Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06854/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 27 October 2015	**On 30 October 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHMADZIA STANIKZAI

Respondent

Representation:
For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr T Ruddy, of Jain, Neil & Ruddy, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Afghanistan, whose date of birth is recorded as 1 January 1979. He sought asylum on 10 July 2009 but failed to attend an interview or to observe reporting conditions until 27 September 2013. He then put forward a claim as follows. He is from Mughalkhail in Muhammad Agha, Logar Province. In 2005 he began teaching at a local school in the mornings. In 2006 he began teaching a group of illiterate

women at his home in the afternoon. He received 2 threatening letters from the Taliban warning him to cease that activity. The local elders, who had encouraged him in his teaching, firstly advised him to continue but on receipt of the second letter advised him to report to the local government. Having received no reassurance there, he went to police headquarters in Kabul. After speaking to the police, he decided that he had to leave Afghanistan. After staying for a week with his father-in-law in Kabul he left, travelling through many other countries until he reached the UK.

3. The respondent refused the appellant's claim for reasons explained in a letter dated 20 March 2015. The respondent found that he was not in need of international protection, largely because of the delay in putting forward his claim. Paragraphs 4 -10 of the letter survey the evidence regarding threatening letters from the Taliban to perceived government sympathisers, who may include teachers, and the Taliban's attitude to girls' education. Paragraph 11 acknowledges clear evidence of intimidation of teachers such as they may have to resettle in a safe environment, usually in an urban area such as Kabul. It is therefore accepted that the appellant "could not have continued teaching in Logar Province". Nevertheless, the authenticity of the threatening letters is doubted. There is found to be no reason why the appellant might still be at risk in Kabul, and no reason why it would be unduly harsh to expect him to relocate.

4. First-tier Tribunal Judge Wallace heard the appellant's appeal on 7 July 2015. In her determination, promulgated on 21 July 2015, the judge noted the appellant's case that he had explained why he had absconded, that instances of targeting of teachers should be dealt with according to their specific individual circumstances, and could be continuous, and that relocation to Kabul was not a viable option. The respondent argued that there was no evidence that the appellant was of any ongoing interest to the Taliban, that he had complied with what they required him to do, and that he could relocate to Kabul being a city with which he was familiar, where he had lived for a number of years, and which was his wife's place of origin. (It appears she presently lives in Pakistan, although some at least of her relatives live in Kabul. The appellant's family appears to live in Mugalkhail, having returned there from Pakistan at the same time as the appellant, although the judge refers to them as living in Pakistan.) Both parties based their submissions on *AK* Afghanistan CG [2012] UKUT 00163.

5. The judge treats the threatening letters from the Taliban are genuine, although she does not expressly state that conclusion. She goes on to note the background evidence regarding the Taliban and education, and continues:

> " 60 … The respondent's position is not that the teachers are not attacked, but that the appellant could stop teaching and go to Kabul … that ignores the reason why the appellant went to Kabul. The appellant went to Kabul … to police headquarters to see if he could get advice regarding protection …

against the Taliban … he wanted to see if protection would be extended to him so that he could continue his teaching.

61 The appellant admittedly has lived in Kabul, he is familiar with the city, but his circumstances have changed … at that time he was a student … at the university, living in student accommodation.

62 *AK* talks about the sliding scale … and the need to take into account the specific individual circumstance of a claimant. This appellant obviously has a vocation and felt it incumbent upon himself to teach women. This became very apparent in oral evidence as the appellant's face lit up when he was talking about his teaching and his work with the village women in particular. He was visibly animated.

63 Teaching is a vocation and to ask him to stop would … be particularly harsh. The appellant believes in what he was doing and it is not so easy to give up something in which you believe and which you believe can make a difference for good in the lives of others.

64 On the basis of the evidence presented and the low standard of proof required, I accept the appellant's account as an accurate finding in fact.

65 As to relocation to Kabul, he would have minimal family support, his wife is not in Afghanistan, neither are his siblings, nor his parents. In these particular circumstances, I believe it would be unduly harsh to require him to go and live in Kabul especially as he could only go there if he abstained from teaching women."

6. The SSHD's grounds of appeal to the Upper Tribunal do not challenge the credibility finding, which was more favourable than the assessment reached by the respondent. The respondent:

> "… rather takes issue with the way the judge dealt with the alternative submission that internal relocation to Kabul would provide safety from the Taliban and would not be unduly harsh.
>
> The judge finds at paragraph 65 that the appellant could only go to live in Kabul if he gave up teaching women, and this is the core reason for finding that it would be unduly harsh to expect him to live there. The judge proceeds on the assumption that the Taliban would be willing and able to target the appellant in Kabul just as easily as … in the heavily disputed area of Logar … The judge refers to no background evidence to show that the appellant would be unable to continue teaching in Kabul without serious issue.
>
> Even if the judge were entitled … to find that somebody teaching women in Kabul would face a risk of ill-treatment from the Taliban, she has not adequately explained why it is unreasonable to expect the appellant to choose a different profession to avoid that harm. While the judge refers at paragraph 63 to teaching being a vocation … the desire to work as a teacher is not a fundamental right protected by the Refugee Convention. It is therefore reasonable (and not unduly harsh) to expect someone to modify their behaviour to avoid harm, the *HJ (Iran)* principle being inapplicable …
>
> All other factors … point to internal relocation being reasonable … the appellant is 35 years old, well educated with very good employment prospects, travelling without women or children, in relative good health and is familiar with Kabul having lived there previously.

> It is hard to see how the judge's conclusion that relocation to Kabul would be unduly harsh and sustainable on these facts, when it is recognised that the test is a stringent one: Baroness Hale in *AH* (Sudan) [2007] UKHL 49."

