



IAC-AH-DP-V1

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

Appeal Numbers: AA/09464/2015
AA/08552/2015

THE IMMIGRATION ACTS

Heard at Manchester

On 6th July 2017

**Decision & Reasons
Promulgated
On 12th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**K B S
O S
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss M Vidal of Haris Ali Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants are citizens of Afghanistan. The first Appellant was born on 1st January 1944 and is now 73 years of age. She is the aunt of the second Appellant born 1st January 1998, who is 29 years of age.

2. The Appellants appealed to the FtT following the refusal of their asylum and human rights claims. The FtT heard the appeals together on 6th February 2017. The appeals were dismissed on all grounds. The FtT did not find that the Appellants would be at risk if returned to Afghanistan, and did not find that the Appellants had proved that there would be very significant obstacles to their integration into Afghanistan, and therefore they could not succeed with reference to paragraph 276ADE(1)(vi). The FtT also considered Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) outside the Immigration Rules, concluding that the public interest in maintaining effective immigration control, required the Appellants' removal from the UK, and their removal would not be disproportionate and therefore there was no breach of Article 8.
3. The Appellants applied for permission to appeal to the Upper Tribunal. There was no challenge to the FtT findings in relation to asylum or risk on return. The Appellants contended that the FtT had erred in considering paragraph 276ADE(1)(vi) and Article 8 outside the Immigration Rules.
4. In relation to paragraph 276ADE(1) it was contended that the FtT accepted that the Appellants left Afghanistan approximately twenty years ago, and that the first Appellant suffers from paranoid schizophrenia, and the second Appellant suffers from depression, anxiety and PTSD. It was contended that the FtT's approach to the issue of integration into Afghanistan was fundamentally flawed and lacked adequate reasoning, and the FtT had failed to apply guidance given in Kamara [2016] EWCA Civ 813.
5. With reference to Article 8 it was accepted that the FtT had correctly cited the law, but it was contended that the FtT materially erred when conducting the proportionality balancing exercise by failing to consider three material matters.
6. Those matters were the first Appellant's age and serious mental health condition, the length of time that the Appellants had been away from Afghanistan which was approximately twenty years, together with the human rights and security position in Afghanistan at present.
7. Permission to appeal was granted by Judge of the FtT Adio on 19th April 2017.
8. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT had directed itself appropriately, and properly considered whether it was reasonable to expect the Appellants to return and live in Kabul, had fully considered the medical issues, and the grounds upon which permission was granted amounted to a disagreement with findings properly made by the FtT.

9. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should set aside.

Oral Submissions

10. Miss Vidal relied upon the grounds contained within the application for permission to appeal. I was asked to note that it was accepted that both Appellants had been outside Afghanistan for twenty years, and that twenty years is significant. It was not contended that the Appellants had resided in the UK for twenty years, but the fact that they had been away from Afghanistan for such a length of time was relevant when considering reintegration. I was asked to accept that the FtT had not considered the guidance on integration given by the Court of Appeal in Kamara. I was asked to find the FtT reasoning in relation to paragraph 276ADE(1) inadequate.
11. With reference to Article 8 I was asked to find that the FtT had not taken into account and properly considered the first Appellant's age, not taken into account in the balancing exercise, the length of absence from Afghanistan, and not taken into account the mental health issues. There was no reference to current background evidence on Afghanistan, which was included in the Appellants' bundle of documents which was before the FtT.
12. Mr McVeety contended that the FtT decision disclosed no error of law and relied upon the rule 24 response. I was asked to find that the weight to be attached to evidence was a matter for the FtT, provided all the issues had been considered.
13. Mr McVeety submitted that the FtT had considered all material issues. The relevance of the reference to twenty years in paragraph 276ADE(1), is that if an Appellant has lived continuously in the UK for at least twenty years, then paragraph 276ADE(1)(iii) would be satisfied. That was not the case with these Appellants, as at the date of hearing they had lived in the UK for three or four years.
14. Mr McVeety submitted that the FtT was aware that the Appellants had been away from Afghanistan for twenty years, and had fully considered the medical issues. The FtT had set out background evidence on the medical facilities in Afghanistan, finding that medical treatment would be available.
15. It was not the case that the FtT had failed to consider background evidence, and Mr McVeety pointed to paragraphs 50-53, 64 and 82 of the FtT decision in support of that submission.
16. By way of response, Miss Vidal stated that it was accepted that the Appellants had not resided in the UK for twenty years, and their case was

not put on that basis. They had however been away from Afghanistan for twenty years, and that was relevant to reintegration.

