



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

Appeal Number: PA/10817/2019(P)

THE IMMIGRATION ACTS

**Decided Under Rule 34
On 19 August 2020**

**Decision & Reasons Promulgated
On 24 August 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**W.R.
(ANONYMITY ORDER MADE)**

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

ANONYMITY ORDER

The appellant be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise, and be referred to as W.R. 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 a contempt of court.

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Afghanistan and, whilst he was there, he was employed by the Afghan police as a driver. He entered the United Kingdom on 6 October 2015 and applied for asylum on that same day. His application was refused on 21 March 2018 and his subsequent

appeal was dismissed on 9 June 2018. He made a fresh claim, which was refused on 21 October 2019 and he appealed against that decision.

2. First-tier Tribunal Judge Rea dismissed his appeal in a decision promulgated on 23 January 2020. The Appellant appealed against this decision and Upper Tribunal Judge Martin, sitting as a First-tier Tribunal Judge, refused him permission on 5 March 2020. However, on 20 May 2020, permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Owens.
3. On 9 June 2020, the Appellant's solicitors lodged an Application for Directions on Further Procedure and the Vice-President made directions in response on 29 June 2020. He stated that it was his view that the error of law hearing could proceed on the papers. It does not appear that the parties have made any further submissions in reply to these directions.
4. The Appellant had not opposed the initial error of law element of the appeal proceeding on the papers and the Respondent has not opposed this course of action.
5. I have read the decision under challenge, the grant of permission and the Appellant's application and find that it is appropriate for the error of law hearing to proceed on the papers. The issue between the parties is a narrow one and it is in the interests of justice for the matter to be heard on the papers so that the matter can be decided without any further delay.
6. When reaching this decision, I have taken into account the overriding Objective of the Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, is for the Upper Tribunal to deal with appeals fairly and justly and without any unnecessary delay.
7. I also agree that there are a number of evidential and legal issues that will need to be explored at an oral hearing and find that the appropriate venue for such a hearing is the First-tier Tribunal.

ERROR OF LAW DECISION

8. The Appellant's sole ground of appeal relied on the fact that First-tier Tribunal Judge Rea had referred to the case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) but

this case had been partially overturned by the Court of Appeal and had been remitted to the Upper Tribunal. I find that the reliance on a country guidance case which had been partially overturned by a higher court did amount to an error of law without further explanation.

9. The Upper Tribunal has now reconsidered its country guidance and published AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC) on 4 May 2020. The decision replicates some of the findings of the 2018 country guidance but does replace it. In addition, the Upper Tribunal made slightly different findings in relation to relocation to Kabul; namely it found that:

“Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera.

However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person’s age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the limited options for employment, capability to undertake manual work may be relevant”.

10. In addition, it is arguable that given First-tier Tribunal Judge Rea’s findings in paragraphs 20 to 23 of his decision, he did not give sufficient evidence to the role which the Taliban may have perceived the Appellant to have played in Afghanistan, albeit that he may have been technically an army driver.
11. Therefore, I find that First-tier Tribunal Judge Rea’s decision contained material errors of law.

DECISION

- (1) The Appellant's appeal is allowed
- (2) First-tier Tribunal Judge Rea's decision is set aside.
- (3) The findings made by First-tier Tribunal Judge Rea at paragraphs 20 to 23 of his decision are preserved as the reasoning contained in these paragraphs is detailed and cogent.
- (3) The appeal is remitted to be heard by a First-tier Tribunal Judge other than First-tier Tribunal Judges Rea and Murray.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 19 August 2020

