Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00565/2014

THE IMMIGRATION ACTS

Heard at Birmingham UT (IAC)	**Determination Promulgated**
On 20 June 2014	**On 27 June 2014**
Prepared 20 June 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AM
(ANONYMITY ORDER CONTINUED)

Respondent

Representation:

For the Appellant: Mr Mills, Senior Presenting Officer
For the Respondent: Miss E Rutherford, Counsel

DETERMINATION AND REASONS

1. In this determination the Appellant is referred to as the Secretary of State and AM is referred to as the claimant.

2. The claimant, a national of Afghanistan, date of birth 5 June 1995, appealed against the Respondent's decision dated 14 January 2014 to refuse claims under the Refugee Convention and seeking Humanitarian Protection status, as a result of a refusal of further leave to remain. The matter came before First-tier Tribunal Judge Frankish who, on 14 March 2014, who allowed the appeal, the parties are agreed, with reference to Article 8 of the ECHR. The judge's determination is by no means a model of clarity, but it is clear that the judge rejected a claim of risk on return under the Refugee Convention and on the basis of the risk of serious harm or it would seem, although the determination is somewhat quiet on the matter, Articles 2 and 3 of the ECHR.

3. Permission to appeal that decision by the Secretary of State was given by First-tier Tribunal Judge Fisher on 31 March 2014.

4. At the hearing Mr Mills argued that the judge, having rejected or made adverse credibility findings in respect of the claimant's claim to be at risk on return, nevertheless without clarity of reasoning went on to make two, possibly three significant factual findings: which are to be inferred from the decision he ultimately made. In paragraph 23 of the determination and reasons, the judge accepted the claimant was of Hazara ethnicity, whose father had died when he was very young and that the claimant, on attaining the age of being able to work, had essentially been discarded, as an unwanted mouth to feed, by the uncle who had been providing for him, his mother and brother. There being no work for him he was sent to the United Kingdom.

5. The judge found it difficult to conclude with any certainty as to whether or not the claimant's mother and brother, in being returned to Afghanistan, had been able to return to the old family home and to use the land which had formerly been the subject of a dispute. The judge was less than clear upon what view he ultimately took of their return but it might be inferred he did not accept that part of the claim either. Nevertheless the judge, in

paragraph 27, went on to conclude that the maternal uncle had washed his hands of his responsibilities towards the claimant. Thus it was said, by the judge, the claimant, having been in the United Kingdom for a significant number of years, found himself, by reference to the case of JS (Former unaccompanied child – durable solution) Afghanistan [2013] UKUT 568 (IAC), a category of person who, having been in the UK a significant length of time, should be granted leave to remain. Thus, although he does not expressly say so, he allowed the appeal under Article 8 of the ECHR.

6. Mr Mills makes the point that there was no factual basis or proper finding made b y the Judge to conclude that the claimant had been abandoned by his maternal uncle and that the associated concerns about his return simply failed to properly assess the real likelihood of there being family and support available on a return to Afghanistan.

7. Miss Rutherford fairly says that a great deal has been found in favour of the claimant in relation to those personal circumstances. In those circumstances or even if, although she does not concede the point, the judge's reasoning is poor, in substance even with better reasoning the outcome would be not materially different. Accordingly such mistakes as the judge may have made do not disclose an error of law which means that the original Tribunal's decision cannot stand.

8. In considering this matter I, with some diffidence, bear in mind the advice and guidance given in R Iran [2005] EWCA Civ 982 and E and R [2004] QB 1044 CA and Karanakaran [2000] EWCA Civ 11, do not lightly interfere with the decision. However it does seem to me that parties to appeals are entitled to sufficient and adequate reasoning. With considerable reluctance, but with a sense of inevitability, I am driven to the conclusion that the reasons do fall short of that required and that the original Tribunal decision cannot stand.

9. The anonymity order is continued.

10. The appeal is allowed to the extent that the matter should be re-made in the First Tier Tribunal.

Signed Date 24 June 2014

Deputy Upper Tribunal Judge Davey