



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

Appeal Number: PA/06840/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 9th November 2021**

**Decision & Reasons Promulgated
On 25th November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mottershaw instructed by Wilsons Immigration

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. By a decision promulgated on 28 October 2019 a Deputy Judge of the Upper Tribunal set aside the decision of a First-tier Tribunal judge who dismissed the appellant's appeal.
2. The matter has been delayed as a result of issues recorded in earlier directions of the Upper Tribunal and the Covid-19 pandemic.

3. The core of the appellant's claim is a fear of being forcibly recruited or killed by the Taliban if he is returned to Afghanistan. The First-tier Tribunal Judge recorded between [4 - 6] of his decision:
 4. The appellant's claim is that he fears being forcibly recruited or killed by the Taliban if he returns to Afghanistan. The appellant said that he is a Sunni Muslim of Tajik ethnicity and was born and brought up in a village named Dah Sabz in Kabul province although he has never been to Kabul. He lived with his parents and 2 brothers and has 2 older sisters. His father worked on the farms of other people. The appellant attended school for 4 years from the age of 9. The school was about 15 minutes walking distance from his house. They were not allowed to go to the mosque for fear of the Taliban. His parents were scared that the Taliban would forcibly take them away as they had kidnapped other children from the village. The Taliban usually took them age 14 or 15.
 5. 3 days before he left Afghanistan, the appellant attended the mosque with his father and brother who was a year older and on the way they were encountered by Taliban members in a truck. He and his brother ran away. The Taliban spoke to his father and said they wanted the appellant and his brother to join them. His father was approached with the same demand on 2 further occasions. On the last occasion they threatened that they would attack the appellant's family home with rockets if his father refused. He and his brother overheard his parents discussing the threat that evening. His mother was crying saying she would not send her sons as they are young. The appellant and his brother went into the room where his mother was crying and said they did not want to go fighting. His mother told them not to worry and go to their room. She would speak to his father and find a solution.
 6. Their father said to his mother that the only way to protect them was to leave Afghanistan and get as far away as possible from the Taliban. His mother said she had jewellery that she could sell to pay for the services of a smuggler to get them to another country. His father started making enquiries. The following day. They stayed at home for 2 days in fear the Taliban would return at any moment. They were not allowed to go to school during those 2 days. The week before they fled, they heard a neighbours son being taken by the Taliban and the appellant had hid.
4. The First-tier Tribunal Judge accepted the credibility of the appellant's account, which is a finding that has not been appealed and, therefore, is the basis of the assessment of the appellant's risk on return.
5. At an earlier hearing before the Upper Tribunal listed at Birmingham on 8 January 2020, but which could not proceed, Mr Mills, who was then a Senior Home Office Presenting Officer indicated there was one outstanding issue which was whether the appellant had the required level of maturity to make relocation to Kabul reasonable in the event that he could not return to his home area.
6. Since those earlier hearings substantial changes have occurred in Afghanistan with the Taliban now being in complete control of the country following the withdrawal of international forces and the collapse of the Afghan government.

The Evidence

7. The appellant relies upon an original country report prepared by Mr Tim Foxley, an addendum, and supplementary report dated 5 November 2021.

- 8.** The appellant also relies upon a medical report prepared by Dr Sarah Heke dated 8 July 2020.
- 9.** In addition, the Tribunal has had sight of two updated CPIN reports, Afghanistan: Fear of the Taliban, Version 1.0, October 2021, and Afghanistan: Security and humanitarian situation, Version 8.0, October 2021.
- 10.** I have also considered the considerable volume of additional evidence, including the witness statements prepared by the appellant and those who have supported him during his time in the United Kingdom, and specifically in relation to this appeal. Although there may be no specific mention of that evidence below it does not mean it has not been taken into account. What that material does show is that the appellant has considerable support for him within the United Kingdom, which I have no doubt will remain available to him if he is permitted to stay as he will require the same.

