



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

Appeal Number: PA/03559/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 31 August 2017**

**Decision & Reasons Promulgated
On 03 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**AK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Jackson, of Counsel instructed by Duncan Lewis & Co Solicitors (Harrow Office)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

Introduction and background

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Coutts (the Immigration Judge) to dismiss his appeal against the respondent's decision to refuse an application for asylum and human rights protection in the UK. The appellant entered the UK, it seems, on 6 October 2016 when he managed to get through customs and immigration control on the back of a lorry. He subsequently claimed asylum. However, he explained that he had travelled through Iran,

Turkey, Greece, Macedonia, Serbia, Austria, Hungary, Germany and France before coming to the UK. He also admitted being fingerprinted in Greece, Hungary and Germany where he had remained for two months before going to France. The respondent's records show that he had been fingerprinted in Greece on 6 June 2015, Hungary on 23 June 2015 and Germany on 25 August 2015.

2. The Immigration Judge dismissed his appeal because he did not accept the appellant had given a truthful account of having been targeted by the Taliban in Afghanistan. The appellant was at that time 17, having been born on 20 November 1999. He will be 18 on 20 November 2017.
3. The appellant applied for permission to appeal the decision of the First-tier Tribunal. His grounds of appeal extend to 8 pages. He contends that the First-tier Tribunal failed to consider relevant evidence regarding the state of Afghanistan and had failed to take into account the appellant's own witness statement dated 2 May 2017 filed with the Tribunal on 5 May 2017, the hearing heard by the First-tier Tribunal on 9 May 2017.
4. First-tier Tribunal Judge Cruthers considered the grounds of appeal on 22 June 2017 and he found that at least one of the grounds was arguable. He criticised the grounds of appeal, which were settled by Miss Miranda Butler of Counsel, because they considered them to be unduly lengthy and repetitive. Of course, that is not the appellant's fault. Judge Cruthers found there to be merit in the criticism of the Immigration Judge's failure to properly consider the evidence of Dr GIUSTOZZI. Judge Cruthers considered the reasons the Immigration Judge gave for dismissing the appeal, in paragraphs 28 to 42 of his decision, to be arguably insufficient. It seemed from consideration of those paragraphs that the Immigration Judge had not fully considered the report by Dr Giustozzi dated 26 April 2017 and a witness statement by the appellant dated 2 May 2017. However, Judge Cruthers in giving permission to appeal pointed out that even if the appellant faced a real risk of persecution or serious harm in his home area, he may have a reasonable internal relocation option available (see paragraphs 43 to 45 of the decision). Judge Cruthers also referred to paragraphs 25 and 26 of the decision of the First-tier Tribunal, where the respondent pointed out that she did not accept the appellant had been forcibly recruited into the Taliban.
5. Following the grant of permission, the respondent has submitted a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In that response, the respondent points out that the leading case law showed that while forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity, evidence is required to show a real risk to the particular individual and not a mere possibility that he will be at risk of recruitment into the Taliban.

The Hearing before the Upper Tribunal

6. At the hearing before the Upper Tribunal both parties were represented. Ms Jackson appeared for the appellant and Mr Walker appeared for the respondent. Ms Jackson began by summarising the law before presenting the arguments on behalf of her client. At the end of her submissions I pointed out that I intended if possible provide a decision in the appeal later that day, as subsequently occurred. Other professional engagements prevented Ms Jackson remaining until the conclusion of the appeal. Mr Khoshal attended the Tribunal when I provided an oral decision later in the day.
7. Ms Jackson said that the real basis for the appeal was that the Immigration Judge had not properly demonstrated that he had considered Dr Giustozzi's report. Dr Giustozzi was an acknowledged expert, whose evidence had been referred to in a number of cases. She referred me to some key passages in expert's report. In particular, she referred to pages 23 et seq in the appellant's bundle of documents submitted for the appeal to the First-tier Tribunal. Ms Jackson said that the Immigration Judge had only made a passing reference to Dr Giustozzi's report by stating that had considered "all the evidence" without mentioning Dr GIUSTOZZI by name. She said that that was not sufficient reference given the report's importance. Ms Jackson accepted that the Immigration Judge had engaged with some of the key points in Dr Giustozzi's report she did not consider he had engaged in all aspects of the report. She submitted that an expert of such note, who had dealt so thoroughly with the issues, should have been more thoroughly considered by the Immigration Judge. Ms Jackson went on to identify other errors which she said were material to the outcome of her client's appeal. She submitted that only safe way of rebalancing matters was to find a material error of law, set aside the decision and direct a fresh hearing of her client's appeal in either the First-tier Tribunal or before the Upper Tribunal. Ms Jackson submitted that the issues of expert evidence were so closely tied- up with the issue of credibility that the Immigration Judge's assessment of the appellant's credibility could not be allowed to stand. If Dr Giustozzi's report were properly considered, a different tribunal might reach a different decision. She took me to a number of key passages in the law which, helpfully, were provided to the Tribunal in a ring binder file of authorities. In so far as those authorities are material to the outcome of this appeal I will refer to them later in this decision.
8. I am grateful to Mr Walker for his succinct and concise submissions. I also have the benefit of the respondent's Rule 24 response, to which I have already referred. This was drafted by his colleague Mr Tufan, another Presenting Officer. The respondent did not accept that Dr Giustozzi has the elevated status the appellant's representatives had purported to give him. The country guidance case of **CG [2010] UKUT 378** indicated that, whilst evidence is available to the effect that the Taliban can place individuals at risk, evidence is required to show a real risk to a particular child and not a mere possibility. Mr Tufan in his Rule 24 response indicated that the Immigration Judge had rejected the credibility of the appellant's account

