Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/26098/2015

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 10 August 2017 **On 23 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MR NOOMAN KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms V Dirie of Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan and his recorded date of birth is 1 January 1997. He appealed against the respondent's decision dated 29 July 2011 refusing his application for asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge Eldridge in a decision promulgated on 30 November 2016 dismissed the appellant's appeal but granted him discretionary leave for a period of three years until 1 July 2014 by which time it would be age 17 ½ years.

© CROWN COPYRIGHT 2017

2. Permission to appeal was granted by First-tier Tribunal Judge Ramsay on 12 June 2017 stating that it is arguable that the Judge failed to take into consideration material evidence in the report of the Refugee Support Network entitled "After Return" dated 2016 regarding the risks facing care leavers returning from the United Kingdom, despite attention being drawn to the report in the appellant skeleton argument at the hearing. The Judge decision at paragraph 16 indicates that the Judge might have conducted his own research into the position of the Hizibi-i-Islami in Afghanistan after the hearing and without giving notice to the parties, contrary to the guidance in **AM (fair hearing) [2015] UKUT 656 (IAC).** It is also arguable that the Judge failed to take into account material evidence regarding the appellant's asylum claim which might have made a material difference to the outcome of the appeal.

3. The First-tier Tribunal Judge in his decision made the following findings which I set out in summary. In his protection claim the appellant relies on two aspects. First, he says (and has maintained throughout) that he is a risk from his father because his father was a member of Hezbi-i-Islami and wanted to induce his son to be part of that group and possibly as a suicide bomber. That was the basis of his asylum claim made in 2011 but this was not made this explicit in the letter from his solicitors or his further application for further leave to remain apart from the single sentence. It did not feature in either of his two statements made for the hearing and nor was any evidence given concerning this aspect. Counsel on his behalf did not seek to address this aspect of the claim either his skeleton argument or in his oral submissions, other than to ask to consider the appellant's age and communication skills at the time he made his claim for asylum. Taking this claim at face value, it cannot be found that the appellant has a well-founded fear of persecution for these reasons.

4. The second reason that the appellant claims protection in the United Kingdom is his profile on return which is as follows. The appellant is a 19-year-old national of Afghanistan who will be 20 in January 2017. He has lived in this country since he came here when he was about 14 or 12 years old. He has been educated in the State system in this country and obtained a number of qualifications. He has an uncle and other relatives in this country. This uncle was in Afghanistan in Jalalabad at the date of the hearing making arrangements for his wife and children to settle in the United Kingdom. The appellant continues to speak Pushtu which is the language in which he gave his evidence. He is not financially dependent upon his uncle or anyone else because he works in this country and has no health problems.

5. An important aspect of this claim is the appellant's claim that he has had no contact with his family in the Nangarhar province since he came to this country more than five years ago. The appellant has not shown that he has no family to return to in Afghanistan as the only evidence is his own assertion. There was no witness statement from the uncle who lives in the United Kingdom but the appellant claims had gone to Afghanistan. Failure by the uncle to make a statement does not give support to the first aspect of the claim concerning why the appellant came to this country which she claims was the threat of becoming a suicide bomber from his father. This easily readily available evidence was not provided. Additionally, it is

apparent that the appellant's uncle has accommodation available in Jalalabad for his wife and children and yet has made an application for them to join him in the United Kingdom. It is found as a fact that the appellant has family and accommodation available to him in Afghanistan on his return.

6. It is on this basis that the appellant's claim has been considered as to the risks to him as a young man returning to Afghanistan as a failed asylum seeker. The most recent country guidance decision of the upper Tribunal is **AK (article 15 (c) Afghanistan CG [2012] UKUT 00163 (IAC** must be considered and not to do so would be an error of law. This case is the authority for the proposition that the conditions in Afghanistan are not at such a level of indiscriminate violence that country taken as a whole so as to mean that, within the meaning of Article 15 (c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk that threatens his life or person". The Upper Tribunal went on to state further that "whilst when assessing a claim in the context of article 15 (c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account, both in assessing "safety" and "reasonableness" not only the level of violence in that city but also the difficulties experienced by the city's poor and also the many internally displaced persons living there, these considerations will not in general make return to Kabul unsafe or unreasonable. The appellant has family to return to in Jalalabad and he is not an internally displaced person.

