



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05903/2019

THE IMMIGRATION ACTS

Heard at Bradford
On 11 December 2019

Decision Promulgated
On 7 January 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DS
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Kaur of Immigration Advice Service, Leeds.

For the Respondent: Mr Dimnycz Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant, a national of Afghanistan born on 14 September 2000, appeals with permission a decision of First-tier Tribunal Judge Dunne ('the Judge') promulgated on 9 September 2019 which dismissed the appellant's appeal on all grounds.
2. The Judge noted an earlier decision of First-tier Tribunal Judge Adio promulgated on 23 January 2017 in which Judge Adio rejected the appellant's

claims and found he will be able to rejoin his father back in Afghanistan. The Judge correctly took as a starting point as per the Devaseelan principles that earlier decision.

3. The Judge had the benefit of not only the documentary evidence but also seeing and hearing oral evidence being given by the appellant and his brother.
4. Findings of fact are set out from [24] of the decision under challenge which the Judge clearly reminds himself at [31] of the necessity to consider whether he should depart from the findings of Judge Adio especially in light of the fact that 2 ½ years have passed since that determination and in light of the evidence relied upon by the appellant in this appeal.
5. At [38 - 39] the Judge writes:

38. On the basis of that evidence I find that the appellant, if returned to Afghanistan, would on the balance of probabilities be able to find his family and return to live with them. There is no reason to believe, on the appellant's own evidence, that they would not still be in the same location in which they have lived throughout the appellant's life. If they had cause to move, I see no reason why they would be impossible to trace. Neighbours or extended family could be expected to be able to help the appellant in this respect. This is not a situation, for example, in which the appellant and his family have become separated in a refugee camp outside of their home country, where reunification might be far more difficult.

39. I see no basis for the respondent's statement in the refusal letter [at 45] that "it is accepted that you would not have any connections on return to Afghanistan". That statement is not in accordance with the evidence given in the appellant's first appeal, or in any material submitted as part of his renewed claim. It does not accord with the appellant's own case. The appellant's evidence, which I accept, is that he has no current contact with his family in Afghanistan due to difficulties with communication. That is a very different matter to not having any family in Afghanistan. This statement in the refusal letter is not in accordance with the evidence and I do not follow it.

6. In the refusal letter at [45] the decision-maker writes:

45. It is not accepted that you fled Afghanistan duty or imputed political opinion. While it is accepted that you would not have any connections on return to Afghanistan, you will be returning to your home with the option of taking up the voluntary assisted returns program to assist your reintegration into Afghanistan. In addition, you will be returned to Afghanistan as an 18-year-old man. It is not accepted you will face persecution on return to Afghanistan.

7. Mr Dimnycz submitted that this represented a failure by the decision-maker to consider what was written earlier in the refusal letter in which the decision-maker sets out relevant parts of the determination of Judge Adio including the finding that the appellant could rejoin his father in Afghanistan.
8. The appellant asserts in the application for permission to appeal that Judge Dunne had departed from the respondent's refusal letter and wholly ignored the danger to the appellant on returning to Afghanistan alone. The grounds assert the finding the appellant will have family contact was contrary to the respondent's decision.

9. This is not a case of the Judge make a finding in relation to an issue that was not canvassed at the hearing. The Judge's Record of Proceedings clearly records submission been made by Ms Kaur at the hearing that the Judge was bound by [45] of the refusal letter and that the appellant has no connections in Afghanistan.
10. The Judge was required to consider all the available evidence and was entitled to depart from any concession made subject to the requirements of fairness. The Judge specifically took into account the evidence given by the appellant and the fact the finding at [45] was not in accordance with the appellant's own case strongly supports the Judges findings that it was inappropriate on the evidence to follow the statement in the refusal letter. The Judge also refers to the statement not being in accordance with the evidence given in the appellant's first appeal or in any material submitted as part of his renewed claim.
11. It is also important to consider the specific wording of [45] of the refusal letter. The decision-maker accepts that the appellant would not have any connections on return to Afghanistan but specifically finds he will be returning to his home. It appears the correct and proper interpretation of this is that the respondent's position is that the appellant will not have connections outside his home environment not that he will have no connections at all. The existence of family connection is in accordance with the findings of Judge Adio.
12. I do not find it has been established the Judge has erred in law in a manner material to the decision in relation to this issue.
13. The appellant also asserts legal error in the Judge's finding that he can return to Kabul by reference to the UNHCR evidence concerning the Afghan capital.
14. In AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 the Upper Tribunal held that 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 may 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. 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 that general position. 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.
15. The Court of Appeal has, in AS (Afghanistan) v SSHD [2019] EWCA Civ 873 found that the Upper Tribunal erred in law in that its conclusion as to the percentage risk of being a victim of indiscriminate violence was not available to it on the evidence. The case was remitted on the basis that the Upper Tribunal need consider only the extent of the risk to returned asylum seekers from security incidents. It was however, for the tribunal to consider in the light of the

new UNHCR guidelines on returns, whether a more extensive basis for reconsideration was required.

16. It is not sufficient for an advocate to state that error has been made as a result of the UNHCR report without more. The report does not arguably establish that no person may be returned to Afghanistan which, as in every matter, is a fact specific assessment. The Judge examined the facts with the required degree of care and gives adequate reasons in support of the finding the appellant can be returned to Afghanistan where he has family available to him. He can be returned to his family and live with them where he will be protected. The appellant originates from Kapisa Province about 80 km north-east of Kabul.
17. It is not established the Judge's findings are infected by arguable legal error. They are adequately reasoned and the weight to be given to the evidence was a matter for the Judge. The grounds fail to establish it is appropriate in all the circumstances for the Upper Tribunal to interfere any further in this matter.

Decision

18. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

19. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 13 December 2019
(Revised by inclusion of anonymity direction on 2 January 2020)