



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01530/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

On 24th April 2017

**Decision & Reasons
Promulgated
On 3rd May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**ABDUL MOMEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain of Lei Dat Baig Solicitors
For the Respondent: Mr Bates, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Lawrence made following a hearing at Manchester on 26th October 2016.

Background

2. The appellant is a citizen of Afghanistan, born on 1st October 1997. He arrived in the UK in December 2009 and claimed asylum as a dependant of his brother, subsequently making a claim in his own right. He was refused but granted discretionary leave until 16th December 2013 extended to 1st August 2015. His further application for discretionary leave was refused and his appeal came before Judge Lawrence.

3. The sole issue before the judge was whether the appellant could be returned to Kabul. The appellant relied upon an expert report from Tim Foxley MBE. The judge discounted it on the grounds that the author had just correlated information available in the public domain. He concluded that there were no very significant obstacles to the appellant integrating into Afghanistan on return and he dismissed the appeal.
4. Mr Bates conceded that the judge had erred in law in failing to consider the report. He was right to do so.
5. The author set out his expertise. He has been studying Afghanistan since 2001 and runs his own political/military research and analysis consultancy based in Sweden focusing on Afghanistan with an associated analytical blog. From 2001 to 2012 he worked with the UK Ministry of Defence and in 2005 was awarded the MBE for his work on Afghanistan. He was an Afghanistan insurgency research analyst in the UK Foreign Office in 2014. He lists a number of papers which he has written on Afghanistan in the appendix.
6. It was not open to the judge to refuse to engage with the report which was plainly relevant to the issues under appeal. Accordingly he erred in law and his decision is set aside.
7. It was agreed that the decision could be remade without the need for a further hearing.

Submissions

8. Mr Bates submitted that the appellant could not meet the requirements of paragraph 276ADE(iii), (iv) and (v) because he had not spent long enough in the UK. He also submitted that he did not meet paragraph 276ADE(vi) because there were not very significant obstacles to his integration into Afghanistan. The appellant had lived for the first twelve years of his life there, spoke Uzbek and had no particular health problems. He had not shown that it would not be possible for him to adapt to the “cosmopolitan atmosphere” in Kabul which was the point of return for many failed asylum seekers. He could not succeed under Article 8 outside the Rules because there were no compelling aspects to his case such as to outweigh the public interest in the removal of failed asylum seekers. The starting point for any consideration had to be the fact that he did not meet the requirements of the Immigration Rules. In any event, his relationship with his foster family here had always been of a precarious nature.
9. Mr Hussain submitted that the appellant did meet paragraph 276ADE(vi). He relied on the report from Mr Tim Foxley and submitted that he would not be able to integrate into Afghanistan having left there when he was only 12 years old. He was not from Kabul and had no family connections there. Alternatively the appeal ought to be allowed on Article 8 grounds since the appellant enjoyed a relationship with his foster father which amounted to more than the usual emotional ties. He was still living with him, even though he was now 19, and dependent on him.

Findings and Conclusions

10. Paragraph 276ADE(1)(vi) states that the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that, at the date of the application, the applicant has made a valid application for leave to remain on the grounds of private life in the UK, is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.
11. In SSHD v Kamara [2016] EWCA Civ 813, which concerned a foreign criminal, the Court of Appeal said, as per Sales LJ at paragraph 14

“In my view the concept of a foreign criminal's integration into the country to which it is proposed that he be deported as set out in Section 117C(4)(c) and paragraph 399A is a broad one. 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.”
12. The appellant comes from Takhar province and is of Uzbek ethnicity. He cannot speak Pashtu and when he lived in Afghanistan he could speak a little Dari. However his main language is Uzbek. There is evidence in his bundle that a number of attempts have been made through the Red Cross to contact his family but none have been successful.
13. The respondent did not argue that the appellant would have any family support available to him on return to Afghanistan.
14. Mr Bates' main argument was that the appellant has had the benefit of a western education in the UK. Indeed it is quite clear that he has been very successful here. He could therefore adapt to life in Kabul without difficulty.
15. However, according to the expert report, which Mr Bates did not seek to criticise, the appellant would be at enhanced risk as a westernised young person, particularly if he was to come across Taliban checkpoints where any westernised mannerisms, lack of fluency or lack of convincing local knowledge might mark him out for adverse attention.
16. He referred to the April 2016 UNHCR guidance which states

“AGEs reportedly target individuals who are perceived to have adopted values and/or appearances associated with western countries, due to their imputed support for the government and the international community. There are reports of individuals who returned from western countries having been tortured or killed by AGEs on the grounds that they had become foreigners or that they were spies for a western country.”