17. For the reasons contained in the grounds upon which permission to appeal was granted, and in her earlier oral submissions Miss Vidal submitted that the FtT decision in relation to paragraph 276ADE(1) and Article 8 outside the rules, was materially flawed and should be set aside.
18. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

19. Paragraph 276ADE(1)(vi) requires that an individual must be aged 18 years or above, have lived continuously in the UK for less than twenty years, but there would be very significant obstacles to that individual's integration into the country to which he would have to go if required to leave the UK.
20. Guidance on integration has been given by the Court of Appeal in Kamara at paragraph 14 which is set out below in part;

“14. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of integration calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”

21. Integration is one limb of the test, the other is whether there are very significant obstacles, and on that issue guidance was given by the Upper Tribunal in Treebhawon [2017] UKUT 00013 (IAC) at paragraph 37 which is set out below in part;

“37. The other limb of the test, very significant obstacles, erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context.”

22. The FtT did not specifically refer to Kamara or Treebhawon, but that, without more, is not an error of law, provided the appropriate principles and guidance have been applied. I do not find that the FtT erred in law on this issue for the following reasons.
23. The FtT considered whether it would be reasonable for the Appellants to live in Kabul. This is not as high a threshold as contained in paragraph 276ADE(1) and the FtT concluded that it would be reasonable. This was

considered in the context of whether there was a reasonable internal relocation option when the FtT was considering the asylum claim.

24. The FtT in considering whether it would be reasonable for the Appellants to live in Kabul took into account the relevant country guidance case law and background evidence. There is reference to this in paragraphs 51-53, 64, 65 and 82 of the FtT decision.
25. The FtT appreciated that the mental health conditions of the Appellants must be considered, and in relation to the first Appellant this was considered and findings made thereon at paragraphs 67-71, and in relation to the second Appellant at paragraphs 73-74.
26. In relation to availability of medical treatment, the FtT considered a report submitted on behalf of the Appellants at paragraph 68, and background evidence supplied by the Respondent at paragraphs 69,70 and 73.
27. The FtT at paragraph 61 did not accept that the Appellants would be perceived as having been “westernised” noting that both spoke the indigenous languages of Afghanistan, and practised the religion of that country. The FtT noted at paragraph 66 the lack of evidence to indicate that the Appellants would have difficulties in relocating to Kabul because of ethnic or cultural issues.
28. In my view the FtT considered all material evidence placed before it, and was entitled to take the view, notwithstanding the mental health difficulties of the Appellants, that they could reasonably live in Kabul. It would not be the case that the first Appellant would be returned as a lone woman, as the Appellants would be living together, and as stated in paragraph 74 of the FtT decision;

“74. In addition, the report indicated that treatment and medicine for PTSD was also available in Kabul. In the light of this evidence therefore I conclude that there is a sufficiency of physical, medical and psychological care available for A2 in Kabul to allow him to live a reasonable life there and look after A1 as he does in the UK. In those circumstances there is no reason to conclude that with such services he would not be able to find work and provide for A1.”
29. The FtT applied the correct test when considering paragraph 276ADE(1) (vi) and did not materially err in law.
30. With reference to Article 8 outside the Immigration Rules, I do not accept that the FtT erred by failing to consider three material matters.
31. The FtT did take into account the first Appellant’s age. Her date of birth is set out in paragraph 2, and in paragraph 68 the FtT makes reference to a report submitted on behalf of the Appellants, and makes specific reference to the report author referring to the first Appellant as “a lone elderly woman who is in poor health”, although the FtT goes on to find that the first Appellant would not be returning as a lone woman.

32. It is not the case that the FtT failed to consider in the balancing exercise the first Appellant's mental health. There is specific reference at paragraph 116g to the Appellants not proving on a balance of probabilities that they will not receive adequate medical and psychological treatment in Afghanistan. It is clear that the FtT considered the availability of medical facilities in Afghanistan, and took into account the mental health issues of both Appellants.
33. I do not accept that the FtT failed to appreciate and take into account the length of time that the Appellants had been outside Afghanistan. There is specific reference at paragraph 57 to the FtT accepting that the first Appellant left Afghanistan in 1997 together with the second Appellant. There is further reference at paragraph 60 to both Appellants having "been away from Afghanistan for a prolonged period". The length of absence from Afghanistan was properly considered by the FtT.
34. The FtT did consider the security position in Afghanistan. It was found that the Appellants would not be at risk, and this finding has not been challenged. The FtT does not need to refer to each individual piece of evidence submitted by the parties, provided that it is apparent from the decision, that all material evidence has been considered. In my view that is the case in these appeals. The FtT considered country guidance case law at paragraphs 51-53, and considered background evidence at paragraph 64. There is further reference to country guidance case law at paragraphs 65 and 82.
35. It may be that another FtT judge might have reached a different conclusion when considering these appeals, but that is not relevant, and not the appropriate test. I find that the FtT made findings which were open to it on the evidence, and provided adequate and sustainable reasons for those findings. The grounds contained within the application for permission to appeal demonstrate a clear disagreement with the findings made by the FtT, but do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The FtT decision stands and the appeals are dismissed.

Anonymity

I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 7th July 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeals are dismissed. There are no fee awards.

Signed

Date: 7th July 2017

Deputy Upper Tribunal Judge M A Hall