



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

Appeal Number: AA/08411/2015

THE IMMIGRATION ACTS

Heard at Bradford Phoenix House

**Decision &
Promulgated**

Reasons

On 20 April 2016

On 27 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**OK
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hachemi a Solicitor

For the Respondent: Mr Diwnycz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for asylum or ancillary protection on 15 April 2015. His appeal against this was dismissed by First-tier Tribunal Judge Shimmin ("the Judge") following a hearing on 28 October 2015.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order preserving that already in force as the Appellant was a child recruit to the Taliban. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

The grant of permission

3. Upper Tribunal Judge Cavanagh granted permission to appeal (23 December 2015) on the grounds that;
 - (1) It is arguable that the Judge may have erred in failing to consider the likelihood of the attack on the family home being perpetrated by the authorities and how this impacted on the Appellant's risk on return.
 - (2) It is also arguable that, in light of the fact that he had already been recruited to carry out activities for the Taliban, the Judge failed to consider whether there was a continued risk of forced recruitment on return.
 - (3) HN (Afghanistan) and Others (C2/2015/2582) will be heard on 13 and 14 January 2016. The Appellant is from Baghlan. It may well be that any findings made by the Court of Appeal might also need to be considered.

The Judge's findings

4. The Judge found that the Appellant's account was reasonably likely to be true [36]. He is 22 [11] and from Baghlan province [37]. His paternal uncle interfered with the family after the Appellant's father left for Norway, and forced the Appellant to be taken out of school [11]. The Appellant was forced to carry and deliver explosive devices to use against government soldiers and policemen [12]. On one occasion it was strapped to his chest when he to the home of his uncle's arch enemy (Mullah Allam who allegedly worked for the government) [13]. His father returned from Norway to an extortion bid by the Taliban following which he died when the paternal uncle came to the house [14]. The Appellant was prevented from moving to his maternal uncle's with the rest of his family [15]. About 1 year later the paternal uncle died from injuries received in battle and the Appellant went to live with his family at his maternal uncle's [16]. He was subsequently injured in a bomb blast in which his cousin died [17]. He was not taught how to assemble bombs as they were always delivered in a container and covered and he was under orders not to meddle with them [28].

5. The Judge considered PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089 and AK (Article 15 (c)) Afghanistan UKUT 00163 (IAC). He found that after the passage of time the Appellant's low profile was such that the government would not have any particular interest in him [40]. Kabul is a city of more than 8 million people and it is not reasonably likely he would come to the adverse attention of the government [41]. He is a fit and healthy young man and it would not be unduly harsh to expect him to relocate to Kabul [42].

Respondent's position

6. It states in the Rule 24 notice (19 January 2016) that the Judge directed himself appropriately and was entitled to find the appellant was not at risk on return to Kabul given he was now 22. No Additional oral submissions were made.

Appellant's position

7. In summary it was submitted in the grounds seeking permission to appeal and orally that the Judge did not fully take into account the length of time he had worked for the Taliban or the nature of the work. Mullah Allam was from his village and therefore it is reasonably likely it was he who attacked the Appellant's home. The fact that the Appellant is from Baghlan province is an additional factor. His lengthy involvement means it is likely he will be recruited again.

Discussion regarding ground 1

8. There is no merit in ground 1. The Appellant's case was that there had been fighting as the authorities had been alerted to his paternal uncle's return (statement 16 June 2014 [14]), he being a known Taliban commander, and that it was Mullah Allam who was the arch enemy and who worked with the government. The Judge did therefore consider and accept the likelihood of the attack on the family home being perpetrated by those who supported the authorities. Against that factual background, the Judge assessed that there was no real risk to the Appellant on his return given the passage of time and his low profile. He was entitled to do so on the evidence and given PM and AK.

Discussion regarding ground 2

9. There is no merit in ground 2. The Appellant's case was not that he was at real risk of being re-recruited by the Taliban in Kabul. He said it was the government he feared in Kabul [39]. He did not say it was the Taliban. The fact he may fall within the category of those who are particularly vulnerable to recruitment (AA (unattended children) Afghanistan CG [2012] UKUT (00016 (IAC) does not mean he personally is at real risk, he now being 22.

Discussion regarding ground 3

10. Mr Hachemi accepted that as his claim is that, at best, he is perceived to be Taliban, there is no merit in ground 3 which, in any event, was not one of the grounds upon which he sought permission to appeal. All the Court of Appeal decided in HN was that the Upper Tribunal had not erred in dismissing claims for Judicial Review of decisions of the Respondent not to admit fresh claims based on the worsening security position in Afghanistan.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
26 April 2016