Discussion

- 11.** Two important concessions are made by the Secretary of State in the CPIN one of which is that the changed circumstances in Afghanistan may warrant departure from the current country guidance case of AS (Safety of Kabul) [2020] UKUT 130 and at section 2.6.1 of the Security and humanitarian situation document:

2.6.1 In AK, the Upper Tribunal held that internal relocation to Kabul was reasonable, bar some limited categories (lone women and female heads of household). This was confirmed in AS (Safety of Kabul). However, in light of the Taliban's capture of Kabul on 15 August 2021, internal relocation to Kabul is unlikely to be a reasonable option whilst the Taliban remain in control and it would therefore be unduly harsh to expect a person to do so.

- 12.** In relation to the situation in Afghanistan 'on the ground' Tim Foxley in his most recent report, writes:

Note on the collapse of the Afghan government

3. Because of the collapse of the Afghan government on 14 August and the Taliban's advances and seizure of control of the country, including Kabul city, the security situation in the country is highly unstable and dangerous. Although most of the fighting has stopped it is very hard to give a clear assessment of the state of the security situation in Kabul city or to the home area of your client in Deh Sabz district. Reliable information is extremely limited as many journalists have fled and there is now only a minimal international presence on the ground. There is virtually no effective functioning government operating across the country. Up to the end of August, Kabul airport was controlled by the US and British militaries in an emergency evacuation operation. The formal international evacuation efforts from the airport finished on 30 August. The Taliban now control all airports in Afghanistan. The most important point to make, however, is that if your client was to be deported to Kabul, he would now be received by a Taliban government. Their likely attitude towards Afghan individuals returning from the West is currently unclear.
- 13.** In his concluding comments Mr Foxley writes:

90. My main core assessments (plausibility of his account, general risks and specific risks) regarding your client have not significantly changed since my original report, although some circumstances have now worsened as a result of the Taliban seizure of power. At time of writing, it appears that the Taliban have captured all of Kabul province, including Deh Sabz district. The Taliban still violently target those they perceive as opposing them. This could put your client at risk. Given the Taliban now control the airports and all legitimate means of returning back to Afghanistan, it is very plausible that your client's background could be exposed upon arrival at the airport. Beyond this, there is also a significant risk to your client if he was to return to his home area, where his family personal history is more likely to be remembered or re-established.
 91. With the collapse of government and return to power of the Taliban, widespread fighting has stopped for the moment, but the country remains highly unstable, volatile and fearful. There are credible reports of acts of violence and revenge being perpetrated by the Taliban, including executions, against collaborators with the previous government and those they perceive as having opposed them in some way. The Taliban are likely to take a dim view of someone who fled the Taliban to take refuge in a Western country. Taliban groups, be they in your client's home area, in Kabul or elsewhere in the country, now have the time, space, authority and resources of government to detain him, question him and cross-check information across the country if he stands out in any way.
 92. Beyond his home area and outside of Kabul, much would depend upon where he went, what he did and what information became known about him. He has specific vulnerabilities. He has been out of the country for over half a decade. He has no experience of living, working, travelling or operating in Afghanistan as an adult. He has limited education. He will have a limited understanding of a security environment which is very unstable and fast moving, including who can and cannot be trusted. He does not appear to have a stable and secure family support network to return to. His significant mental health problems will put him at risk of exploitation.
 93. Encounters with the Taliban at and beyond arrival at the airport are now more or less guaranteed - the Taliban have the power of governance and many road blocks and checkpoints. In such circumstances, if his background became known (previous adverse attention from the Taliban - including allegations of betrayal and collaboration - and his time in the West), the risk of adverse attention and treatment could increase significantly. The risk would not simply be from the Taliban - other illegal armed groups, criminals, insurgents and local militias could all pose a threat to your client.
 94. There are other risks in Kabul and the country as a whole, stemming from the many broader security, social and economic problems, including drought, food insecurity, mass population displacement and a pandemic. There is no functioning legitimate government at present. Finding employment will be highly problematic. I do not believe Kabul is a safe place to return to. It is still at high risk from terrorist attacks from Islamic State and from illegal acts of targeting and detention by the Taliban. There will be major challenges for your client if he is returned to Afghanistan. Travel will be risky. The security, political and economic situation is volatile and prospects bleak in Afghanistan and likely to remain so for the foreseeable future. He will struggle to receive the mental healthcare that he demonstrably needs.
- 14.** In terms of who the appellant is and the relevance of the comment concerning the availability of treatment for mental health needs Dr Heke, a Consultant Clinical Psychologist, writes:

