



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/12261/2015

THE IMMIGRATION ACTS

Heard at Upper Tribunal Birmingham
On 16 February 2017

Decision & Reasons Promulgated
On 3 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

TARIQ NIAZI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bedford; Mr Talacchi, Counsel, instructed by Buckingham
Legal Associates
For the Respondent: Mr Mills, HOPO; Ms Isherwood, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Boylan-Kemp made following a hearing at Birmingham on 20th June 2016.

Background

2. The appellant is a national of Afghanistan born on 1st January 1994. He left Afghanistan in 2009 and came to the UK, via France, claiming asylum on 10th September 2010 following arrest for working illegally. He was granted discretionary leave to remain until 1st July 2011 as an unaccompanied asylum seeking child. The appellant's asylum claim was dismissed but subsequently allowed by the Upper Tribunal to the extent that the Secretary of State was said not to have complied with

her duty of assessing the extent to which the reception arrangements and family support and involvement would reduce or eliminate the risk to the appellant.

3. A fresh decision was subsequently made on 4th September 2015 refusing to grant the appellant asylum.

The First-tier Judge's Decision

4. The judge found that the appellant to be wholly credible and accepted that his paternal uncles had tried to recruit him to the Taliban against his will. The judge also accepted that the appellant had assisted the relevant agencies insofar as possible in providing the details to locate his family but this had been without success. The judge therefore accepted that the appellant had lost contact with his family and would be consequently without familial support on his return.
5. The appeal was dismissed on the grounds that the risk of forcible recruitment had diminished since the appellant had reached adulthood and he was no longer at risk of persecution on his return to his home area. If he was wrong about that the appellant would have sufficiency of protection from the Afghan authorities and/or could relocate from his home province of Logar to Kabul. On that basis he dismissed the appeal.

Background

6. The appellant sought permission to appeal on the grounds that the judge had misapplied the law in concluding that the appellant would not be at risk in his home area of Logar which is a contested province. The appellant relied on the UNHCR Eligibility Guidelines which state that men and boys of fighting age may be at risk in provinces which are contested.
7. The judge had furthermore erred in her assessment of the reasonableness of relocation to Kabul, both in not taking into account relevant evidence before her, namely the evidence of the expert Dr Schuster and the UNHCR Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan dated April 2016. Moreover she had not properly applied the case law in relying on the cases of PM [2007] UKAIT 00089 and RQ [2008] UKAIT 00013 which were plainly distinguishable.
8. Permission was granted by Judge Gillespie on 15th August 2016 for the reasons stated in the grounds.
9. On 12th September 2016 the respondent served a reply defending the determination and commenting on the fact that the bundle amounted to well over 600 pages. It was argued that the judge could not be expected to carry out a trawl through such a large bundle to search for evidence to make out the appellant's case and in any event there was no authority for the proposition that the view of UNHCR should be taken as determinative.

