



IAC-FH-CK-V1

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

Appeal Number: AA/11330/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 July 2015**

**Decision & Reasons Promulgated
On 21 July 2015**

Before

**THE HONOURABLE MR JUSTICE COLLINS
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

**M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter, Counsel instructed by Warnapala & Company

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Immigration Judge Eldridge given on 2 April of this year whereby he dismissed the appellant's appeal against the decision of the Secretary of State in December of 2014 refusing his claim for asylum.
2. The appellant arrived in this country in 2009 having fled Afghanistan because he said his father, who was a local commander of the Taliban, had tried to compel him to become a suicide bomber following the

example of his older brother, who had in fact been killed in a suicide attack. He refused to comply with his father's wishes and with the assistance of an uncle (Mr D) he managed to escape. Shortly after his arrival he claimed asylum. The initial decision was to refuse asylum but, because he was only 14 years old, was given three years' discretionary leave as was the practice in force at that time. When that period of leave expired in December of 2012 he made a further application for leave to remain on the basis of his asylum claim.

3. The Secretary of State took what we regret to say is so often the usual failure to deal with the matter in time. This necessitated a claim for judicial review which was compromised on the basis that the Secretary of State agreed to make a decision within three months and did so in December of 2014.
4. In that decision the Secretary of State did not accept the appellant's account that his father had attempted to force him to become a suicide bomber. There were one or two discrepancies which were pointed out and relied on but that conclusion essentially meant that the asylum claim was rejected.
5. The Immigration Judge on the appeal heard the appellant and clearly was very impressed by the appellant as a witness and essentially he concluded that the witness' claim as to what had led to his fleeing the country was correct. He had given, as the judge indicated, a broadly consistent account throughout as a witness and essentially he concluded that the witness's claim as to what had led to his fleeing the country was correct. The judge found that the appellant indicated when he could not be sure about issues because information about his father and his brother had to a considerable extent been relayed to him from his mother, and that this was not unexpected since he was still very young when all this was happening.
6. There was a significant letter before the First-tier Tribunal from a Mr A and it explains that Mr A had had contact with the appellant's uncle (Mr D) and produced various documentary evidence in support of the travel arrangements that Mr A had made; in evidence before the Immigration Judge was also an email from the appellant's uncle (Mr D) and the statement of Mr A which indicated that the appellant's father had obviously formed the view that the appellant was in essence an enemy of the Taliban and had tried to get in touch with him or rather to find out where he was and had circulated a photograph of him. This of course was highly significant evidence in the context of considering the possibility of safety through internal relocation because having accepted his account of the reasons why he had left the country the Immigration Judge took the view that it would be unsafe for him to return to his home area, which is we gather some thirty miles or so from Kabul.
7. That being so the only question so far as the asylum claim was concerned was whether internal relocation was a reasonable possibility. The

Immigration Judge referred to a quotation which was said to be included in the respondent's Operational Guidance Note of February 2015 at paragraph 2.4.2 from an EASO report which stated, and we quote:

"If a low profile person quits his activity and can flee the area and resettle in a safer area, such as Kabul City, Mazar City or Herat City, he can normally escape targeting by insurgents, unless there are specific individual circumstances which would preclude this possibility."

8. We should say that it has not been possible to locate the quotation from the EASO report in Section 2.4.2 nor has it been possible to find that quotation anywhere in the Guidance Note. However, perhaps that matters not because it must be clear that that particular observation cannot assist the contention that this was a proper case in which internal relocation could provide safety. We say that because there are clearly specific individual circumstances in this case, namely the fact that it has been accepted that his father has in essence regarded him now as an enemy of the Taliban because of his refusal to follow the wishes of his father and his father is an influential member of the Taliban. That being so, he cannot be regarded simply as a "low-profile" person.
9. The Immigration Judge went on to say that he did not accept that the father had as he put it 'reach into Kabul', and also that the appellant had an uncle there who was concerned for him and had assisted him in the past and could do so if he were to internally relocate there. Clearly the judge accepted the uncle was not suspected by the father of having assisted in the appellant's escape from Afghanistan. If he had there can be little doubt that he would have taken some action against the appellant's uncle. Thus, to expect the appellant to return and be looked after by his uncle in Kabul is unrealistic in all the circumstances as it would have created a real risk of danger to the uncle.
10. Further, and most importantly, it is not a question of the father having a 'reach into Kabul'; it is a question of in the circumstances whether, having regard to the view that he is effectively an enemy of the Taliban put forward by his father, the Taliban would, if it were known he was back in Afghanistan, attempt to find him and take persecutory action against him of one sort or another.
11. In our judgment in all the circumstances and on the evidence before the First-tier Tribunal that risk clearly exists, and that the First-tier Tribunal therefore erred in law in finding otherwise. The Immigration Judge did not deal with the matter on that wider basis, namely a threat from the Taliban as opposed to an individual threat from the appellant's father, and that does affect in our judgment the possibility of relocation and the consideration as to whether in all the circumstances it would be reasonable for relocation to be expected.

12. There are of course the added elements that the appellant has now been in this country since he was 14 years old and established a significant private life in this country. As the Immigration Judge noted in considering the Article 8 ECHR element, he has established a considerable private life here; he had grown up and been educated in this country; he has not been here without leave or in a precarious state; he speaks excellent English and works hard at his studies; he is not yet financially independent and at 19 is unlikely to be for some time; and if he went back would be returned to a country he has not known for six years and to a city in which he has never lived because he cannot return to his home area. Those observations, as we say, were in connection with the Article 8 aspect but they are of course material when one considers whether it would be reasonable in all the circumstances to expect him to go back to Afghanistan and relocate there. There is also the issue of the appellant's ill-health (he suffers from hepatitis B) which the First-tier Tribunal failed to place in the balance in relation to the reasonableness of relocation or Article 8 ECHR. The reality is, however, that we take the view that there is a real risk of serious harm to this appellant anywhere in Afghanistan in all the circumstances of this case. That being so, we would allow the appeal on that ground.

12. In the circumstances it is in our view not necessary to consider the details of the Article 8 ground. That of course would only arise as an independent basis for allowing the appellant to remain if it was safe for him to return to Afghanistan. But as we have decided clearly that it would not be safe and that relocation is not in the circumstances of this case a reasonable possibility for this appellant we will accordingly allow this appeal and direct that the appellant be granted leave to remain on the basis that he is a refugee from Afghanistan.

Notice of Decision

1. The First-tier Tribunal decision involved the making of errors on a point of law.
2. The appeal is remade allowing the asylum appeal on the basis that the appellant is entitled to refugee status, and on human rights grounds for the same reasons.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. 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 contempt of court proceedings.

A handwritten signature in black ink, appearing to read "Hana Lincley". The signature is written in a cursive style with a long horizontal stroke at the end.

Signed

Date 21st July 2015

pp Mr Justice Collins