Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03437/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 November 2017	**On 28 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR I K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Halim, Counsel instructed by Tower Hamlets Law Centre
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr IK, a citizen of Afghanistan born on 1 January 1998 appealed to the First-tier Tribunal against the decision of the respondent, dated 20 November 2015, to refuse the appellant asylum and humanitarian protection. In a decision promulgated on 1 March 2017, Judge of the First-tier Tribunal O'Garro dismissed the appellant's appeal on asylum grounds, on humanitarian protection grounds and on human rights grounds.

Background

2. The appellant originally appealed to the First-tier Tribunal in 2016 and in a decision promulgated on 25 May 2016, Judge of the First-tier Tribunal Pears allowed the appellant's appeal on asylum and human rights grounds. The Upper Tribunal, a decision promulgated on 18 August 2016, set aside that decision and remitted the appeal to the First-tier Tribunal for a fresh hearing, as there were inadequate reasons given for departing from the country guidance **MK (duty to give reasons) Pakistan [2013] UKUT 00641** and **Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC)** applied.

3. The case was heard de novo by Judge of the First-tier Tribunal O'Garro on 16 February 2017. The appellant appeals with permission from the Upper Tribunal. The permission dated 12 September 2017 Judge of the Upper Tribunal Jordan accepted that grounds of appeal do not challenge the First-tier Tribunal Judge's findings that the appellant is not credible. However, Judge Jordan referred to the submissions of 17 May 2016 and made the grant of permission solely on the basis that further enquiries should be made as to whether that document was the subject of argument before First-tier Tribunal Judge O'Garro and whether it was served on the Home Office. Judge Jordan noted that had he not seen this document he would not have granted permission.

4. It was not disputed before me that the document dated 17 May 2016 comprised a post-hearing submission submitted to Judge of the First-tier Tribunal Pears, at his suggestion, as referred to by Judge Pears' decision. Mr Halim confirmed that further written updated submissions were submitted for the fresh hearing before Judge O'Garro, essentially updating the material included and referred to in the May 2016 submission. The updated submission is dated 15 February 2017. It was not disputed before me that this updated submission was also served on the Secretary of State.

5. For the reasons set out below I am not satisfied that any material error of law has been disclosed.

Grounds of Appeal

6. The appellant's grounds of appeal to the Upper Tribunal submitted that the First-tier Tribunal refused to depart from the findings made in the country guidance case of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 163** and placed significant reliance upon the decision of the Upper Tribunal in **R (on the application of Naziri & Others) v SSHD [2015] UKUT 00437** and **HN & SA Afghanistan [2016] EWCA Civ 23** upholding the decision of **Naziri** 'and the references to country references therein'. It was submitted that **Naziri** was not a country guidance case and that more importantly this case looked specifically at the events up to March 2015 and the First-tier Tribunal was provided with significant up-to-date evidence which postdated that evidence which was indicated in **Naziri**. Mr Halim took the Upper Tribunal through this evidence in considerable detail at the oral hearing:-

(a) UNHCR Eligibility Guidelines, April 2016;

(b) EASO (European Asylum Support Office), November 2016 – an agency of the European Union set up by Regulation (EU) 439/2010 of the European Parliament and of the Council, .acting as a centre of expertise on asylum.

7. It was submitted that it was incumbent upon the Judge of the First-tier Tribunal to consider this up-to-date evidence, particularly as it emanated from the UNHCR and EASO and that the judge's reliance on **Naziri** and **HN & SA** and **AK** provided no answer to the evidence relied on which post-dated all of those cases. It was submitted that the judge was required to give reasons as to why the evidence before her attracted little weight or was insufficient to cross the Article 15(c) threshhold. It was submitted that no reasons were provided because no examination of that evidence took place.

Error of Law Discussion

8. The First-tier Tribunal, at [62], indicated that Mr Halim had submitted that the appellant should be granted humanitarian protection and that she should depart from the country guidance case of **AK** 'in light of UNHCR Guidelines from April 2016 and other more recent objective material, to which she refers in her skeleton argument' (sic). I accept that the judge was referring to the written submissions document dated 15 February 2017 (updating the document dated 17 May 2016 referred to by Upper Tribunal Jordan in his grant of permission). It is patently incorrect of Mr Halim to claim, as he did, that the judge failed to consider the up to date information from UNHCR and EASO (which Mr Halim had extracted in his written submissions/skeleton argument as well as providing the original documents which were before both the Upper and First-tier Tribunals).

