



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

Appeal Number: AA/02518/2011

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 9<sup>th</sup> December 2013**

**Date Sent  
On 22<sup>nd</sup> April 2014**  
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**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MR BAHADER TANHA SAHAK**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Timson of Counsel, instructed by Manchester Associates

For the Respondent: Mr G Harrison, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Afghanistan, who was born on 6<sup>th</sup> June, 1993, and who entered the United Kingdom clandestinely on 2<sup>nd</sup> December, 2009, when he claimed asylum. He was granted discretionary leave to remain on 19<sup>th</sup> August, 2010, until 3<sup>rd</sup> December, 2010, and, shortly before the expiry of this leave, the appellant made an application for leave to

remain to be extended on the basis that he was a refugee and also on human rights grounds. By way of decisions dated 14<sup>th</sup> February, 2011, the Secretary of State refused to vary the appellant's leave and made a decision to remove him pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant appealed that decision to the First-tier Tribunal and his appeal was heard by Immigration Judge De Haney on 29<sup>th</sup> March, 2011. The judge allowed the appellant's asylum appeal and allowed the appellant's human rights appeal. The Secretary of State challenged that decision and the Upper Tribunal, comprising Upper Tribunal Judge Dawson and Upper Tribunal Judge O'Connor, heard that appeal at Piccadilly Exchange Manchester on 23<sup>rd</sup> August, 2013.
3. They set aside the decision of First-tier Tribunal Judge De Haney, but preserved the findings of fact made by him. A copy of their determination is set out in Part 1 of the Appendix to this determination. The only findings of fact are set out in paragraphs 17, 18 and 19 of the First-tier Tribunal Judge's determination.
4. At the hearing before me, both representatives agreed that the only live issue before me is the question of proportionality under Article 8 jurisprudence. It was agreed by both representatives that the claim could not succeed under the Immigration Rules.

### **Oral Evidence of the Appellant**

5. I ensured that the appellant and the interpreter understood each other and told them to inform me if at any time they had difficulty in understanding each other.
6. The appellant confirmed his full names, his date of birth and his nationality.

### **Evidence-in-chief**

7. In answer to questions put to him by his Counsel, the appellant identified his signature on the last page of a four page witness statement dated 12<sup>th</sup> September, 2013. He told me that the contents are true and correct and that it was read back to him in his own language. He told me that he had also read it and that he could read English. He told me that he wished to adopt the statement as his evidence and that everything in it was true.
8. A copy of the appellant's statement is set out in Part 2 of the Appendix to this determination.

### **Cross-Examination**

9. In answer to questions put to him by Mr Harrison, the appellant confirmed that his girlfriend was not attending the hearing today. He agreed that her parents do not want her to have any relationship with him. She lives in

Accrington and suggested that the appellant should move away, but he refused. His girlfriend's father has said that he wants his girlfriend to have nothing further to do with the appellant. She is 19 years of age and works with her father.

10. She did not tell her parents about making a statement. She was sick.

### **Re-Examination**

11. The appellant agreed that his girlfriend was under pressure from her parents and he thought that they might send her back to Pakistan. That is the reason she has given for not attending the hearing.

### **Questions Put by Me in Order to Clarify the Appellant's Evidence**

12. The appellant told me that he had not contacted the Red Cross to find out about his mother and other family members. Social services have told him about these things. He believed that his mother had moved from her home.

### **Submissions**

13. Mr Harrison relied on the Reasons for Refusal Letter. He reminded me that this is a simple Article 8 appeal and that the appellant arrived in the United Kingdom as a minor. His evidence previously was that he was in regular contact with his mother. First-tier Tribunal Judge De Haney recorded that the appellant had received a document from his mother which had been sent to him by his maternal uncle in Pakistan. He also recorded that in oral evidence before him, the appellant had last spoken to his mother two weeks before the hearing in August 2013 and that the appellant had said that he keeps in touch with his mother on a regular basis and tends to phone her after he has had a particularly bad dream. Under cross-examination the appellant confirmed that his mother, two brothers and maternal uncle lived together in Kunar where they had moved from Helmand. Mr Harrison suggested that there was a clear line of communication between the appellant and his family members. If, as the appellant maintains, he has now lost contact with his family, then it is clear from his evidence that he has made no attempt at all to contact the Red Cross to find his mother.
14. Mr Harrison asked me to bear in mind that the appellant would be returning to Afghanistan as a fit, young adult. He is resourceful and speaks Pushtu. His girlfriend's family is opposed to the relationship between him and her and she is bowing to that pressure. She has chosen not to attend the hearing and give evidence which suggests that the relationship is not quite as strong as the appellant may believe, or alternatively is stronger on one side than on the other. Mr Harrison suggested that it would be wholly proportionate for him to be removed.
15. Counsel suggested that it was not surprising that the appellant has a girlfriend and that the parents do not approve. The appellant clearly has

built up a strong private life in the United Kingdom and has built strong ties with this country, having been here since his arrival on 2<sup>nd</sup> December, 2009. He indicated that there was nothing between him and Mr Harrison on the facts of the appeal but, so far as the question of proportionality is concerned, it must be borne in mind that the appellant is now settled in the United Kingdom. He has simply lost his social and cultural ties in Afghanistan.

16. I reserved my decision.

### **Discussion**

17. I am most grateful to the representatives for confirming to me that the only issue before me is the question of proportionality and that the appellant's appeal could not succeed on Article 8 grounds under the Immigration Rules.

