



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No.: UI-2024-001867

First-tier Tribunal Nos:
PA/52003/2023
LP/03819/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

QA (AFGHANISTAN)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Said Aziz, Solicitor, ATA & Co Solicitors

For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 17 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Row promulgated on 18 January 2024 (“the Decision”). By the Decision, Judge Row dismissed on all grounds the appellant’s appeal from the decision of the respondent to refuse to recognise him as a refugee, or as being entitled in the alternative to a grant of humanitarian protection, because the respondent did not accept that the appellant had a well-founded fear of persecution or serious harm from the Taliban, or from the family of a woman with whom the appellant said he had been discovered in a compromising situation.

Relevant Background

2. The appellant is a national of Afghanistan, whose date of birth is 8 May 1986. He is recorded as having claimed asylum on 11 June 2020, which was the same day he is recorded as having entered the UK illegally by lorry.
3. As summarised in the subsequent Home Office Reasons for Refusal Letter (“RFRL”) dated 14 July 2022, the appellant’s claim was that he met a woman, “N”, who came into a shop which he owned in Kabul. He gave N his number and they began speaking to each other over the phone and through video calls. On a video call with N, where they were both naked, N was attacked. He was unable to see anything, but he heard screams. He knew that her father was from a government background and that he was also involved in Jihad, and so he was scared. After the incident, he turned his phone off. The next morning, he went to his sister’s home. He stayed at his sister’s home for six days, and then left for Iran. On return to Afghanistan, he feared that he would be killed by N’s father and family, because they had caught her naked in a video call with him.
4. It was not accepted that in the RFRL that the appellant was in a relationship with N. His account was not considered to be reasonable, as it lacked detail and it was internally inconsistent, and his account was also based on speculation.
5. Part of the respondent’s reasoning was that he claimed that N’s family had been to his shop to look for him, and the last time they came to his shop was in 2020. He had not mentioned any threats that were made subsequently, and he also stated that they had never attended his home. External sources showed that Afghanistan was a collectivist_society, and any shame that a single family member might cause was shared with their whole family, indicating that due to his absence it was highly likely that they would threaten his family, if his account of his extra-marital relationship with N was true.
6. As to his claim that N’s father was part of the government and also involved in Jihad, when questioned about this, he had said that he did not know about her father’s activities, and he was also unable to provide detail

of his involvement with Jihad. This showed that his account about N's father's influence in Afghanistan was based on speculation.

7. On the issue of risk on return, even if his claim had been accepted (which it was not), he was still able to return to Afghanistan because his fear was of somebody who worked for a government which was no longer in power. It was noted that the Taliban had taken over Afghanistan since he left. On his own account, he had had no encounters with the Taliban, and his family had had no encounters with the Taliban since the Taliban had taken over. The CPIN on *Afghanistan: Security Situation*, version 2.0, April 2022, showed that as an adult male, he would be able to return to Kabul or areas outside Kabul.
8. The appellant's case on appeal was set out in an appeal skeleton argument ("ASA") settled by his solicitors. The appellant was a Tajik. At the end of 2018, he was forced to flee Afghanistan as his life was in danger. He was in a relationship with an Afghan girl who belonged to a conservative family with a Jihadist background. On 9 May 2021 he married according to Islamic Law, "Z", who was an Afghan national with settled status in the UK. On 15 August 2021 the Taliban took over and established their brutal rule in Afghanistan. They were imposing strict Islamic Law. They were also targeting and discriminating against Tajiks. The appellant was a Tajik with liberal views. The Taliban perceived such individuals as anti-Taliban and would subject them to persecution. Furthermore, the Taliban was severely punishing any sexual relationships outside marriage. The Taliban was also persecuting women, and therefore the appellant's wife could not relocate to Afghanistan with the appellant.
9. In a Respondent's Review dated 11 November 2023, the Presenting Officer's Unit in Cardiff gave reasons for maintaining the refusal decision notwithstanding the case put forward in the ASA and the evidence relied upon as supporting that case.
10. On the issue of credibility, the respondent relied upon the adverse credibility findings in the RFRL and on section 8 of the 2004. The appellant had the following Eurodac hits: Category 2 Eurodac match with Greece, dated 29 January 2019; a category 1 Eurodac match with Greece, dated 5 February 2019; and a category 1 Eurodac match with Sweden, dated 25 February 2019.
11. The appellant was therefore in two safe countries before arriving in the UK on 11 June 2020. The appellant had made two asylum claims - one in Greece, and 2 in Sweden - 16 months before arriving in the UK. This showed that the appellant had travelled to the UK for economic reasons, as opposed to travelling for the purposes of international protection.
12. On the issue of the appellant's claimed fear of the Taliban and of non-state actors in Afghanistan, it was submitted that, given the passage of time, the appellant was unlikely still to be of interest. The respondent noted the articles in the appeal bundle relating to Tajiks, in particular the report of the European Union Agency for Asylum dated 2022 which at