9. The judge specifically noted that the UNHCR guidelines and 'other more recent objective material' was referred to in the appellant's representative's skeleton argument. The judge went on to find that at paragraphs [63] and [64]:-

> "63. I find that it cannot be disputed that the security situation is fluctuating in Afghanistan from one month to the next and objective information in this regard appears to be outdated as soon as it is published, I have however considered not only the documents referred to but also the cases of **R (on the app of Naziri & Others) v SSHD 2015 UKUT 00437, HN & SA (Afghanistan (2016) EWCA Civ 23** and the references to country information therein.
>
> 64. Most importantly, I have taken into account the decision of the Upper Tribunal in Naziri in which he did not depart from the decision of AK notwithstanding the material before them. Whilst it is clear that the situation remains volatile, in line with that decision, I am not persuaded that the situation had deteriorated

> to such an extant that I should depart from the country guidance case."

10. A country guidance case retains its status until overturned or replaced by subsequent country guidance. However, it is uncontroversial that a judge may depart from existing country guidance in the circumstances described in the relevant Practice Direction and accompanying Chamber Guidance Note. In **SG (Iraq) [2012] EWCA Civ 940**, the Court of Appeal made it clear (paragraph 47) that decision makers are required to take country guidance into account and to follow them unless very strong grounds supported by cogent evidence, are adduced, justifying not doing so. To do otherwise would amount to an error of law.

11. It was open to the judge to find, as she did, including at [64], that there was insufficient evidence to justify in this case departing from **AK**. I am not persuaded, even in light of the extensive background evidence produced by the appellant, that the judge needed to expand on the reasons given. Although the reasons the judge gave at paragraphs [62] to [64] were brief, the judge specifically mentioned the UNHCR Guidelines and other more recent objective material. The judge found at [63] that it could not be disputed that the security situation in Afghanistan is 'fluctuating' from one month to the next and that material appears to be 'outdated as soon as it is published'. She summarised her view of the material before her in finding, at [64] that it was 'clear that the situation remains volatile' and in going on to find that she was not persuaded by that material that the situation had deteriorated to an extent that she should depart from **AK**. Although Mr Halim pointed to the extent of the material before the First-tier Tribunal he was unable in my view to point to anything materially wrong in that overall conclusion.

12. It also could not be properly said that the judge made any error in her consideration of **Naziri**. At [64] it is evident that the judge took into account the material which post-dated **Naziri.** There was no error in Tribunal relying on **Naziri,** albeit that Naziri and **HN & SA** referred to judicial review proceedings. However it was clear in both cases that the judges were mindful of the limitation of judicial review proceedings, including at paragraph 75 of **Naziri** where the Tribunal reminded that the principle (that judicial review is not a suitable vehicle for resolving disputed facts) was not an inflexible one. The Tribunal was presented with extensive updating material in **Naziri** and reviewed that material, finding at paragraph 95 that there was nothing to warrant departure from **AK** and that the evidence 'falls short of satisfying the stringent Article 15(c) test'. There was no error in the Judge of First-tier Tribunal taking account of that approach, given the scrutiny of the background material undertaken in **Naziri.**

13. The judge had in mind the evidence before her which post-dated 2015 and **Naziri** which is implicit in her findings as to the continuing volatility and fluctuation of the situation and I note that much (although I accept not all) of the material cited in the footnotes of both the EASO and the UNHCR reports relied on by the appellant refers to events in 2015.

14. It is incumbent on the Tribunal to consider both the background and the general level of violence together with the individual circumstances of the appellant. **Naziri** confirmed the existing guidance on how Article 15(c) should be applied and concluded at that stage that there was not such a general breakdown of law and order 'as to permit anarchy and criminality occasioning the serious harm referred to in the Directive' that would indicate that the violence was indiscriminate.

15. I am of the view that the judge properly took into account this appellant's particular and individual circumstances including from [66] to [70]. The judge considered that there was no evidence that the appellant has any disabilities and that he will be returning to Afghanistan as a 'fit and well young person'. The First-tier Tribunal went on to consider that the appellant's family are alive and that he would be given some support in assisting him in reintegrating into Afghanistan and considered that although an adult the findings of the Tribunal in **HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)** were relevant to this appellant.

16. Taking all this into account together with the additional evidence, the judge was entitled to reach the conclusion that she did that his removal would not expose him to a risk of serious harm under Article 15(c).

17. **Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC)** refers:

> "Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge".

18. On a careful reading of the First-tier Tribunal's decision in its entirety I am satisfied that there were adequate reasons for the findings given and for not departing from the country guidance. In conclusion, there is no material error of law in that decision and it shall stand.

Notice of Decision

19. The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appellant's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed Date: 27 November 2017

Deputy Upper Tribunal Judge Hutchinson