- 6.2.1 In my opinion [AA] is suffering from moderate PTSD with comorbid depression, anxiety (see Appendix 3 for full criteria). The diagnoses I have reached are according to criteria for PTSD and a major depressive disorder by the American Psychiatric Association (2013) Diagnostic and Statistical Manual of

Mental Disorders (5th Ed.) presented in Appendix 3. This is one of the two internationally recognised classification systems used for informing and reaching psychiatric diagnoses. The other is the World Health Organisation (2018) International Classification of Diseases (11th Ed.). Although there are some differences they agree on the core symptoms and in my opinion [AA] would meet criteria for PTSD and depression on both diagnostic classification systems. This is consistent with the recommendations for an independent expert assessment according to the Istanbul protocol.

6.2.2 In light of the losses that [AA] has suffered, I believe that his current difficulties should also be considered in the context of complicated grief. This is a form of suffering distinct from normal bereavement or depression, characterised by a specific set of symptoms that persist for over six or twelve months after the death. Whilst [V] died three months ago, and the following criteria specify time periods of 6 to 12 months, I believe this is of relevance in the context of also having lost contact with his maternal mother for a substantial period of time and in essence [AA] is grieving for the loss of attention, affection and love they shared which has made the loss of [V] even stronger. Diagnostic criteria for complicated grief, or persistent complex bereavement disorder, according to DSM-5 is present after 12 months (American Psychiatric Association, 2013) and for ICD-11 is present after 6 months (World Health Organization, 2018), but for both diagnostic systems can be clustered into two main areas:

1. Separation Distress - linked to the survivor's attachment history:
 - Intrusive thoughts, memories or fantasies about the deceased
 - Strong spells or pangs of emotions related to the deceased, including yearning, longing and searching for them
 - Feelings of loneliness, emptiness, numbness or that a part of oneself has died
2. Traumatic Distress - linked to the traumatic nature of the loss:
 - Intrusive thoughts, memories and fantasies about the circumstances of the death
 - Excessive responsibility, guilt and self-blame
 - Shattered worldview, life seen as empty and meaningless, loss of interest in work or social relationships
 - Avoidance of people, activities or places that act as reminders of the deceased
 - Unusual levels of sleep disturbance
 - Assuming symptoms or behaviours of, or related to, the deceased
 - Excessive irritability, bitterness or anger related to the death
 - Disbelief about or lack of acceptance of the death

6.2.3 Whilst this is not the primary difficulty that [AA] is presenting with, I do believe that grief is an additional factor that is impacting on his current functioning, although as I have specified the social interactions that this has also provided, in being able to remain in the care of his foster carer's daughter, [CF], is a restorative and protective factor in [AA]'s life, should he be able to remain in the UK.

6.2.4 Finally, in informing my opinion, I also completed a psychological formulation which incorporates the main psychological theoretical models for PTSD by Ehlers and Clark (2000) and Brewin et al. (2010), which inform and explain the mechanisms involved in the development and maintenance of PTSD. Using these together, I am able to integrate the cognitive, behavioural and emotional factors with the theoretical concepts relating to the formation of traumatic memories. These memories are then re-experienced as intrusive images, thoughts, memories and nightmares or bad dreams.

15. In relation to return to Afghanistan and ability to seek medical help, it is written:

- 6.13.c.3 I think that [AA] would struggle significantly on return to Afghanistan, where there is ongoing armed conflict, in all aspects of his capacity to fend for himself and cope with his mental health and psychological difficulties. Further [AA] would find it very difficult to seek help for his mental health problems in Afghanistan as he has never received any treatment even in the UK. Whilst the availability of services and support in Afghanistan is beyond the scope of my expertise, the country expert report by Mr Tim Foxley very clearly and definitively in my opinion, outlines the very significant challenges faced by unaccompanied minors returning to Afghanistan who have pre-existing mental health problems. Overcoming the social obstacles, including accessing housing, employment, in regards to a hierarchy of needs, seems a huge obstacle for young men returning to Afghanistan, let alone being able to identify and access specialist trauma focussed psychological therapy and mental health support, even if this is available.
- 6.13.c.4 In my opinion the impact of not receiving this treatment would mean that he would continue to suffer with these problems and this would have a further detrimental impact on his life. [AA] is still young and as such being able to engage with treatment earlier will mean that his future prognosis is very much improved. In conclusion, I believe that the consequences of [AA] not receiving any future treatment will have a very detrimental impact on his functioning and especially his capacity to form a meaningful, healthy life for himself either in the UK or if returned to Afghanistan.