7. On 7 August 2015 FtT Judge Lever granted permission, observing that it was arguable that the judge did not address the issue whether in Kabul the appellant could not continue teaching women, or whether he would be prevented from teaching generally, and that the judge had not adequately explained even if he could only partially fulfil his vocation how that could meet a threshold of being unduly harsh.

8. Mrs O'Brien submitted along the following lines. A desire to work as a teacher is not a core right protected in terms of the Refugee Convention. The judge decided that the appellant should not be expected to relocate to Kabul, where he had an uncle and his father-in-law, where his wife's relatives lived, and where he had lived before. It was clear that but for the specific issue of pursuing his employment of choice, the judge would not have come to the decision she did. It was an error of law to give that element such decisive significance. In *MSM* (journalists, political opinion, risk) Somalia [2015] UKUT 413 the Upper Tribunal found that return to Somalia would involve a real risk of persecution on the ground of actual or imputed political opinion where the appellant would seek and find employment in the media sector, and that he was not to be denied refugee status on the ground it would be open to him to seek other employment. That was the most relevant comparison in a reported case, but the present case fell well short. There was no similar finding that the appellant would seek and find employment as a teacher. The present case was not allowed because it fell within the Refugee Convention, but on the alternative of internal relocation. This case did not involve forfeiture of a core protected right. There was no evidence which supported a finding that the appellant would be at risk in Kabul as a teacher, even if teaching women. There was no reason why he would have to abstain from working as a teacher. The high threshold for an internal flight was simply not met.

9. The submissions for the appellant were as follows. The Secretary of State had not taken the line in the First-tier Tribunal which was now pursued in the Upper Tribunal. It had not been argued there that the appellant could not properly contend that he had a right to resume teaching on return. There was background evidence of the difficulties for teachers not only in provincial and disputed areas, but even in Kabul. The respondent sought to portray this as a new point introduced by the judge, but the case had been put by the appellant on just the basis on which it was allowed. The submission was recorded at paragraph 39 of the determination, "The appellant displayed a passion for teaching which could not be denied." The evidence was that the appellant might be safe if he ceased teaching, but not if he carried on doing so, even in Kabul. He fell into the category of protection identified in *AK* at paragraph 26(i) and at 208-209. The judge, although she had not mentioned *HJ (Iran),* had in effect correctly applied its principles. The determination should stand.

10. I observed that in this case there did not appear to have been a finding on what the appellant would *do* on return (unlike in *MSM)*. Mr Ruddy submitted that it was implicit in the determination that the judge thought that he would teach. Mrs O'Brien said that to the contrary, the assumption in the determination was that the appellant on return to Kabul would not teach, and that was the very feature which led her to find that return would be unduly harsh – a finding which could not be justified.

11. I reserved my determination.

12. In general, on country guidance and background evidence, it is not unduly harsh to expect a fit educated adult male Afghan citizen to re-establish himself away from an area of risk in Afghanistan, which usually but not always means in Kabul, even without family connections in the area of relocation.

13. Although both representatives and the judge referred to the requirement (derived from *AK* and elsewhere) to take into account the specific individual circumstances of a claimant, I do not think that either the parties or the judge focused on what those circumstances were.

14. The appellant says in the statement which he provided to the First-tier Tribunal that in 2005 he started teaching in the local school, Mughalkhail Girls Lycee, which is both a high school and primary school. He worked in the primary department, "teaching girls subjects like geography, history and Pushtu. I always taught in the mornings in that primary school." The problems he describes arose only from further and separate work which he began in 2006, teaching illiterate women at home. The Taliban's objections were only to the latter element. Their letter complains that the appellant is:

> "… taking female fellow villagers out of their homes with the pretext of education … arranged by the Americans and their puppets. And you teach them American and pagan culture … using every avenue to eliminate Islam and our religious legal system. As you come from an Islamic religious family it doesn't suit you well and you shouldn't be doing it … close the school down or … face the consequences."

15. The Taliban had no issue with the existence of a local girls school and with the appellant's employment there as a male teacher. The particular evidence did not suggest that the appellant would be at risk if he resumed teaching, including the teaching of girls, even in his home area. There was nothing to stop him from teaching boys or girls (or even women) in Kabul.

16. I think that having to renounce a vocation and make a living in another way might legitimately be pleaded as an element in judging the balance between internal relocation being acceptable, and being unduly harsh. It is not a factor which by itself establishes a protection need or which shows internal relocation to be unduly harsh.

17. Taking together the background evidence and the appellant's account of his 2 year teaching career in his home village, there was nothing to justify the conclusion reached. The appellant could teach boys or girls, at home or elsewhere. The only problem which realistically might arise in Kabul would be from the teaching of adult women. At highest, his case was that his pursuit of his vocation would be limited to that extent.

18. The parties made only passing reference to *HJ (Iran)* and did not go to the case report. I think it is sufficient to say that there was no citation of any authority for a rule that vocational preferences are to be protected to an extent that would benefit this appellant on the facts of his case, properly examined. Nor am I aware of any such authority.

19. The judge was not entitled to allow the appeal on the basis of undue harshness arising from a partial restriction on the range of pupils the appellant might be able to teach. There is nothing else in the case to justify a grant of protection.

20. The determination of the First-tier Tribunal is **set aside**. The following decision is substituted: the appeal by Ahmadzia Stanikzai, as originally brought to the First-tier Tribunal, is **dismissed**.

21. No anonymity order has been requested or made.

Hugh Macleman

Upper Tribunal Judge Macleman
30 October 2015