### **The Law**

18. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for respect for a person's private and family life, their home and correspondence. The appellant has to show that the subject matter of the Article 8 subsists and that the decision of the respondent will interfere with it. If he does so, it is for the respondent to show that the decision is in accordance with the law, that it is one of the legitimate purposes set out in Article 8(2) in this case for the economic well-being of the country, for the prevention of disorder or crime and for the protection of the rights and freedoms of others, and that it is necessary in a democratic society, which means that it must be proportionate.

19. At paragraph 17 of Razgar v Secretary of State for the Home Department [2004] UKHL 27, Lord Bingham of Cornhill said this:

“17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:

- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- (3) If so, is such interference in accordance with the law?
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the

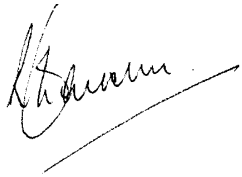
prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

- (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

## **Discussion**

20. I am satisfied that the appellant does enjoy a private life in the United Kingdom, but I find that he does not enjoy a family life in the United Kingdom, although his relationship with Ms Khan is clearly a significant part of his private life. I am not sure, however, that their relationship is necessarily as strong on part of Ms Khan's as the appellant would have me believe, but I accept that his relationship with Ms Khan is a significant part of his private life.
21. Within the appellant's bundle is a signed statement from Ms Khan, dated 12<sup>th</sup> September, 2013. I have caused a copy of it to be set out at Part 3 of the Appendix to this determination. The appellant and Ms Khan became friends after meeting at college in March 2011. Her parents disapprove of the relationship she has with the appellant and because he did not have a job and was an asylum seeker. They were no doubt concerned that at some stage in the near future he might be removed from the United Kingdom. Ms Khan indicates that she could never live in Pakistan and that, quite understandably, her life was in the United Kingdom. She is a British citizen and was born in the United Kingdom and permanently settled here. The appellant suggested that it was possible that Ms Khan's parents may "send Ms Khan back to Pakistan" and Ms Khan speaks about forced marriage being common in Pakistan.
22. I do give that statement some weight but not the weight that I would feel able to give if Ms Khan had attended the hearing and given oral evidence and been cross-examined.
23. I am afraid that I did not believe the appellant was being completely honest with me when he said in his witness statement that he has now lost all contact with his mother in Afghanistan. His evidence before the First-tier Tribunal was that he was in regular contact with his mother. I believe that the appellant has realised the significance of him having contact with his family members in Afghanistan and has now decided to change his evidence, in the hope that that would help his appeal. Given that he has always accepted that was in regular contact with his mother for some time after his arrival and that she would not unnaturally be concerned with his welfare, I do not believe that the appellant has suddenly lost all contact. He told me that he had not been in touch with the Red Cross to make enquiries as to her whereabouts. I believe that if he had been regularly in contact with his mother by telephone since his arrival in the United Kingdom and then suddenly not been able to make contact with her, he would have immediately sought help in locating her.

24. I also believe that the appellant has exaggerated the extent of his relationship with Ms Khan. I believe that if she truly did love the appellant and want to spend the rest of her life with him, she would have attended the hearing and given oral evidence on his behalf. She clearly attended solicitors and made a statement and I believe that if she truly wanted to spend the rest of her life with the appellant she would have found a way of attending the hearing.
25. The appellant has now been in the United Kingdom for approaching five years and during that time he will inevitably have formed friendships and ties with the United Kingdom. He has been studying at college and speaks English.
26. The appellant is a 20 year old, fit male. I have disbelieved his claim to have lost contact with his mother for the reasons I have given. I accept that he is in a relationship with a British subject but I do not believe that it is as strong as he would have me believe. I have read letters from Ahmad Javid Mohebi, Abdul Hotak and Melanie Riley. None of these individuals attended to give oral evidence before me and submit themselves to cross-examination. As a result, I place far less weight on their evidence than I would do if they had attended. I am sure that Ahmad Mohebi and Abdul Hotak value their friendship with the appellant but they do not indicate whether they are British subjects or not. Likewise, I am sure that the appellant is a pleasant young man who is respectful and a good tenant.
27. I notice from City & Guilds certificates in the bundle that the appellant has achieved Entry Level Certificate in Adult Numeracy, Entry Level Certificate in ESOL Skills for Life and has completed a full-time Entry Level Three course at Blackburn College gaining qualifications in English, ICT and maths. I have read the letter of 11<sup>th</sup> September, 2013 from West Berkshire Council and I have seen the Certificate of Functional Skills qualification in Information and Communication Technology, together with the Certificate of Achievement in Further Education awarded to the appellant. The skills he has acquired whilst he has been in the United Kingdom would no doubt be of benefit to the appellant on his return to Afghanistan.
28. I accept that, given that Ms Khan is a British subject, it would be wholly unreasonable to expect her to go with the appellant to Afghanistan. However, they do not enjoy family life at the moment. They do not and never have lived together. I accept that the appellant's removal will probably mean that he will lose all contact with Ms Khan and she will lose all contact with him. It would be open to them, should they choose, to continue their friendship by writing letters to each other and using email, but I accept, and assess the question of proportionality in the likelihood, that their relationship will be permanently ended by his removal. When balancing all the factors in favour of the appellant remaining in the United Kingdom against the interests of the wider public in the maintenance of immigration control, I have concluded that the appellant's removal is entirely proportionate. The appellant's Article 8 appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley