



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

Appeal Numbers: AA/03331/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 January 2015**

**Decision & Reasons  
Promulgated  
On 29 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**JALALDIN AHMADZAI  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Holmes, Home Office Presenting Officer

For the Respondent: Ms V Easty of Counsel instructed by Brighton Housing Trust

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Blake promulgated on 17 November 2014 allowing Mr Ahmadzai's appeal against the Secretary of State's decision dated 6 May 2014 to refuse to vary leave to remain and to remove him from the United Kingdom.
2. Although before me the Secretary of State is the appellant and Mr Ahmadzai the respondent, for the sake of consistency with the

proceedings before the First-tier Tribunal I shall hereafter refer to Mr Ahmadzai as the Appellant and the Secretary of State as the Respondent.

## **Background**

3. The Appellant is a national of Afghanistan. There was an initial issue concerning his age, but following two age assessments the Respondent accepted his date of birth as being 1 January 1996.
4. The Appellant arrived in the United Kingdom in or about January 2009 and claimed asylum on 19 March 2009. His application was refused on 4 September 2009 but he was granted discretionary leave until 4 September 2012 as an unaccompanied minor. On 4 September 2012 the Appellant applied for further leave to remain which in due course was refused on 6 May 2014, and the decision to remove the Appellant was made in consequence.
5. The Appellant appealed to the IAC. His appeal was allowed for reasons set out in the decision of First-tier Tribunal Judge Blake.
6. The Respondent applied for permission to appeal to the Upper Tribunal which was granted on 8 December 2014 by First-tier Tribunal Judge Astle.

## **Consideration**

7. The Appellant's claimed history is summarised in the two 'Reasons for Refusal Letters' ('RFRLs') of 4 September 2009 and 6 May 2014. It is also set out at paragraphs 16-29 of the decision of the First-tier Tribunal. It is unnecessary to repeat that claimed history here: I make reference as is incidental for the purposes of this decision.
8. The experienced First-tier Tribunal Judge in a lengthy, detailed, and careful determination, having heard oral evidence from the Appellant made positive findings as to credibility. In doing so he took into account those matters raised against the Appellant by the respondent: see determination at paragraphs 99 and 152.
9. The Judge made the following findings in respect of the Appellant's history at paragraphs 100-105:

*"100. I noted at the time of his arrival in the UK he had been but 12 years of age. I accepted his account of the destruction of his home and the death of his parents. I further noted that he had lost contact with his brothers. I also took account of the fact that at the time of his interview the Appellant had been only 13 years of age.*

*101. I further noted that he no longer considered himself to be a Muslim. I noted from his appearance before me that he had become westernised. I took into account the fact that his foster care had been with English and Irish families.*

102. *I accepted the Appellant's account in the course of his evidence that his memory and behaviour had changed since he had lived in the UK. I accepted from his account that he had undergone quite traumatic change.*

103. *I further noted that he claimed he had lived in the small village of Dubandai in the Loghar province and that this had been destroyed in the course of hostilities. I further accepted his account that the only known relatives he had had been that of his paternal uncle and cousins who had lived near the family home. I accepted his account that he had lost contact with them.*

104. *I noted that the Appellant had made contact with the Red Cross and that he had been unable to trace his brothers or any other family. I further noted that the Appellant had been absent from Afghanistan for some six years and had become westernised.*

105. *I further took account of the fact that the Secretary of State had made no attempt to seek to trace the Appellant's family. In respect of this I took into account the Upper Tribunal decision in **SHL (Tracing obligation/trafficking) Afghanistan [2013] UKUT 00312 (IAC).**"*

10. The Judge explained his findings, and also conducted a thorough review of the supporting materials particularly relied upon by the Appellant - including both evidence in respect of the country situation and evidence in respect of the Appellant's circumstances: see paragraphs 108-151. In respect of the country situation, it is to be noted that the Respondent did not place any particular documentation before the First-tier Tribunal and did not expressly rely upon any specific country guidance cases in either of the RFRLs or at the hearing.

11. The Judge then stated his conclusions as to the issue under the Refugee Convention at paragraph 157 in these terms:

*"I found that the Appellant was in danger of being returned to a hostile environment where he might be targeted by the Taliban. I found that he was westernised and on the evidence before me he was likely to be singled out for ill-treatment on that basis. I found him to be a vulnerable individual who still depended partially on the assistance and help of social workers in the UK."*

12. The Judge then went on to consider Article 8 of the ECHR with reference to paragraph 276ADE of the Immigration Rules: see paragraphs 161-165. The Judge found that the Appellant met the requirements of the Immigration Rules in this regard. At paragraph 164 the judge states:

*"I considered Rule 276ADE. I found that the Appellant qualified under subparagraph (vi). I found that he was over 18 and had lived in*

*the UK for less than 20 years but there would be very significant obstacles to his reintegration into Afghanistan if he were required to leave the UK. I therefore found that the Appellant was entitled to leave to remain on the basis of his private life in the UK."*

