



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/00329/2015

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
On 19th June 2017**

**Decision & Reasons Promulgated
On 6th July 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

**SA
(anonymity direction made)**

Respondent

**For the Appellant:
Presenting Officer**

Ms Isherwood, Senior Home Office

**For the Respondent: Mr Richardson, Counsel instructed by Kothala &
Co**

DETERMINATION AND REASONS

1. The Respondent is a national of Afghanistan born in 1996. On the 29th March 2017 the First-tier Tribunal (Judge McIntosh) allowed his protection appeal. The Respondent now has permission to appeal against that decision.
2. The central submission made on behalf of the Secretary of State for the Home Department is that the determination is flawed for a lack of clear reasoning, and a failure to make findings on a central matter in issue, namely whether the Appellant would in fact be at risk of serious harm in Afghanistan and if so from whom. Notwithstanding the

submissions very well made by Mr Richardson, I am satisfied that the grounds are made out and that the determination must be set aside.

3. There can be little doubt that the Respondent had good reasons not to want to return to Afghanistan, a country that he had left when he was a small child. He had been living with his family in Pakistan for most of his life. He knew no-one in Kabul. He was, and is still, very young. He was afraid of going to live in that strange and dangerous city with no-one to support or protect him. He also advanced several reasons why he would face a risk of harm in Pakistan. In respect of the latter the Judge rejected – without any good reason it must be said – the account of attempted radicalisation and a fear of jihadi militants there. In respect of Afghanistan, however, the Tribunal obviously had great concerns about the Respondent. It notes at paragraph 45 the somewhat unusual factual matrix in this case, that the Respondent faces return “to a country with which he has no independent association”. In the closing sentence of paragraph 45 the Tribunal accepts the evidence that it would be unduly harsh upon the Respondent to send him to Afghanistan. The next sentence, at the beginning of paragraph 46 reads: “I find these factors would place the appellant [the Respondent before me] at risk”. It is not clear whether the Tribunal meant the factors already set out, or the findings that follow. Mr Richardson thought it might be both. The findings that follow are:

“Although an adult, his knowledge of Afghanistan is limited, he would be recognised as an individual as a returnee with no family, leaving him vulnerable to those that would seek to exploit young men. In areas where the high level of civilian fighting (*sic*) The objective evidence notes that comments from the Afghan Minister for Refugees and Repatriation, Mr Hussain Alami Balkhi, in February 2015, it noted that the security situation in Afghanistan was not stable, and that 80 per cent of the country was insecure and unsafe. Taking that factor into consideration together with the particular circumstances of the appellant who had not been residence in Afghanistan for a considerable period of his life, who is alone and would be vulnerable”.

4. Neither writing nor reasoning is easy to follow. On one reading the Tribunal has found there to be a risk of serious harm because conditions in Kabul would be unduly harsh. If that was the Tribunal’s conclusion, that was an impermissible conflation of two distinct tests. On an alternative reading the Tribunal finds there to be a risk of serious harm in the city from “those who seek to exploit young men”. Whilst this may, in the final analysis, be a finding that proves to have some substance, it is difficult to see on the face of this determination why it was found to be the case here. The Tribunal does not identify, for instance with reference to any country background material or

country guidance, who those agents of persecution might be or why the Respondent might be especially vulnerable. The Secretary of State for the Home Department is justified in her complaint that upon reading this determination she is left unsure about what the feared harm is and why the burden of proof was found to be made out. The ambiguity in the findings is underlined by the fact that a finding of risk would obviate the need for a finding that it would be “unduly harsh”.

5. I am satisfied that the determination must be set aside in its entirety. As I observe above the findings on Pakistan are as inadequately reasoned as those on Afghanistan. It is in the interests of justice that the matter be remitted to the First-tier Tribunal for a *de novo* hearing.

Anonymity

6. This case involves a claim for international protection. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders. I consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decision

7. The decision of the First-tier Tribunal contains a material error of law and the decision is set aside.
8. The matter is to be re-determined in the First-tier Tribunal.
9. There is a direction for anonymity.

Upper Tribunal Judge Bruce
19th June 2017