section 6.5.2 discussed the general situation for Tajiks under Taliban. The appellant was from Kabul, and not from a predominantly Tajik province, or an area associated with resistance groups, which had been targeted by the Taliban. The respondent also noted that at page 355 a source was quoted as not seeing any evidence of ethnic targeting during house searches in the Khair Khana neighbourhood in Kabul which was mainly inhabited by Tajiks.

13. The rest of the report detailed Taliban action in other regions of Afghanistan, and there were no further reports of targeting of Tajiks within Kabul. No objective evidence had been produced by the appellant which showed that Tajiks were persecuted by the Taliban in Kabul.

The Hearing Before, and the Decision of, the First-Tier Tribunal

14. The appellant's appeal came before Judge Row sitting in the First-tier Tribunal at Nottingham IAC on 15 January 2024. The appellant was not represented, but the respondent was represented by a Home Office Presenting Officer, Ms Bhatti.
15. In the Decision at paras [15] to [28], Judge Row gave a detailed explanation as to the chain of events which had led to the appeal hearing proceeding in the absence of representation for the appellant. For present purposes, it suffices to say that the appellant was offered an adjournment by the Judge, but after discussing the position with his "sponsor" (sic), he said that he did not wish to be represented; he did not wish the hearing to be adjourned, and he wished the matter to proceed.
16. The Judge records that he took the witnesses through their statements, then heard submissions from Ms Bhatti, and then he went through the submissions with the appellant and obtained his comments on them.
17. As summarised by the Judge at paras [45] to [48] of the Decision, the respondent did not accept the appellant's account of his relationship with N. But even if it were true, there was no evidence that the appellant was at any risk from her family. He was a young man with physical and mental good health. He had run a business in Kabul before. He had had the means to come to the UK in a prolonged journey. There was a family home in Kabul and he had family members there who would be expected to support him. There was no reason why a young man of his characteristics would be at risk of living in conditions in Kabul which would invoke Articles 2 and 3 ECHR.
18. As to a claim under Article 8 ECHR, Ms Bhatti did not accept that he was in a relationship with his sponsor, Z. But even if they were in a relationship, it was open to the sponsor to join the appellant in Afghanistan. It was also open to the appellant to make the appropriate application under Appendix FM.
19. The Judge addressed issues of credibility at paras [50] to [75], and considered each of the requirements of para 339L of the Immigration

Rules. He found that the appellant met some of the requirements, but not all of them.

20. At para [76], the Judge took into account that the burden of proving an asylum claim was a low one. But even taking that into account, he did not believe what the appellant said. His failure to reveal that he had claimed asylum in Sweden; his failure to pursue asylum claims in safe countries; and his failure to answer a straightforward question about the basis of his claim, all damaged his credibility. Whether he accepted his account depended upon his credibility.
21. At para [77], the Judge concluded that the appellant was not involved in any relationship with N, and that he was not at risk from her family or from anyone else in Afghanistan. He found that his account was fabricated.
22. The Judge went on to find that the appellant had not shown that there was a risk of him being targeted by the Taliban in Kabul on account of his Tajik ethnicity; that there were not very significant obstacles to his integration; that the interference with the family and private life which the appellant had established in the UK was necessary in a democratic society, both for the economic well-being of the country and for the protection of rights and freedom of others, and that the interference was proportionate to those legitimate public ends.

The Reasons for the Grant of Permission to Appeal

23. On 22 April 2024, Judge Kudhail of the First-tier Tribunal gave reasons for granting permission to the appellant to appeal on all five grounds advanced in the application for permission.
24. Ground 1 asserted that the Judge erred in law when determining credibility by placing too much weight on section 8 considerations. This ground was arguable, given the Judge's findings on the appellant's core account of events in Afghanistan.
25. Ground 2 referred to the Judge not considering objective evidence of the targeting of Tajiks by the Taliban. It is arguable that at paras [80] and [81] the Judge had not engaged with the evidence or provided reasons for rejecting it.
26. Ground 3 was arguable, as the Judge did not address the risk to the appellant as a person returning from the West, or as a westernised individual.
27. Ground 4 was arguable for the same reasons as Ground 2. Ground 5 was arguable in light of the evidence of treatment of women in Afghanistan, which the Judge did not appear to consider.

