



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

Appeal Number: AA/04620/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 28<sup>th</sup> October 2014**

**Determination Promulgated  
On 20<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**MR SHAKIR TAHERI  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss A Radford instructed by Turpin Miller

For the Respondent: Mr Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. Mr Shakir Taheri date of birth 4<sup>th</sup> August 1996 is a citizen of Afghanistan. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge S Taylor. The determination was promulgated on 20<sup>th</sup> August 2014. By the determination the judge dismissed the Appellant's appeal against the decision of the respondent to remove the Appellant from the United Kingdom after refusing him

asylum, humanitarian protection and other relief to enable him to remain in the United Kingdom. The immigration decision was taken on 25<sup>th</sup> June 2014 to remove the Appellant from the United Kingdom back to Afghanistan. It is against that decision that the Appellant originally appealed. The judge dismissed all of his claims and upheld the decision to remove him.

3. The matter appeared before Designated Judge of the First-tier Tribunal Macdonald, who on 10<sup>th</sup> September 2014 gave permission to appeal to the Upper Tribunal.
4. In granting permission it was noted that the First-tier Tribunal Judge had accepted the circumstances in which the Appellant came to depart Afghanistan. In granting permission it was noted that the First-tier Tribunal Judge had however concluded that there was no evidence that the Appellant was still wanted by the Taliban or that he would still be at risk from his step-father. In granting permission it was noted that given that the Appellant's original account of leaving Afghanistan appeared to be accepted it was arguable that further reasoning was required to explain why the Appellant would no longer be at risk.
5. It is suggested within the Grounds of Appeal that the judge has failed to take account of the effect of paragraph 339K. Paragraph 339K notes that the fact that the person has already been subjected to persecution or serious harm or direct threats of such is a serious indication of a person's well founded fear of persecution or real risk of suffering serious harm unless there are good reasons to consider that such persecution or serious harm will not be repeated.
6. The judge had found that there was no evidence that the harm will be repeated. However it was submitted that there was a serious indication by reason of having found that the Appellant was a male of fighting age; who had been of interest to the Taliban in the past; and who had been forcibly recruited into the Taliban by his father; who would continue to be of interest to the Taliban; and whose failure to co-operate or work with the Taliban would result in his persecution.
7. The judge examines the personal circumstances of the Appellant and the reasons why he is satisfied that the Appellant would not be at risk in paragraph 21 of the determination. The judge had noted that the Appellant had lived for a time after escaping from a Taliban training camp and one of his uncle living in Kabul with an aunt before leaving Afghanistan to come to the United Kingdom.
8. The judge was referred to the case of DS [2011] EWCA Civ 305. However the judge also refers to the case of AA (CG) [2012] UKUT 16. I would also draw attention to the case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163. In the case law the Upper Tribunal specifically considered the option of the viability of return and internal relocation to Kabul. It was held that the level of violence in the city had to be considered but even the difficulties experienced by the poor and the circumstances within Kabul were such as not to generally make return to Kabul unsafe or unreasonable.

9. In relying upon the case of AA [2012] the judge specifically dealt with the issue with regard to whether children were at risk. The case of AA concluded that the risk to children was not such as would qualify for international protection.
10. The judge specifically had regard to the fact that each returnee had to be considered on their own individual circumstances. The judge therefore went on to consider the individual circumstances of this Appellant in paragraph 21. He took account of the history of the Appellant. The Appellant as noted within the determination had for some time after he had escaped from the purported Taliban camp and from his uncle gone to live with his aunt in Kabul. The judge has therefore considered the viability of the Appellant living in Kabul with his aunt. The judge was satisfied in the circumstances that there was no risk to the Appellant if the Appellant were to return to Kabul to his aunt.
11. Having examined the personal circumstances of the Appellant and the circumstances in which the Appellant would be returned to in Kabul the judge has given sufficient reasons to justify the conclusion that this Appellant could live in Kabul without his being at risk and why his situation would be such that he would not be at risk from the Taliban or from his uncle. The judge was satisfied on the circumstances that the Appellant would not be at risk in Kabul. That was a finding of fact that the judge was entitled to make on the basis of the evidence presented.
12. Within the Grounds of Appeal reliance is placed by the Appellant's representative on AA (see above) and upon PM [2007] UKAIT 00089. It is suggested that the expert's report within those cases indicate that Pashtuns are limited to Pashtun areas within Kabul. It is submitted that the Appellant's background will be checked and on being checked he will be traced. However the judge specifically considered the circumstances of this Appellant and given the support and assistance that he would have from his aunt the judge was satisfied that living in Kabul the Appellant would not be at risk.
13. Those were findings of fact that the judge was entitled to make on the basis of the evidence presented before him. The judge has given sufficient reasons for coming to the conclusion that this Appellant would not be at risk in Kabul. The judge has given sufficient reasons for finding that this Appellant would have family members upon who he could rely within Kabul. The judge has specifically considered the fact that the Appellant's family in the United Kingdom had been in touch with the aunt in Kabul and that therefore contact could be made with the aunt.
14. It is suggested as the fourth ground that there is no availability of sufficient protection within Kabul. However given the case law that has been cited the judge concluded that the Appellant would not be at risk on his return to Kabul and would be capable of relying upon family members. In those circumstances there would be no issue as to sufficiency of protection as the appellant would not be at risk.
15. Whilst past persecution is a significant indicator of the potential for future persecution consideration has to be given to the actual circumstances in which an

Appellant would be returned to their home country. The judge has specifically considered the circumstances in which this Appellant would be returned to his home country and has come to the valid conclusion that the Appellant would not be at risk of conduct capable of constituting persecution. In the light of that the issue with regard to protection does not arise.

16. Given all the circumstances the judge has fully justified the conclusions that he reached on the basis of the case law presented and on the facts presented. Accordingly there is no material error of law within the determination and I uphold the decision to dismiss this matter on all ground.

Signed

Date **19<sup>th</sup> January 2015**

Deputy Upper Tribunal Judge McClure