Submissions

10. At the commencement of the hearing Mr Mills helpfully conceded that the judge was wrong to consider that the appellant could return to his home area of Logar Province. The respondent accepted that since this was a contested province, he would at risk in his home area. He did however submit that, whilst the judge could have done far more with the new evidence before her, and in many respects the determination was not ideal as he put it, it was nevertheless sustainable since it was open to her to conclude that the appellant could reasonably relocate to Kabul. He accepted that there was no specific reference to the Schuster Report but the Court of Appeal in Naziri and Others (R on the application of) v SSHD (JR - scope - evidence IJR) [2015] UKUT 437 had dealt with a similar report from Dr Schuster and found that it was not sufficient to justify departure from the country guidance case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC). The Tribunal in that case held that the level of indiscriminate violence in Afghanistan taken as a whole was not at such a high level as to mean within the meaning of Article 15(c) of the Qualification Directive a civilian solely by being present in the country faces a real risk which threatens his life or person. Whilst there was no reference to the UNHCR Guidelines, they were not binding although an opinion to be respected and had not been followed in a number of different cases, specifically GJ (Post-civil war returnees) Sri Lanka CG [2013] UKUT 319.
11. Finally he repeated the point made in the grounds that the judge had not been provided with a list of essential reading nor a skeleton argument and it was therefore unreasonable to expect her to find her way through such a large bundle of evidence. AK made it clear that Kabul was safe for Article 15(c) purposes and that finding must transfer across to the question of whether it provided a reasonable relocation alternative.
12. Mr Bedford submitted that the Tribunal in AK was not dealing with the circumstances of this particular appellant namely someone who arrived in the UK as a child and had spent a considerable amount of time in local authority care and who had no familial support on return. AK made it clear that although in general return to Kabul was not unsafe or unreasonable the individual circumstances of each appellant had to be assessed and the judge had not carried out such an assessment. The cases which she relied on were clearly distinguishable. In PM the appellants were battle hardened former soldiers aged 30 to 40. The appellant in RQ, although 18, had been a soldier for three years and had also been in the UK for less than a year. They were plainly distinguishable.
13. So far as the case of Naziri was concerned he submitted that in R (HN and SA) [2016] EWCA Civ 123 the court ruled that it had not been a part of the Tribunal's function in R (Naziri) to assess country conditions in Afghanistan in the context of a fresh claim JR.
14. Finally, whilst he accepted that he had not submitted a skeleton argument, he had marked certain passages in the extensive bundle which he had referred to specifically in his submissions.

Decision

15. I am satisfied that the judge erred in law in failing to take into account all relevant matters when reaching her decision.
16. First, there is no reference at all to the Schuster Report which states at paragraph 76:
 “A further concern is that those returned after spending years in Europe, in particular formative teenage years would stand out. Though those returned may still speak Dari or Pashtu, their accents and compartment are different, and they do not have the local knowledge and experience necessary to assess and deal with risks. If they do not have family or friends in Kabul, they will not have the necessary guidance and advice on where to go and how to behave. This is as true in Kabul as in the provinces, since most of the new arrivals have reproduced their village and social structure when resettling in Kabul as noticed in an article published in 2013.”
17. And again at paragraph 78:
 “Those who return as young men without social networks are also vulnerable to recruitment by insurgents. In the course of my research I have met young men who say they are desperate, have been approached by recruiters and are considering joining insurgent groups (see also Institute for War and Peace reporting Afghan Militants find Unemployed make easy Recruits 10th February 2015).”
18. It is not sufficient to refer to a judicial review case which dealt with a different report by the same author.
19. Second there is no reference at all to the UNHCR Guidelines which states that a particularly careful examination of possible risks is required, inter alia, on the return of men of fighting age and children in the context of under age and forced recruitment. A careful examination is also necessary for individuals perceived as contravening AGE’s interpretation of Islamic principles, norms and values.
20. The judge erred in failing to take into account relevant material. The error is material because the cases which she relied upon in deciding that it would be reasonable for the appellant to return to Kabul are arguably distinguishable and she did not deal with the argument, by reference to the objective material, that they should be so distinguished. Moreover the Tribunal in AK, which was not a decision on the reasonableness of return to Kabul, nevertheless made it clear that whilst the situation there would not in general make a return to Kabul unsafe or unreasonable. It was still necessary to take into account the appellant’s circumstances in deciding both the safety and reasonableness of return. The judge should have engaged with the material to determine what skills if any the appellant had to protect him from destitution in Kabul beyond the fact that he was a 23 year old male with no known health problems who had previously travelled to Europe with the assistance of an agent. His circumstances are manifestly different from the appellants in PM, who were much older and former Hezb-e-Islami commanders and from RQ who had only been in the UK for less than a year.

21. Both Mr Bedford and Mr Mills said that they would welcome clear guidance from the Upper Tribunal in relation to former child asylum seekers returning to Kabul without family support.

Notice of Decision

The original judge erred in law. The decision is set aside.