13. I pause to note that the Respondent in the grounds in support of the application for permission to appeal has not raised any challenge in respect of the Judge's conclusions on paragraph 276ADE, and thereby Article 8 private life. Ms Holmes acknowledged that in the circumstances she would be in difficulties in pursuing any such challenge before me and does not seek to do so. In those circumstances the Judge's decision in respect of Article 8, taken under the Immigration Rules, stands.
14. The Respondent, however, does raise challenge to the Judge's conclusions in respect of protection under the Refugee Convention. Five bases of challenge are set out in the grounds in support of the application for permission to appeal and Ms Holmes relies upon those grounds. I address them in turn.
15. The first ground argues that the First-tier Tribunal Judge erred in his application of the standard of proof. The ground is in two parts. There is a general criticism with particular reference to the wording employed by the Judge at paragraph 157 of the determination. Secondly, there is a challenge in respect of the Judge's comments at paragraph 123 of the determination.
16. The Judge sets out his principal self-direction in respect of burden and standard of proof at paragraph 6. The Respondent, through Ms Holmes, acknowledges that there is nothing objectionable in that self-direction. Reliance however is placed by the Respondent on the use of the words "*might*" and "*likely*" in the following sentences already quoted from paragraph 157.

*"I found that the appellant was in danger of being returned to a hostile environment where he might be targeted by the Taliban. I found that he was westernised and on the evidence before me he was likely to be singled out for ill-treatment on that basis."*

17. Ms Easty acknowledged that the use of 'might' and 'likely' could possibly be characterised as a 'looseness of terminology', but emphasised that such conclusions and such wording must be seen in the overall context of the determination. I agree. I am not persuaded that the use of those words denotes a misunderstanding or misapplication of the relevant standard clearly set out in the early part of the determination. There is nothing else in the determination to suggest that the Judge, as he embarked upon a careful and thorough analysis of all materials, had misunderstood or misapplied his clear self-direction on burden and standard of proof.

18. The Respondent's further aspect of challenge in this regard relates to paragraph 123 which is in the following terms:

*"In the light of this background information, I accepted the Appellant's account of the trouble in his home district and his fears of returning there without any family networks to support him."*

19. The Respondent argues that this only indicates an acceptance of the Appellant's subjective fears, and therefore does not constitute a finding of whether or not those fears are well-founded.

20. In my judgement paragraph 123 must be read in the context of the preceding paragraphs, in particular paragraphs 119-122. In those paragraphs the Judge makes reference to country information relating to the Appellant's home area and the level of violence and armed military activity. Given that paragraph 123 starts with the phrase *"In the light of this background information"*, it seems to me abundantly clear that when the Judge states that he accepts the Appellant's fears of return at the present time he is making a finding that the Appellant's expressed fears are well-founded against that background information.

21. Accordingly I reject the first ground of challenge raised by the Respondent.

22. The second ground of challenge is in respect of the Judge's characterisation of the Appellant as being 'westernised'. It is argued that the Judge failed to identify adequate reasons for such a conclusion. Further, although not expressly pleaded in this way in the written grounds, Ms Holmes queried what it was that the Judge meant by the term 'westernised'.

23. In my judgement the appropriate starting point is to consider the basis upon which such a characterisation might have been relevant to the Judge's overall conclusion that the Appellant would be at risk if returned to Afghanistan. In this context I note in particular paragraph 151 in which the Judge quotes from the expert opinion report of Dr Liza Schuster of the School of Social Sciences, City University, London. The relevant quotation is in the following terms:

*"To sum up - the level of violence over the past year in Kabul (and elsewhere) has increased and the decision as to whether it approaches the level required to engage Art. 15(c) of the Qualification Directive will need to be revisited regularly. While the majority of Kabul citizens go about their everyday lives accustomed to the risk of being in the wrong place at the wrong time, if it seems likely [the Appellant's] ethnicity or destitution forced him to live in certain parts of the city, he would be at greater risk from those who would see him as contaminated by his time in the West, or assume that time spent abroad would mean he or his family would be able to pay a ransom. Neither the Afghan government forces or the international forces are in a position to offer protection to such individuals."*

