



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

Appeal Number: PA/05097/2016

**THE IMMIGRATION ACTS**

**Heard at Newport (Columbus House)      Decision      &      Reasons  
On 31 August 2017      Promulgated  
On 20 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**R R**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer  
For the Respondent: Ms E Fitzsimons instructed by Migrant Legal Project  
(Cardiff)

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Respondent (RR). This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. For convenience, although this is an appeal by the Secretary of State I will hereafter refer to the parties as they appeared before the First-tier Tribunal.

### **Introduction**

3. The appellant is a citizen of Afghanistan whose date of birth has been assessed as 1 January 1999. He arrived in the United Kingdom on 11 October 2015, aged 16 years. On 16 November 2015, he claimed asylum. The basis of his claim was that his father had been a commander in the Taliban who had been killed by German soldiers (as part of the international force in Afghanistan) when the family home was raided. The appellant, thereafter, was sought by the Taliban to recruit him.
4. On 4 May 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. However, as an unaccompanied asylum seeking child he was granted discretionary leave to remain until 31 June 2016.

### **The Appeal to the First-tier Tribunal**

5. The appellant appealed to the First-tier Tribunal. Judge K Real allowed the appellant's appeal on asylum grounds. First, she accepted the appellant's account that his father had been a Taliban commander and had been killed by international forces in Afghanistan and that the Taliban had sought to recruit the appellant. The judge found that the appellant would, therefore, be at risk of persecution in his home area. Secondly, the judge found that it would be unduly harsh for the appellant to internally relocate to Kabul.

### **The Appeal to the Upper Tribunal**

6. The Secretary of State sought permission to appeal to the Upper Tribunal on essentially three grounds. First, the judge had erred in law in reaching her positive finding in respect of the appellant's account. Secondly, the judge had failed to provide adequate reasons for concluding that the appellant had lost contact with his family in Afghanistan, in particular his uncle who had arranged for him to leave Afghanistan and had sent a copy of a "night letter" to the appellant in the UK. Thirdly, in concluding that it would be "unduly harsh" for the appellant to relocate to Kabul, the judge had failed to apply the country guidance case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) which recognises that, in general, internal relocation to Kabul is not unreasonable.
7. On 17 January 2017, the First-tier Tribunal granted the Secretary of State permission to appeal on grounds 2 and 3 but refused permission on ground 1.

8. On 24 May 2017, the appellant filed a rule 24 reply seeking to uphold the judge's decision.

### **Discussion**

9. On behalf of the Secretary of State, Mr Richards accepted that permission had only been granted only in grounds 2 and 3 and these were the only grounds upon which he could rely.
10. As regards ground 2, he did not seek to press that ground as he conceded that the judge had given reasons at para 35 of her decision for reaching her finding that the appellant had lost contact with his uncle and it had not been possible to trace his family through the Red Cross.
11. Mr Richards was, in my judgment, correct not to press ground 2. In para 35, the judge made a clear finding that the appellant had lost contact with his uncle. That was his evidence and the judge found (and that finding is no longer challenged) that he was a credible witness. In addition, efforts to trace his family through the Red Cross had been unsuccessful. Ground 2 is not made out.
12. Instead, Mr Richards focused upon ground 3 and he relied upon the country guidance decision in AK and passages from that decision at paras [224], [225], [212] and [253] where the Upper Tribunal had noted the assistance packages available to returnees to Afghanistan and that "single young males" returning without family support could do so in safety and without undue hardship.
13. The difficulty with ground 3 and its reliance upon AK, is that that country guidance is subject to the earlier country guidance decision in AA (unattended children) Afghanistan CG [2012] UKUT 0016 (IAC). The Upper Tribunal in AK explicitly preserved that decision as being "unaffected" by its decision in AK (see head note B(i)).
14. Ms Fitzsimons submitted that AA was the relevant country guidance decision as it concerned the return of unaccompanied children. She submitted that the appellant was 17 at the date of the judge's decision - and therefore a child - and he would be returning unaccompanied and the judge's finding was that he had lost touch with his family who could not be traced. He would, therefore, be an unaccompanied child in Kabul. On the basis of AA, Ms Fitzsimons submitted that the judge was entitled for the reasons she gave in para 28 to find that, despite the availability of return packages, it would be unduly harsh to expect him to live in Kabul as a returning unaccompanied child with PTSD, no family support, no qualifications, an inability to read or write Dari or Pashtu and who was vulnerable.
15. I accept Ms Fitzsimons submission. In AA, the position of unaccompanied children without support on return recognises that there may be risks of serious harm and child protection issues. The judge referred to AK and AA

at para 38 in reaching her finding that it would be unduly harsh for the appellant to live in Kabul as follows:

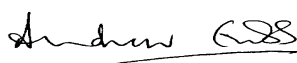
“I have considered both AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC) and the more child specific guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) and I find that as a young man with no family support, and post traumatic stress disorder, no qualifications and an inability to read or write Dari or Pashtu, he would be extremely vulnerable on return and face very significant difficulties. He is not yet an adult and even upon reaching adulthood the difficulties he faces will not suddenly evaporate. I find that any return package would do no more than mitigate the initial situation, because I find that without connections or skills the Appellant would face significant difficulties in establishing and then sustaining himself. I find that relocation would be unduly harsh in his individual circumstances.”

16. AK was concerned with an adult returning to Kabul. AA was concerned with an unaccompanied child. Although the appellant was 17 at the date of the hearing, he remained a child. The guidance in AK had no binding application to him. It was for the judge to assess all the circumstances on return in considering whether it would be unreasonable or unduly harsh for him to live in Kabul. The judge took into account that he would have no family support (a finding entirely consistent with para 35 of the judge’s decision), that he suffered from PTSD and that he had no qualifications or ability to read or write the relevant languages. She took into account the availability of return packages but that would do “no more than mitigate the initial situation”. The judge was, in my judgment, entitled to find that the appellant, as a child in these circumstances, would face significant difficulties and was extremely vulnerable. I am wholly un-persuaded that it was irrational for the judge to find that it would, in those circumstances, be unreasonable or unduly harsh to expect the appellant to live in Kabul.
17. For these reasons, therefore, I reject ground 3 also.

### **Decision**

18. The decision of the First-tier Tribunal to allow the appellant’s appeal on asylum grounds did not involve the making of an error of law. That decision, therefore, stands.
19. Accordingly, the Secretary of State’s appeal to the Upper Tribunal is dismissed.

Signed



A Grubb

Judge of the Upper Tribunal

Date: 18 September 2017