RESUMED HEARING

22. This matter came back before me following the promulgation of the country guidance decision of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118.
23. At the commencement of the hearing Mr Talacchi made an application for the matter to be adjourned and converted to a CMR but, upon reflection, he agreed that there was no reason not to proceed. I then heard oral evidence from Mr Niazi which I have taken into account together with his additional statement and the expert report provided by Mr Tim Foxley dated 18th April 2018.
24. Mr Niazi gave his evidence in English. He said that he had not gone to school in Afghanistan, and had simply attended the mosque where he was taught to read but not to write. He regarded himself as a Muslim and did attend mosque sometimes, but not regularly, just three or four times last year. He thought that it would be hard for him to go back to Kabul because he had forgotten many things and had adopted UK ways. He had no contacts there. For most of his time here he had been living in a hostel and then was given a flat. He sometimes met his fellow Afghans in mosques, the park and the shops. Some were girls but he did not have a girlfriend. They told him that his use of Pushtu was unlike most Afghans and he had forgotten some Pushtu words.
25. In his statement he said that he had previously attempted to find out about his family by seeking the help of the Red Cross but had not been able to trace them. He came to the UK when he was very young and he considers the UK his home. He will be treated as an outsider if he returned. He was anxious about how he could survive financially because he had no contacts there. He feared becoming destitute and that he might become a target for the Taliban. He has no skills because he has not been given permission to work in the UK. He is currently on medication because he feels low and depressed.

Submissions

26. Miss Isherwood submitted that there was no reason why the appellant could not return to Kabul. He was a healthy young male, and it would not be unduly harsh for him to do so. He was clearly in contact with other Afghans in the UK. There was absolutely no reason to distinguish him from the appellant in AS and the appeal ought to be dismissed.

27. Mr Talacchi submitted that there were a number of factors in the appellant's case which rendered his removal unduly harsh. He had left Afghanistan in 2009 when he was 14 years old and had spent his formative years in the UK. He had absolutely no contact with anyone there, no support network and would find difficulties in finding work. There was evidence that he would be ostracised given that he had forgotten some of his native language and mixed English with Pashtu. Having spent a third of his life in the UK he was not familiar with Kabul and would not be able to take advantage of any employment opportunities there.

Findings and Conclusions

28. The appellant comes to the Tribunal with a finding that he has satisfied a previous Immigration Judge that his account was a credible one and that his paternal uncles did try to recruit him to the Taliban against his will. It was also accepted that he had lost contact with his family and he will be without familial support on his return.
29. The appellant gave evidence in fluent English. There is no reason to reject his evidence that he is fully integrated into the UK and that, as he says, the Pushtu which he speaks may well be identify him to people in Kabul as a person who has spent a significant amount of time in the west. On the other hand, it was clear that he and the interpreter could speak to each other with ease and that he has Afghan friends in the UK whom he meets with regularly.
30. The appellant is not putting forward his case on the basis of having mental health issues, although it would be unsurprising if he did not find his presence a situation stressful so as to require some medication.
31. AS is the definitive assessment of whether it would be unduly harsh for appellants to return to Kabul and I therefore base my conclusions in line with those in AS. Indeed, Mr Talacchi accepted that his client could only succeed if it was possible to distinguish the facts from those of the appellant in that case.
32. The head note in AS reads as follows:-
- “Risk on return to Kabul from the Taliban*
- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*
- Internal relocation to Kabul*
- (ii) *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.*
- (iii) *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.

- (iv) *A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.*
- (v) *Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh."*

33. Broadly speaking this appellant falls within the ambit of appellants considered in AS, namely that he is a single adult male in good health.

34. The question is whether his individual circumstances could bring him outside the general proposition that he would not be at risk, and that it would be unduly harsh for him to return to Kabul.