24. In circumstances where the Judge has concluded that the Appellant's 'westernisation' might lead to him being singled out for ill-treatment (see paragraph 157), the concept of being westernised must be seen to be understood through the perspective of those that might perceive the Appellant "*as contaminated by his time in the West*".
25. The First-tier Tribunal Judge's findings in respect of the Appellant being 'westernised' in my judgement are clearly derived from the following aspects of the evidence that the Judge identifies:
- (i) "*I further noted that he no longer considered himself to be a Muslim. I noted from his appearance before me that he had become westernised. I took into account the fact that his foster care had been with English and Irish families.*" (paragraph 101).
  - (ii) At paragraph 125 where the Judge makes reference to the evidence of Mr Daniel Russell, the Appellant's social worker, who confirmed "*that the Appellant had spoken to him about feeling more English than Afghani*".
  - (iii) At paragraph 129 where reference is made to the Appellant's "*self image as a UK resident*".
26. Ms Holmes queried the relevance of appearance to the concept of being westernised. I accept that appearance is not a determinative indicator of how an individual may feel and think. Nonetheless, in my judgement it is a possible indicator that is appropriately taken into account 'in the round' with other factors.
27. In this context in addition to the observations made in the determination by the First-tier Tribunal Judge, Ms Easty directs my attention to the nature of the supporting material which inevitably must have informed the Judge in reaching his conclusions, including in particular photographs of the Appellant socialising with his friends in groups of mixed gender and in public bars.
28. It is also to be noted that the context of the Judge's consideration is in respect of an individual who has spent his adolescent years - in reality having grown up in the sense of transitioning from childhood to manhood - in the United Kingdom. It is also observed in the evidence and noted by the Judge that the Appellant had a girlfriend who had a child from a previous relationship.
29. In all of the circumstances the Judge's conclusion that the Appellant was westernised in the sense that he might possibly be perceived as 'contaminated by the West' is in my judgement not to be impugned. Accordingly I reject the second aspect of the Respondent's challenge.
30. The third ground of challenge raised by the Respondent in the written grounds in support of the application for permission to appeal relates to the Judge's conclusion that the Appellant was still dependent or partially

dependent upon social services in the United Kingdom. The ground pleads that it is arguable that no adequate reasons are provided.

31. I reject that argument. It seems to me that it is abundantly clear that the Judge relied on the evidence of the Appellant's social worker who indicated that he was still seeing the Appellant on an approximately monthly basis: see paragraph 131.
32. Ms Holmes seeks to present this aspect of the challenge with a slightly different emphasis, and submits that the Judge's findings are not sufficient to reach the conclusion expressed at paragraph 157 that the Appellant was a vulnerable individual.
33. In the first instance I note that the concluding sentence at paragraph 157 in reality adds nothing to the finding on risk in the preceding sentences: to that extent the vulnerability or otherwise of the Appellant is not directly material to the conclusion that he would be at risk if returned to Afghanistan. Nonetheless, it seems to me that 'in the round' there was sufficient material over and above the monthly contact with social services to indicate that the Appellant could properly be characterised as vulnerable - that this was a conclusion open to the Judge on the materials before him.
34. In this context I note in particular that reference was made to the Appellant having been offered, but having declined, therapeutic support. The fact of such an offer is indicative of there being an underlying reason requiring therapeutic input which in turn is an indicator of potential vulnerability. It is also the case that the Appellant's social worker described the Appellant as being vulnerable (paragraph 130).
35. In all such circumstances I also reject the Respondent's third basis of challenge.
36. As regards the fourth and fifth bases of challenge, Ms Holmes was somewhat circumspect in seeking to advance these with any particular vigour.
38. So far as the fourth ground is concerned, it is pleaded that the Judge did not "*resolve conflicts in the objective evidence*". The ground argues that "*If the Judge prefers the report of Dr Schuster to the objective material (including the country guidance case law of **RQ**) then it is respectfully submitted that the reasons for so doing, and in what respects, are not clear*".
39. Ms Holmes acknowledges that she is not able to identify in what way Dr Schuster's evidence was in conflict with the country guidance case of **RQ (Afghan national army - Hizb-e-Islami risk) Afghanistan CG [2008] UKAIT 00013** which in any event did not seem to be on point in respect of the Appellant's particular circumstances and claimed risk factors. In those

circumstances Ms Holmes realistically acknowledged that she could not advance that particular ground any further.

40. In ground 5 of the Respondent's challenge it is argued that the Judge failed to take into account relevant authority: reference is made to the country guidance cases of **HK and Others (Indiscriminate violence - forced recruitment by the Taliban - contact with family members) Afghanistan CG [2010]** and **RQ**.
41. Again Ms Holmes very fairly acknowledged that those reported country guidance cases did not appear to be directly on point. Insofar as reliance may have been placed in the grounds on the case of **HK**, Ms Holmes accepted that this applied to children and the Appellant was no longer a child. In any event, paragraph 2 of the headnote in **HK** (referenced in the Respondent's grounds) indicates no more than that a case sensitive analysis of possible risk is required. In my judgement this is exactly what the First-tier Tribunal Judge undertook. As was acknowledged in respect of ground 4, the decision in **RQ** is not on point.
42. In the circumstances I also therefore reject the Respondent's challenge based on grounds 4 and 5.
43. Accordingly in all the circumstances I find that there was no error of law on the part of the First-tier Tribunal Judge, and accordingly his decision stands.

### **Notice of Decision**

44. The decision of the First-tier Tribunal contained no error of law and stands.
45. The Secretary of State's challenge is dismissed. Mr Ahmadzai's appeal remains allowed under the Refugee Convention and on human rights grounds (Articles 3 and 8 - the latter pursuant to paragraph 276ADE of the Immigration Rules).

*The above represents a corrected transcript of an ex tempore decision given at the hearing on 15 January 2015.*

Signed

Date: 27 January 2015

**Deputy Upper Tribunal Judge I A Lewis**