16. In relation to the question of whether the appellants mental health would affect his ability to relocate it is written:

- 6.14.1.a I believe I have already covered my opinions regarding how [AA] would struggle to cope on return to Afghanistan, but specifically in regards to relocating to a different part of Afghanistan, I believe factors I have already identified would be the same wherever [AA] was located. Due to [AA]'s observed vulnerabilities in relation to his mental health, emotional dependency, naivety and lack of independent living skills, I do not believe that he has the internal resources required to relocate, access accommodation, healthcare services and support himself. He has never engaged in any of these activities independently in the UK and is still entirely dependent on the support of his foster care family and professionals for all of these daily living needs. Further, [AA] has no qualifications and limited education in order to attain any meaningful and reliable employment in a highly competitive field. Mr Tim Foxley very clearly highlighted the extremely high unemployment rates in addition to the other challenges that vulnerable young men, such as [AA], face on returning to Afghanistan. So should, [AA]'s worst fears of being killed or forced to join the Taliban not be realised, in my opinion he faces a future of destitution and/or exploitation.

17. Dr Heke was also asked to comment upon the risk of suicide in relation to which she wrote:

- 6.23.1 I will respond to these questions in their entirety to avoid repetition and I believe they are all very inter-linked. Firstly, I believe that [AA]'s risk of suicide in the UK is currently low. He has described having active suicidal thoughts but these are on the basis of considering alternative options that would be available to him rather than facing the fear of being killed and/or joining the Taliban if forced to return to Afghanistan. [AA] stated that he had first experienced suicidal thoughts when he received his rejection letter from the Home Office and that now he described:

“When I became very frustrated I was thinking to stab myself to end my life... it happened a few times. The only thing that prevented it was my religion, as

it's a sin, and that was the only thing that stopped me. I don't think if I return [now] that religion would give me some protection...I don't think so."

"I don't want to return and if I am forced then I will commit that [suicide] yes."

[AA] also stated that his intention to commit suicide rather than return would be imminently on receiving the notice to return:

"Yes, when they decide to send me obviously, as I don't want to go. So I could jump from a roof and kill myself, or something like that."

6.23.2 In my opinion [AA]'s risk of successfully acting on his suicidal ideation is of most concern given the lack of protective factors should he be made to return to Afghanistan, where now even his religious beliefs are insufficient to want him to continue living as he believes that God is punishing him. All of the factors I have highlighted would likely increase his sense of helplessness and hopelessness, which are the most significant risk factors associated with completed suicides (Department of Health, 2012). Secondly, as described, I believe that [AA]'s risk of ending his life is likely to increase significantly if he is returned to Afghanistan as the effects of PTSD and depression on emotion carries and increased risk of suicide (McKinney, Hirsch & Britton, 2017). In conclusion I believe that [AA]'s risk of suicide is not imminent, but would escalate very quickly given his present serious suicidal thoughts such that he would be at very high risk of acting on his thoughts should he be forced to return to Afghanistan. This is on the basis that [AA] has very few coping strategies to mitigate the risk of him completing suicide and that the withdrawal of emotional support in the UK would in my opinion heighten this risk as this is his current primary protective factor.