35. At paragraphs 90 to 94 of AS the Tribunal said:-

- "90. The EASO Country of Origin Information Report 'Afghanistan – Individuals targeted under societal and legal norms' (December 2017) includes a specific section on targeting of Afghan returnees on the basis of 'Westernisation' following time spent in Europe or Western countries. Their broad conclusion on this is as follows:

'Documented instances of individual targeting of returning Afghans on the basis of 'Westernisation' due to having travelled in or lived in Europe, holding Western ID documents, or adopting ideas that seem to be 'un-Afghan', 'Western' or 'European' following time spent outside Afghanistan were scarce. Varying descriptions by sources indicated that there were 'occasional reports' of alleged kidnapping and targeting, or, that not everyone is at risk, but it 'does happen,' though the scale and prevalence is 'difficult to quantify', or, that targeting does not specifically occur because of having sought asylum or having travelled to Western countries.'"

- 91. Dr Schuster, in oral evidence, stated that after a person has been out of Afghanistan it would be relatively easy for them on return to change their physical appearance so as not to stand out. However, it would be more difficult to change values and attitudes that have been learnt and developed whilst away from Afghanistan. A person would have to monitor and self-censor their behaviour on return. An individual's capacity to self-censor would depend upon their maturity, their mental health and their ability to be astute about the social surroundings in Afghanistan, being able to pick up on what it is inappropriate to say and to do.

- 92. Dr Schuster also referred to the assumptions that people make about those who have been away from Afghanistan about their lifestyle, and question whether they have retained their Islamic faith, drink alcohol, or have relationships with women for example. The EASO report 'Afghanistan – Individuals targeted under societal and legal norms' also refers to perceptions of those on return, including concern that returnees fear being labelled by insurgents as spies and a perception by others that an individual

would be wealthy having accumulated funds abroad with the consequent fear of kidnapping for ransom for this reason. There is however very limited evidence of kidnapping other than isolated cases.

93. The EASO report 'Afghanistan - Individuals targeted under societal and legal norms' does not find any agreement from its sources of a collective or consistent attitude toward 'Westernisation' in Afghan society. There are references to broader Western influence on Afghan society in recent decades due to the international military presence and the increasing popularity, particularly amongst young Afghans, towards Western trends and influences (such as fashion, entertainment and tattoos). There are however strong conservative views held amongst individuals, family groups and wider communities.
94. Both Dr Schuster and the EASO report 'Afghanistan - Individuals targeted under societal and legal norms' refer to the risk of someone saying the wrong thing at the wrong time, even in Kabul (which generally has a higher tolerance for westernisation than rural areas) which would not necessarily, but may, cause difficulties and because a person has returned from the West could be used against them with accusations made. Further, the sources both refer to the need for guidance on Afghan cultural norms to those who have been absent from the country and the importance of family, friends or connections to support their understanding of the limits and boundaries of societal norms and behavioural expectations."

36. At paragraph 187 of AS the Tribunal concluded as follows:-

"We do not find a person on return to Kabul, or more widely to Afghanistan, to be at risk on the basis of 'Westernisation'. There is simply a lack of any cogent or consistent evidence of incidents of such harm on which it could be concluded that there was a real risk to a person who has spent time in the west being targeted for that reason, either because of appearance, perceived or actual attitudes of such a person. At most, there is some evidence of a possible adverse social impact or suspicion affecting social and family interactions, and evidence from a very small number of fear based on 'Westernisation', but we find that the evidence before us falls far short of establishing and (sic) objective fear of persecution on this basis for the purposes of the Refugee Convention."

37. Accordingly, the appellant cannot succeed on the basis that he is westernised.
38. The Tribunal, at paragraph 202 said that their starting point was the views of the UNHCR which considers that internal relocation is only reasonable where an individual has access to shelter, essential services and livelihood opportunities. The UNHCR considered that it is only reasonable where a person has access to a traditional support network of members of his or her extended family or the larger ethnic community in the area of proposed relocation who have been assessed as willing and able to provide genuine support to a person. A possible exception to this last requirement may be for single able-bodied men without specific vulnerabilities who may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control. A case-by-case analysis will therefore be necessary.

