opportunity to consider their cases and review their positions.
10. Having considered the submissions, I determined that it is appropriate to remit this appeal. One of the circumstances in which the Practice Direction provides that it is appropriate to remit is where there needs to be extensive fact-finding. Given the multiplicity of issues being raised and the prospect of yet further evidence in a case which is already heavily documented as well as the possibility that the Appellant will wish and be able to give oral evidence for the first time (and where his credibility on more or less all aspects of his claim is disputed in any event), this is a case where there is very extensive fact-finding required. The First-tier Tribunal may wish to hold a further case management hearing following remittal but, I hope, will be assisted by the outline of what further evidence may be expected and the summary of the issues.

## **DECISION**

**The decision of First-tier Tribunal Judge R Cooper promulgated on 28 December 2017 having been set aside by the decision of the Hon Mr Justice Lane, President, sitting with UTJ Norton-Taylor promulgated on 30 July 2019, I remit this appeal to the First-tier Tribunal for re-determination of the appeal before a Judge other than Judge R Cooper.**

Signed L K Smith

Dated: 3 August 2020

Upper Tribunal Judge Smith