



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

Appeal Number: AA/12912/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 16th May 2016**

**Decision & Reasons Promulgated
On 19th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

[F N]

~~(ANONYMITY ORDER NOT MADE)~~

Respondent

Representation:

For the Appellant: Ms A. Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: Mr D. Ritchie, instructed by Lawrence Lupin solicitors

ERROR OF LAW DECISION & REASONS

1. The Respondent, to whom I shall refer as the Claimant, is a national of Afghanistan, born on [] 1996. He arrived in the United Kingdom on 18 March 2015 and claimed asylum 5 days later. The basis of his claim is that his father had been killed by the Mujahedeen because he was a member of the People's Democratic Party of Afghanistan (PDPA). The Appellant stated that he had been targeted as a member of the Nishat family and he had been detained,

physically abused and beaten almost daily, as a consequence of which he had scarring and psychological symptoms. He has a number of relatives in the United Kingdom, including two brothers, who have been granted asylum. The Secretary of State rejected his claim on the basis of credibility and in the absence of medical evidence.

2. An appeal was lodged against this decision which came before First tier Tribunal Judge Quinn for hearing on 3 March 2016. At the outset of the appeal hearing, counsel for the Appellant applied for an adjournment in order to obtain medical reports from Freedom from Torture, who were treating the Appellant. This application was refused on the basis that the Judge considered there had been sufficient time to obtain this evidence in advance of the hearing. The hearing proceeded and the Judge heard evidence from the Appellant and three members of his family.

3. In a decision dated 17 February 2016, the First tier Tribunal Judge allowed the appeal. He took into account the oral evidence and a scarring report prepared by Mr Mason dated 13 August 2015, which confirmed that his scarring was highly consistent with the Appellant's account. At [18] he held:

"Using that lower standard (of proof) I was satisfied that it was more likely than not that [FN] had been assaulted in Afghanistan and that the marks on his body were as a result of those injuries."

At [19] the Judge took into account that the Appellant was receiving counselling for the trauma he had suffered and at [24] found that he would be at risk if returned to Afghanistan, having been detained and tortured in the past, that he would be at real risk of serious harm on return. At [25] the Judge held:

"Whilst it was arguable that the Appellant could relocate to another area in Afghanistan the reality was as a young man without a job or a home he would need to be near to his family to be able to survive. If he were to live near his family there was a risk of him being further abused."

The Judge went on to find at [26] that the Appellant would be at real risk of persecution if returned and at [30] that there would be a real risk of treatment contrary to Article 3 of the ECHR.

4. In an in-time application for permission to appeal to the Upper Tribunal, the Secretary of State argued that the First tier Tribunal Judge had erred materially in law in failing to explore the option of internal relocation further, particularly by reference to AK (Article 15C) Afghanistan CG [2012] UKUT 163 (IAC) at [253]. She contended that the Appellant would be able to safely relocate to Kabul and it would not be unduly harsh for him to do so.

5. Permission to appeal was granted by First tier Tribunal Judge Grimmett on the basis that it was arguable that the Judge made an error as he appears to have overlooked the country guidance case AK [2012] UKUT 163 when considering internal relocation and his conclusion may have been different had he not done so.

6. A rule 24 response was submitted on the Claimant's behalf on 10 May 2016, which argued that:

(i) the question being addressed by FtJ Quinn was different to that before the Upper Tribunal in AK (Article 15C) Afghanistan CG [2012] UKUT 163 (IAC) which considered whether the situation in Kabul was such as to violate Article 15C of the QD;

(ii) the Judge made a clear finding that the Appellant had been detained and tortured by the Afghan police and this has not been challenged by the SSHD;

(iii) the Judge implicitly found that the risk to the Appellant would be prevalent in the whole of Afghanistan at [24] given that the Appellant's fear of persecution is from the State;

(iv) the FtJ clearly applied the undue harshness test set out in Januzi [2006] UKHL 5 and AH (Sudan) [2007] UKHL 49. There was no error of law in his approach.

Hearing

7. At the hearing before me, Ms Brocklesby-Weller sought to rely on the grounds of appeal and submitted that the challenge is to the reasonableness of relocation cf. AK (Article 15C) Afghanistan CG [2012] UKUT 163 (IAC) at [253]. The Judge does not engage with why the Claimant would not be able to seek out employment and why he needs his family to support him. She submitted that relocation was a live issue before the Judge, otherwise he would not have directed himself as he did at [24] & [25]. It does not appear to be his case that the authorities are actively seeking him. It was unclear how in that backdrop this would be an individual who would not be able to integrate or establish himself either in Kabul or a larger city.

8. In response, Mr Ritchie relied upon the Rule 24 response. He submitted that the issue of internal relocation was not the matter in issue given the findings by the Home Office in the refusal decision where the main issue was credibility at [8]-[10] and the issue of risk on return was based on the SSHD's negative view of the Appellant's credibility. There was no alternative finding about the issue of internal relocation in the refusal letter. AK mentioned at [13] but on the basis that credibility was not accepted but on the basis that conditions in Kabul do not breach article 3 of ECHR rather than in circumstances where the Claimant has a well-founded fear of persecution. He submitted that it was clear from the Claimant's statement and interview that his fear arises in Kabul which is generally regarded as the safest part of Afghanistan and the city to which he would be returned. The Appellant has been detained and tortured in the past and would be at a real risk of persecution if returned cf. [25]. The issue in AK is was the article 15C risk, which is different from undue harshness and the findings at [253] of AK seem to be a very fact specific assessment of internal relocation in that particular case, which does not engage with undue harshness and relocation in a refugee context. Mr Ritchie submitted that the Judge had not made a material error of law.

9. Ms Brocklesby-Weller did not exercise her right to respond.

Decision

10. I found that First tier Tribunal Judge Quinn had not erred materially in law and announced my decision at the hearing. I now give my reasons. It is clear from the findings of the First tier Tribunal Judge at [21] onwards that she accepted his claim to be at risk of serious harm or persecution in Afghanistan on account of being a member of the Neshad family. Given that his fear of persecution is from the Afghan authorities, I find that the risk to the Claimant would be prevalent throughout Afghanistan and this is the effect of the Judge's finding at [24] that:

"Taking account of the above I was therefore of the opinion that there was a risk faced by the Appellant if he were to return to Afghanistan. He had been detained and tortured by the Afghan police and that was likely to happen again if he were to be returned to Afghanistan. In my view there is a real risk that he would suffer serious harm on return to Afghanistan."

11. Moreover, the Claimant has always consistently maintained that he is from Kabul and thus any consideration of internal relocation would have to be to a place other than Kabul. In these circumstances, I do not see how the CG decision in AK (Article 15C) Afghanistan CG [2012] UKUT 163 (IAC) is or was material to the decision of the First tier Tribunal Judge, given the very different factual matrix and the fact that in AK the Upper Tribunal expressly found that that Appellant could return to Kabul because he had an uncle there who could help him with accommodation and employment, whereas the Judge's unchallenged finding in this case at [25] was that living near a family would put the Claimant at risk of further abuse.

12. Consequently, I dismiss the appeal by the Secretary of State for the Home Department, with the effect that the decision of First tier Tribunal Judge Quinn allowing the appeal on asylum and Article 3 grounds is upheld.

Deputy Upper Tribunal Judge Chapman

16 May 2016