39. The Tribunal recognised that a single person living alone outside the social norms in Afghanistan is relatively uncommon. However it relied on the evidence of Dr Giustozzi that such support networks were not essential for a person to obtain basic accommodation and employment in Kabul. The Tribunal noted that networks could be reactivated and established and single men and returnees could form their own support network and it was inevitable that a person would make contact with someone from such a group on return to Kabul.
40. Accordingly the Tribunal concluded that it was not an essential requirement for a person to have an existing support network in Kabul for them to be able to access housing or employment there. Kabul therefore was generally a reasonable place for internal relocation for a single male in due good health even if he did not have a support network because it was not essential for him to have one in order to access one of the variety of types of shelter for use in Kabul City.
41. At paragraph 219 the Tribunal said:-
“In conclusion, we do not find that a single male returning to Kabul would be unable to find some sort of accommodation which is comparable to that available for the majority of the population in Kabul, even without support from a network in the city, (sic)”.
42. In reaching their conclusions the Tribunal took into account the evidence about possible assistance on return to Kabul and were satisfied that there was a package of support which includes the offer of temporary accommodation, travel expenses and either cash on return or support in kind for those with a plan to establish themselves in Kabul.
43. So far as employment opportunities were concerned, whilst the job market was very competitive day labouring work was available although extremely precarious.
44. The appellant is now 24 years old. It is not being argued that there are any medical factors which would render his removal to be unreasonable. Certainly no medical evidence was produced. Neither was it argued that he is at any enhanced risk from the Taliban. The basis of his claim is that he left Kabul when he was 14 years old in 2009, has no support network there, and, having spent his formative years in the UK is a westernised individual who would find it more difficult than many others to be able to reasonably relocate there.
45. I take into account the report from Mr Foxley, but the difficulty with it is that it is dated 18th April 2018 and therefore relies upon much of the same evidence as was considered in the case of AS. Indeed Mr Talacchi did not identify any sources of evidence which postdate it. Moreover AS was promulgated in March 2018 and Mr Foxley’s report is dated 18th April 2018. It is therefore very surprising that Mr Foxley did not reference it. For those reasons I place little weight on it.
46. In spite of the submissions from Mr Talacchi I find it difficult to distinguish the appellant’s case from those considered in AS.
47. I apply the test set out in paragraph 230 which is as follows:-

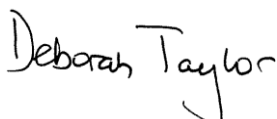
“Our findings above show that it is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. However, we emphasise that a case-by-case consideration of whether internal relocation is reasonable for a particular person is required by Article 8 of the Qualification Directive and domestic authorities including Januzi and AH (Sudan). When doing so, we consider that there are a number of specific factors which may be relevant to bear in mind. These include, individually as well as cumulatively (including consideration that the strength of one factor may counteract and balance the weakness of another factor):

- (i) Age, including the age at which a person left Afghanistan.
- (ii) Nature and quality of connections to Kabul and/or Afghanistan.
- (iii) Physical and mental health.
- (iv) Language, education and vocational and skills.”

48. The appellant left Afghanistan at a relatively young age, of 14. He has no connections to Kabul or to Afghanistan. There is no basis for doubting his word that he does not possess any particular skills. On the other hand there is no evidence that he is not in good physical or indeed mental health and he does speak Pushtu.
49. I do not doubt the difficulties which the appellant will face. The problem that I have is that it is difficult to distinguish his case from the broad proposition set out in AS, i.e for someone such as him, it is reasonable to internally relocate to Kabul. He did come to the UK when he was relatively young but clearly has maintained friendships with the Afghan community here. There is no enhanced risk for someone who might be identifiable as a person who has spent time in the west, either because of his use of Pushtu or his knowledge of Islam. He has accepted that he still attends the mosque, albeit not as regularly as would be expected of him in Afghanistan. I cannot conclude that any difficulties he might face are such so as to bring him outside the scope of the country guidance case.

Notice of Decision

50. The original judge erred in law. The decision has been set aside. It is remade as follows.
51. The appellant’s appeal is dismissed.
52. No anonymity direction is made.



Signed

Date 27 July 2018

Deputy Upper Tribunal Judge Taylor