7. In assessing risk, the issue is whether on return to Jalalabad in Nagar province or to Kabul. The appellant has lived in Afghanistan until he was about 14 ½ years old and predictably continues to speak Pashto. It is accepted that he will have been exposed to Western values and culture and it is likely that he has absorbed much of that culture in such a prolonged period in the relatively short life. That factor apart however, the appellant is no different from any other 20-year-old young man living with or with the assistance of family and Afghanistan.

8. The Judge referred to the UNHCR report on assessing international protection needs asylum seekers from Afghanistan published in April 2016 where it is stated that there are reports of individuals who return from Western countries having been tortured or killed by the anti-government elements is on the grounds they have become foreigners or that there were spies for a western country. In essence, the appellant is an adult young male who is healthy and with family living in Afghanistan. He has an uncle currently in that country visiting family and seeking to enable them to come to this country. The appellant has his own family to whom he can return. There is nothing in the background evidence which suggests that he has a risk profile which raises him above that of others. The appellant will be no more than an asylum seeker who has spent some years in the West.

9. In respect of Article 8 of the European Convention on Human Rights he has no partner and no child and lives with his uncle in this country. The appellant has a family to return to Afghanistan so his appeal cannot succeed on the bases of his private life when taken inside or outside the immigration rules. The appellant does

not meet the requirements of paragraph 276 ADE of the immigration rules because he has not lived in this country for half of his life. He must demonstrate that there are very significant obstacles to his integration into Afghanistan were he to be returned. The Judge dismissed the appellant's appeal both to the extent that he relies on the immigration rules, the Refugee Convention and European Convention on Human Rights.

10. In the grounds of appeal, the appellant states the following which I summarise. The Judge failed to take into consideration material evidence relied upon by the appellant to establish his risk on return and very significant obstacles to integration in Afghanistan under paragraph 276 ADE (1) (iv) of the immigration rules. The Judge also conducted inappropriate judicial research post hearing and dismissed the appellant protection claim on the basis that the Hezbi-i-Islami is now part of the political establishment in Pakistan with seats in Parliament. It is wholly unclear where the Judge has obtained this information as it is not in the lengthy bundles submitted.

11. The Judge also failed to have regard to relevant evidence and/or submissions regarding the material facts of the asylum claim. The Judge did not take into account a lengthy and detailed report by the Refugee Support Network ("RSM") entitled "After Return" dated April 2016.

12. In respect of procedural unfairness, the Judge wrongly concluded that the appellant's reliance upon material facts of his asylum claim were undermined by his failure to make explicit reference to that claim or address the issue in his two statements. It is possible that the Judge relied on the wrong skeleton argument as it is not clear from the decision which skeleton argument was being referred to in the decision. Furthermore, the appellant gave oral evidence in support of his account of past persecution which the Judge does not appear to have attached appropriate weight. Had the Judge not made these material errors and had taken full and proper account of the evidence and submissions in the round, it is not inevitable that he would have come to the same conclusion.

13. At the hearing, I heard submissions from both parties as to whether there is an error of law in the decision of the First-tier Tribunal.

Discussion and whether there is a material error of law in the decision of the First-tier Tribunal

14. I have taken into account the decision, the arguments of the parties, the skeleton argument and I find that the Judge has made no material error of law in the decision. The Judge was very clear in his decision that he did not accept as a matter of fact that the appellant's claim that his father wanted the appellant to join the Hezbi-i-Islami and become a suicide bomber for them. Therefore, it is implicit in the decision that the appellant came to this country as an economic migrant and not because he was

fleeing persecution from anyone. The Judge was entitled to find that the appellant has an uncle with whom he lives in the United Kingdom did not provide a statement even if he was in Afghanistan at the date of the hearing. The Judge was entitled to find that the appellant's failure to provide evidence from his uncle about his asylum claim was readily and easily available to the appellant and failure to provided it goes to his credibility and to the credibility of his claim. This evidence clearly demonstrate that the appellant was sent by his father to the United Kingdom to live with his uncle in this country as an economic migrant.