The Error of Law Hearing in the Upper Tribunal

28. At the hearing before me to determine whether an error of law was made out, Dr Aziz developed the grounds of appeal. On behalf of the respondent, Ms Isherwood submitted that no material error of law was

made out. The case put forward by the appellant was no more than an expression of disagreement with findings that were reasonably open to the Judge, having regard to the evidence and having regard to the way the case was put in the ASA. After hearing from Dr Aziz briefly in reply, I reserved my decision.

Discussion and Conclusions

29. In the light of the way that the appellant's case has been presented, I consider that it is helpful to set out the guidance given by the Court of Appeal in *T (Fact-finding: second appeal)* [2023] EWCA Civ 475 as to the proper approach which I should adopt to the impugned findings of fact made by Judge Row:

56. The most-frequently cited exposition of the proper approach of an appellate court to a decision of fact by a court of first instance is in the judgment of Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5:

"114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many.

(i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.

(ii) The trial is not a dress rehearsal. It is the first and last night of the show.

(iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.

(iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

(v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to the evidence (the transcripts of the evidence),

(vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal

the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2022] EWCA Civ 1039 [2003] Fam 55; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135.”

57. More recently, Lewison LJ summarised the principles again in *Volpi and another v Volpi* [2022] EWCA Civ 464 at paragraph 2:

- i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
- ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
- iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
- iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
- v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
- vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

Ground 1

30. Ground 1 contains a series of error of law challenges. Firstly, it is submitted that the Judge misdirected himself in applying section 8 of the 2004 Act, in that the Court of Appeal in *JT (Cameroon) -v- SSHD* [2008] EWCA Civ 878 at [20] held that section 8 factors shall be taken into account in assessing credibility, and are capable of damaging it, “*but the section does not dictate that relevant damage to credibility inevitably results.*” Secondly, it is submitted that the Judge’s assumption at para [70] that the appellant’s journey to the UK was economically motivated was not adequately reasoned, bearing in mind that he accepted that the

appellant had his own business in Afghanistan. Thirdly, it is submitted that the Judge's assumption at para [76] that the appellant fabricated his account, as he refused to mention the basis of his claim in the screening interview, is "*rather unreasonable.*"

31. Paragraph 339L provides that it is the duty of the person to substantiate the asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
 - (i) the person has made a genuine effort to substantiate their asylum claim or establish that they are a person eligible for humanitarian protection or has substantiated his human rights claim;
 - (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
 - (iii) the person's statements are found to be coherent and plausible and do not run counter to available, specific and general information relevant to the person's case;
 - (iv) the person has made an asylum claim or sought to establish that they are a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
 - (v) the general credibility of the person has been established.
32. The Judge rightly followed a structured approach in assessing the appellant's credibility, whereby he worked through each of the conditions set out in para 339L one by one. Contrary to Dr Aziz's submission in oral argument, the Judge did not reach a finding that the appellant's core claim was credible, and then misdirect himself that the effect of section 8 was that he must nonetheless find that the core claim was not credible. The Judge clearly had in mind the distinct concepts of plausibility, coherence and credibility.
33. At para [55], the Judge addressed the respondent's argument that aspects of the appellant's account were not coherent or plausible. He observed that some of these matters were put in the refusal letter, and others were put at the hearing. The Judge concluded, at para [64], that he did not find that any of the matters cited by the respondent were implausible, inconsistent, or damaged the appellant's credibility. At para [65], he turned to the matters which in his view did damage his credibility and to one matter which in his view undermined the plausibility of the core claim.
34. At para [66], the Judge said that in his screening interview the appellant mentioned that he had been fingerprinted in Greece and he claimed asylum there. He made no mention of having claimed asylum in Sweden.

He now accepted that this was correct. His explanation was that he was in several European countries, the names of which he did not know. The Judge did not find that credible. The appellant had travelled all the way to Sweden and claimed asylum there, and so it was not credible that he would not know that he was in Sweden.