17. The expert also refers to the risk of westernisation by placing the returnee at risk of crime, theft or kidnapping. He cited a report by Gladwell and Elwyn “Broken futures: new young Afghan asylum seekers in the UK and on return to their country of origin, new issues in refugee research,” research paper 246 October 2012, which gives a number of examples of the difficult experiences of young persons having been returned to Kabul.

18. At paragraph 40, Mr Foxley states

“The main risks for your client in a major city such as Kabul would be from unemployment forms of exploitation destitution and lack of family emotional and health support. Moving to any unfamiliar part of the country would be difficult and expose your client to a spectrum of other significant risks, finding employment in particular. Local ethnic tribal economic and security issues in a new area might provide significant challenges. With difficulties of accessing reliable information in some parts of the country these might not be known before departure. A major complicating factor will be the ongoing conflict. Moving beyond his home area would deprive him of most of the advantages and support networks needed to exist in an unfamiliar environment. This would make relocation extremely difficult. Additional risks are created by the route by which your client would have to travel including risks on roads from Taliban or insurgent roadblocks and conflict.”

19. The critical question, as set out by Sales LJ is the extent to which the appellant would be “enough of an insider” in terms of his understanding of how life in Kabul works.

20. At paragraph 43 Mr Foxley states

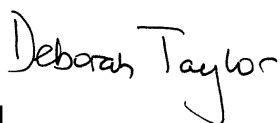
“In Kabul your client is likely to experience significant difficulties, given his lack of experience living in Afghanistan on his own and the time he has now spent in the UK. He will have no street experience of Kabul: his environmental and situational awareness; safe places, no go areas, how to condition his behaviour to avoid unwanted attention will be severely limited. In Kabul attracting unwanted attention might mean involving trigger happy or corrupt local security forces, criminals or insurgent groups looking for human assets to employ in their campaign and would contain significantly greater risk than in the UK. These broad risks would just as easily apply in Takhar province Kabul or wider Afghanistan and might even be greater in some areas.”

21. Mr Foxley also highlighted the difficulty that the appellant would have in accessing housing and accommodation, which is in extremely short supply, and in obtaining work. Being without regular employment would render him at high risk of exploitation.
22. I have some difficulty in accepting Mr Bates's submission that the appellant's experience of a British education would realistically assist him in integrating into life in Kabul, which clearly remains in crisis, not only as a consequence of current terrorist attacks but also as a result of past ones. More than 2,000,000 houses have been destroyed or damaged beyond repair in a city of 4,000,000 people. 500,000 youth enter the labour market each year but according to the minister of economy the gap between supply and demand is cavernous.
23. The appellant has been fortunate to have been fostered since the age of 12 in a loving family, he has attended school, obtained his A levels and has a place at university. It is not disputed that he would be without physical and emotional support. With absolutely no one in Kabul to assist him it is hard to see how on any normal meaning of the word he could not be facing very significant obstacles to integration on return.
24. On any view he is not enough of an insider to understand life in Kabul or to be able to operate in it. The appellant meets the requirements of paragraph 276ADE(1)(vi).
25. With respect to Article 8, I have no doubt that he enjoys a family life with his foster father in the UK, with whom he still lives and is still dependent. His emotional ties with him are more than the usual which one would expect between adults, made stronger no doubt because his foster mother died in 2013, three years after he joined the family. He meets the requirements of the Immigration Rules. Removal would therefore be disproportionate.

Notice of Decision

26. The original judge erred in law. His decision is set aside. It is remade as follows. The appellant's appeal is allowed both under the Immigration Rules and with respect to Article 8.

No anonymity direction is made.



Signed

Date 1 May 2017

Deputy Upper Tribunal Judge Taylor