- 18.** I note the conclusion of Mr Foxton in his first report that the appellant is a person with a low profile within Afghanistan, which was a plausible conclusion at the time that the previous government was in control when he would not have been a primary target for the Taliban who would have been unlikely to pay much attention to him unless he came into contact with them.
- 19.** Whilst Mr Tan referred to the amnesty the Taliban purported to announce for those involved in the Afghan government and the international forces it does not appear on the basis of the information to specifically extend to those who have refused to join the Taliban and fight for them previously, which may be perceived as demonstrating views contrary to their Islamic beliefs and their view of how an individual should behave.
- 20.** At the date of the hearing the Taliban are in control of the international airport in Kabul to where the appellant will be returned. Although there had been some news announcements concerning arrangements be negotiated with a third country to enable the airport to function this appears to relate to the mechanics of running the airport rather than such individuals having control over policy or application of immigration matters. On the limited information available, and in light of there being nothing to contradict such a finding provided by the Secretary of State, it appears likely that upon return the appellant will come into contact with the Taliban.
- 21.** It is also clear from the news reports that have been made available that despite placatory statements being made by representatives of the

Taliban addressing the international press some individuals within that organisation have still carried out acts of violence and that there is a lack of trust in terms of whether what is being betrayed is the reality of the Taliban as a government.

- 22.** If the appellant is asked about the reasons he left Afghanistan he may be able to say that it was because his parents did not want him to join the Taliban. The account accepted by the First-tier Tribunal is not that the appellant himself was confronted by the Taliban and refused to join them but that his father was, and that as a result of the fear of the appellant being forced to join and fight for the Taliban his parents arranged for him to leave Afghanistan. The problem for the appellant may be if he is asked by the Taliban if he is willing to join and fight for them now, he will refuse. If that occurs, there is a risk that the appellant will be subjected to treatment which could include beatings, arbitrary detention, or extrajudicial killing. It was not established by the Secretary of State that the appellant would not be questioned at the airport. It is also not known what view the Taliban would take of an individual returned from the United Kingdom, a nation whose forces fought the Taliban until their withdrawal.
- 23.** There is also the issue identified in the country report of the consequence of the appellant being unable to provide satisfactory answers to questions asked of him on return, partly as a result of his lack of knowledge as he left at a young age, the time that is spent in the United Kingdom, and lack of experience of living in Afghanistan and dealing with the changes that have occurred.
- 24.** The submission based upon the report of Mr Foxton that the Taliban are likely to take a dim view of a person who fled Afghanistan and who did not join them is plausible in light of what is known about the actions of this group, which will give rise to real risk of harm to the appellant. It is plausible that the reason the appellant may face a risk on return is the links to his past history, length of time in the United Kingdom, and conclusions regarding the risk arising from the appellant's "westernisation" and how that may be perceived by the Taliban.
- 25.** Reference was made by Ms Mottershaw to a list provided by the Home Office of those particularly vulnerable and likely to be at risk on return to Afghanistan, which includes those who previously resisted the group, which arguably includes those such as the appellant based on his past history.
- 26.** I find the appellant has established a real risk of harm on return in light of the lack of clarity concerning the view of the Taliban to returned failed asylum seekers with the past history of this appellant from the United Kingdom at the date of the hearing of this appeal. There is enough available material to establish a real risk for the reasons set out above.
- 27.** In addition, there is clear evidence of the appellant's presentation of an individual less mature than his chronological age would ordinarily suggest with the difficulties identified in the psychologist's report combined with a lack of hope of receiving the type of mental health support that will be required for the appellant in Afghanistan. It is also the case that at this point in time, there is no precedent to which

reference can be made to show that the appellant would, despite his problems, be able to reasonably relocate or receive the support that he requires and would not face a real risk. It is also reasonably likely that if the appellant came to the attention of the Taliban that his mental health issues may be a relevant factor in his inability to cope with any adverse attention he receives.

28. There is also, in this case, a real risk of suicide as identified in the psychologist’s report which, when considering the evidence as a whole is credible should the appellant be return to Afghanistan or even at the point if he believed there was a real possibility of his doing so.

29. In light of the situation prevailing at the date of the hearing, and in light of the appellant’s specific presentation and history, I find the appellant has discharged the burden of proof upon him to the lower standard to establish a real risk of harm should he be returned to Afghanistan and that any internal relocation to Kabul or elsewhere will be unduly harsh and unreasonable in light there being no evidence of an existing support system within Afghanistan that could provide for both his physical and emotional/mental health needs, the lack of evidence of availability and accessibility of suitable treatment.

Decision

30. I allow the appeal.

Anonymity.

31. I continue the anonymity order made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 until further order.

Signed.....
Upper Tribunal Judge Hanson

Dated 18 November 2021