35. At para [67], the Judge moved on to matters which damaged the appellant's credibility by virtue of section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. The appellant was in Europe between at least the beginning of 2019 - when he was fingerprinted in Greece - until he came to the UK in June 2020. He claimed asylum in Greece and in Sweden, but did not wait for a decision in either country. He was in France and could have claimed asylum there. His failure to pursue asylum claims in several safe European countries damaged his credibility.
36. The Judge found that this also went to the plausibility of his account. If fleeing harm in Afghanistan, the UK was a long way to flee. Safety could have been maintained closer to home, and at far less expense and physical danger to him than would have been involved in a two-year journey over land and overseas to the UK. If, however, the appellant was an economic migrant, the journey made sense. When the appellant arrived in the UK, he was asked in the screening interview what the basis of his claim was. He refused to say. He said that he would do that in the asylum interview. He accepted that this was the case. His explanation was that he was tired. The Judge did not accept that. He claimed that he travelled to the UK in order to claim asylum, and he had made two previous claims elsewhere. He would therefore know what the basis of his claim was, and he would have given brief details of it at the screening interview. The alternative explanation was that he did not wish to say what his grounds were until he had taken advice to consider what an appropriate basis of claim was. The Judge said that the facts bore out this alternative explanation.
37. The Judge was not clearly wrong to find that the appellant was not credible in his core claim, for the reasons which he gave. His reasoning was neither perverse nor inadequate.

Ground 2

38. Ground 2 is that the Judge made a material error of law by not considering the appellant's asylum claim on the grounds of nationality and/or race under the Refugee Convention; and, specifically, failed to anxiously scrutinise the Country Information reports in the main bundle and supplementary bundle, including the report that he cited at para [80].
39. Although the ASA raised a claim that the appellant was at risk from the Taliban because of his ethnicity, the claim was not supported by reference to any passage relied upon in the background material contained in the appellant's main bundle. It was simply asserted that the Taliban was targeting and discriminating against Tajiks, but it was not clearly stated

that the appellant faced a well-founded risk of persecution on return to Kabul simply on account of his Tajik ethnicity, as distinct from the appellant being at risk through a combination of factors, of which his ethnicity was only one element.

40. The Judge addressed the claim that the appellant would be at risk because he was a Tajik, at paras [80]-[81]. He said that background information had been provided in the way of a report from the European Agency for Asylum dated 2022. Paragraph 6.5.2 dealt with the situation in relation to Tajiks. There were areas in Afghanistan where Tajiks were resisting the Taliban. There was little evidence of ethnic targeting elsewhere. There were apparently no reports of any targeting of Tajiks in Kabul. It was for the appellant to show if the situation was otherwise, and he had not done so.
41. Dr Aziz cites two other passages in the same report (without giving a paragraph reference) which he impliedly relies upon as undermining the conclusions that were drawn by the Judge from the report. I do not consider that the passages relied upon have the effect intended by Dr Aziz. I consider that they can be interpreted in a way which is consistent with what the Judge drew from the report in terms of its overall thrust.
42. In a footnote, Dr Aziz also relies upon the fact that the Judge failed to consider that at page 23 of the supplementary bundle there was a report in which the author stated that the Taliban were killing minorities, including Tajiks, throughout Afghanistan.
43. This criticism overlooks the fact that no supplementary ASA was provided following the filing of a supplementary appeal bundle, and so the Judge's attention was not drawn to any particular passages in the supplementary bundle upon which the appellant wished to rely in support of the claim that he would be at risk as a Tajik in Kabul. Moreover, the Judge was not obliged to refer to every piece of evidence relating to this issue, and it is not shown that the Judge was clearly wrong to find that the appellant did not have a well-founded fear of persecution on return to Kabul on account of his Tajik ethnicity.

Ground 3

44. Ground 3 is that the Judge erred in law in failing to address at all the case put forward at para [11] of the ASA, which was that the appellant is a liberal Muslim who is unable or unwilling to comply with the Taliban's strict law, which will certainly expose him to a real risk of harm, as evidenced by a report dated 23 August 2021 which indicated that Afghans were being beaten for wearing jeans and western-style clothes in Kabul. The victims were quoted as saying that the insurgents accused them of disrespecting Islam with their clothing choices. Reliance was also placed on the fact that the 2022 CPIN said that, as well as targeting ethnic and religious minorities, journalists, human rights defenders, members of the Judiciary and persons deemed to have resisted or opposed the Taliban, the Taliban

were also targeting persons deemed to have transgressed cultural or religious mores (which might include those perceived as westernised).