15. It is within this context, the Judge found that the appellant has no one to fear on his return to Afghanistan. Similarly, in the same context, the Judge found that the appellant has family to return to in Afghanistan and his claim that he has not been in contact with them, since he came to the United Kingdom, was not credible. Given that the appellant's uncle returned to Afghanistan to Jalalabad where his wife and children live, demonstrated that the appellant does have contact with his family and to whom he will return. These are sustainable conclusions on the evidence.

16. The Judge considered the country guidance case and found that the appellant would not be at risk on return to Afghanistan. The evidence before him was that the appellant was an adult, has lived in this country since he was about 14 or 12 years old, has been educated in the State system in this country and obtained several qualifications. The Judge also found that the appellant has an uncle in this country with whom he lives. The appellant continues to speak Pushtu in which language, he gave his evidence. He is not financially dependent upon his uncle or anyone else because he works in this country and has no health problems. The Judge properly considered the appellant's profile in reaching his conclusion that the appellant can return to Afghanistan and continue his life in that country with the support of his family and who had been sent to the United Kingdom as an economic migrant. In the circumstances, the Judge was entitled to conclude that there would be no significant obstacles for the appellant's integration into Afghanistan because he had family in that country. These are perfectly reasonable conclusions and there is no perversity in them.

17. In respect of the research that it is claimed that the Judge did in respect of the Hizibi-i-Islami. From the reading of the entirety of the decision, it is apparent that the Judge did not believe the appellant that his father was a member of the Hizibi-i-Islami who wanted to use the appellant as a suicide bomber. Therefore, even if the Judge did state in his decision that the Hizibi-i-Islami is integrated into the Afghanistan government, which was not something before him, was not a material error of law because it had no impact on his decision. There was no procedural or substantive prejudice to the appellant by this research.

18. It is complained that the Judge did not take into account the Refugee Support Network entitled "After Return" dated April 2016 and if he had done so he might have come to a different decision. Reading the decision in its entirety, it is plain to see that the Judge relied on the background evidence and the country guidance case of

AK to come to his reasoned conclusions. The Judge does not have to make reference to every piece of evidence which has been provided to him in his decision. The Judge referred to other background evidence such as the UNHCR report on assessing international protection needs for asylum seekers from Afghanistan published in April 2016. The Judge also stated that he does not "see anything end the background evidence put before him which suggests that he has a risk profile which raises him above that of others". I have no difficulty in understanding the Judge's decision and I find no good reason has been advanced for why his decision is not safe.

19. The Judge found that on his return, the appellant will have accommodation, family to support him and therefore he will not be open to abuse by anyone because he will have the protection of his family. He correctly found that the general conditions that Afghanistan do not engage article 15 (c) of the Qualification Directive.

20. The Judge was entitled to find that the appellant's private life is not engaged. He stated that the appellant is not meet the requirements of the immigration rules and saw no justification in considering the appellant's private life outside the immigration rules and this finding is undisputedly sound.

21. I find there has been no error of law in the decision in respect of the findings made by the Judge on the evidence before him. I also find that the Judge's conclusion that the appellant can return to Afghanistan because he does not have a profile which would put him at risk. The Judge was also entitled to find that even though the appellant came here as a child, he has studied in this country and achieved qualifications which he can use at home. The appellant works in this country and therefore he can continue working in Afghanistan and enjoy his private life in that country. The appellant has proved to be of considerable resilience, adaptability and fortitude by travelling as a minor to the United Kingdom he could use the same resourcefulness to relocate to Afghanistan with the support of his family.

22. I also find that no differently constituted Tribunal would come to a different conclusion on the evidence in this appeal. I have considered the report titled "After Return" and I find that the appellant does not fit into the profile of a person at risk, given in that report. The difference with this appellant is that he has family support on his return and therefore will not experience the consequences stated at paragraph 28 to 33 of the report. He will also not face obstacles such as envisioned in the report because the appellant has a family network which will protect and support him. The report states at paragraph 43 that the UK based educational qualifications are not recognised in Afghanistan. I find this opinion puts the credibility of the entire report at risk because I do not find it credible that a person who has learned English and acquired skills in the United Kingdom will not be able to get a job in a country like Afghanistan which is trying to rebuild as a country.

<u>Notice of Decision</u>

23. I therefore uphold the decision of the First-tier Tribunal Judge and I dismiss this appeal.

Signed by   Date 22nd day of August 2017

A Deputy Judge of the Upper Tribunal
Ms S Chana