and therefore to a large extent the Upper Tribunal, which had not had the opportunity to hear the appellant give evidence, should accept finding of the First-tier Tribunal. Any disagreement with the First-tier Tribunal's decision amounted to no more than a disagreement with the adverse conclusion that the First-tier Tribunal had reached. Mr Tufan also referred to paragraph 253 of the case of **AK [2012] UKUT 163**. In that paragraph, Upper Tribunal Judge Storey rejected the appellant's account in that case and said that even if the Tribunal were persuaded that the appellant was at risk of serious harm in his home area the Tribunal would not find that he was lacking a viable internal relocation alternative in Kabul. Judge Storey considered that Dr Giustozzi's assessment had been made on a mistaken basis that the appellant had given a credible account of his past experiences but in fact the First-Tier Tribunal had not accepted the appellant's account. In any event, it was the Upper Tribunal's finding that the appellant would be safe to live in Kabul without undue hardship. The appellant would now be returning as a single adult to the Kabul area and there would be no reason to think, based on the evidence, that he would not be able to receive help with accommodation and finding employment in that city. Respondent therefore urged the same conclusion on the Tribunal in this case as had been reached by the Upper Tribunal in the case of **AK**.

Discussion

9. It is well-established that the burden rests on the appellant to show that he falls within the Refugee Convention. Alternatively, the appellant must show that he is entitled to the protection of the European Convention on Human Rights (ECHR) in that his right to life under article 2 of that Convention would be infringed or that he would be subject to inhuman and degrading treatment contrary to article 3 of the ECHR. In addition, there is an obligation on the respondent to ensure, in a case where a person can show substantial grounds for believing that he would, if returned to the country of return, be at real risk of suffering serious harm. In such a case, the respondent is under an obligation to grant the appellant humanitarian protection within the UK. A low standard of proof applies to these claims. In particular, the appellant must show to a reasonable degree of likelihood that his claims are true. Furthermore, the Tribunal must give the matter its anxious scrutiny.
10. I find the law to be accurately summarised in the case of **AK** and in the submissions by the representatives in this case. I have also considered the other authorities to which I was referred by Ms Jackson. The appellant must establish his risk on return but it is open to the Tribunal to conclude that Kabul city represents a viable internal relocation alternative even if the appellant's account is true. Matters of credibility are always for the judge hearing the witnesses give evidence, weighing in the balance their oral evidence against the background material and the objective facts.

Conclusions

11. Ms Jackson has been unable to persuade me that the adverse credibility findings made by the Immigration Judge were not open to him on the evidence. I accept that the Immigration Judge has not referred specifically to Dr Giustozzi by name, but reading the decision as a whole the Immigration Judge demonstrated that he thoroughly considered all the evidence. He referred to all the key points that were raised before him. He clearly had Dr Giustozzi's report in his mind. The skeleton argument submitted on the appellant's behalf in advance of the hearing before the First-tier Tribunal on 9th May 2017, does not refer to the report from Dr Giustozzi, so the Immigration Judge ought not to be criticised for not referring to it by name. In any event, the fact that the Immigration Judge did not refer Dr Giustozzi by name does not mean that he did not take it into account. Furthermore, although there are additional points in the appellant's own witness statement dated 12 May 2017 which may be of importance, I have concluded that the points that the appellant makes in his updated witness statement do not go to the core of his case. In any event, they were essentially considered as part of the Immigration Judge's analysis of the appellant's case.
12. I have carefully whether there is any error of law which may require the Upper Tribunal to set aside the decision of the First-tier Tribunal within the ambit of Section 12 of the Tribunals, Courts and Enforcement Act 2007. However, I have concluded that there is no material error of law in this case. Accordingly, the decision of the First-tier Tribunal stands.

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

An anonymity direction was made by the First-Tier Tribunal. It appears appropriate to continue that anonymity direction and I order that 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 their 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 30 September 2017

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 30 September 2017

Deputy Upper Tribunal Judge Hanbury