45. As the Judge had rejected the appellant's core claim, it followed that the appellant was not at risk of being perceived as transgressing social mores on account of having had a relationship with a woman in Kabul outside marriage.
46. As to westernisation, the appellant did not in terms claim in his appeal statement dated 29 August 2023 that he would be perceived as being westernised. He said in his statement that the Taliban were forcing people to pray five times a day and wear Islamic clothes. He said that he was a very open-minded person and he did not want to pray in the Mosque, and certainly not five times a day.
47. The ASA did not identify any objective evidence to the effect that the Taliban was forcing people to pray five times a day - still less to go to the Mosque five times a day in order to do so. As to the wearing of jeans and western-style clothes in Kabul, the appellant did not say in his appeal statement that he was not willing to conform with the Taliban's dress code.
48. The Judge had the benefit of receiving oral evidence from the appellant, and given the limited evidence on the topic of westernisation in his appeal statement and the way that the case was put at para [11] of the ASA, I do not consider that the Judge erred in law in not specifically addressing the claim in the Decision, but effectively disposing of it by the findings which he made at paras [79] to [83].
49. At para [82] the Judge said that, while he accepted that the conditions in Afghanistan were not ideal, the position of the appellant would be better than most. He had not demonstrated that the conditions he would face would be such as to invoke Articles 2 or 3 ECHR. Although Rule 276ADE(1)(vi) was not specifically raised in the ASA, the Judge said at para [83] that he would consider it anyway, and he found that the appellant was entitled to all the rights and benefits of Afghan nationality; he spoke its languages; he had a home and family in Afghanistan; he was fit and healthy; and he had been able to work in his own business there. Therefore, Rule 276ADE(1)(vi) did not apply, as there were not very significant obstacles to his integration there.

Ground 4

50. It is submitted that in finding that Rule 276ADE(1)(vi) did not apply, the Judge made a material error of law in his assessment by failing to take account of the Appellant's subjective fear, and how this would impact on his integration; failing to apply the test in *Kamara v SSHD* [2016] EWCA Civ at [14] and failing to recognise that life under the Taliban, his Tajik ethnicity and the fact that his partner had lived in the UK since childhood were all very significant obstacles to his integration.

51. Ground 4 amounts to no more than an attempt to re-argue a case that was not put in the ASA, but which was nonetheless adequately addressed by the findings which the Judge made at paras [82] and [83] of the Decision, the Judge having previously made a sustainable finding that the appellant had fabricated his account as to why he had left Kabul to travel to the West.

Ground 5

52. It is submitted that there are insurmountable obstacles to the Appellant and his partner continuing family life together in Afghanistan as women under Taliban rule are subjected to gender-based persecution and inhuman and degrading treatment. For this reason, it is submitted that the Judge's finding at para [92] that "*the sponsor could join the appellant in Afghanistan*" is unreasonable.
53. Ground 5 infringes the principle that the hearing in the First-tier Tribunal is not to be treated as a dress-rehearsal, whereby the unsuccessful party can simply bring forward new arguments as to why they should succeed.
54. In the ASA it was simply asserted that the Appellant's partner could not live with him in Afghanistan because, although an Afghan national, she had settled status in the UK.
55. Moreover, the background evidence cross-referenced in the footnotes to Ground 5 does not establish that with all women in Afghanistan are subjected to gender-based persecution, and still less does it provide a springboard for a tenable submission that it was irrational for the Judge to find that the Appellant's partner could reside in Kabul with the Appellant as his lawfully married spouse.
56. The context of the impugned finding of fact is important. Earlier, the Judge had rightly directed himself that the eligibility relationship requirement in Appendix FM was not satisfied, as the relationship had not begun by the date of application, 11 June 2020, and they had only been living together since April 2023. So, although he did not spell this out, there was no scope for the application of EX.1. For the condition precedent for EX.1 being potentially applicable was satisfaction of the eligibility relationship requirement. In the circumstances, in his assessment of proportionality it was open to the Judge to find that one of the two options available to the appellant and his partner was that she could join him in Afghanistan. He acknowledged in para [92] that she did not wish to, and that the conditions for women under the present regime were not ones which she would accept. But she was an Afghan national, she had lived there before, and she would be with her husband.
57. The Judge gave adequate reasons for finding that the appellant had not made out a case in his current appeal that requiring him to return to Afghanistan would constitute a disproportionate interference with the family life which he had established in the UK with his partner.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 July 2024