



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

Appeal Number: PA/06531/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> April 2017**

**Decision & Reasons Promulgated  
On 4<sup>th</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**NH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Aitken of Counsel instructed by Wai Leung Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 14<sup>th</sup> June 2016 to refuse his application for asylum and humanitarian protection in the UK and deciding that his removal would not breach the Appellant's rights under the European Convention for Human Rights. The appeal was dismissed by First-tier Tribunal Judge Saffer in a decision promulgated on

17<sup>th</sup> November 2016. The Appellant now appeals with permission granted by Upper Tribunal Judge Finch on 16<sup>th</sup> February 2017.

2. The background to this appeal is that the Appellant claims that his mother died when he was 8 and at that stage he and his father moved to Iran where he worked in a factory. He claims that his father was told by his employers to go and fight in Syria and that he was killed there. He claims that after that he had difficulties with his employers who wanted to send him to Syria as well. The Appellant claims that he left Iran and went via Turkey and France to the UK and he arrived in the UK on 15<sup>th</sup> October 2015 and claimed asylum on 29<sup>th</sup> October 2015.
3. In the reasons for refusal letter the Secretary of State accepted that the Appellant is an Afghan national. However the Respondent rejected the Appellant's claim that he fled Afghanistan due to an attack on his village by the Taliban and that he worked in a factory in Iran. The Respondent went on to decide that, even if the Appellant's claim was taken at its highest, he had not shown that he has a well-founded fear in Afghanistan because the Taliban would have no interest in him and he could safely relocate to Kabul.
4. The Appellant was not represented before the First-tier Tribunal and at that point he was 18 years old. The judge accepted the Appellant's account that he left Afghanistan when he was 8 years old and went to Iran following the death of his mother and attack on his village by the Taliban. The judge accepted that the Appellant and his father worked in Iran and were there illegally. He also accepted that the Appellant's father would have felt obliged to carry out his employer's request to fight in Syria and that after the death of his father the Appellant was vulnerable to the wishes of his employer and was also asked to fight in Syria. The judge accepted that the Appellant saved money and had money from his father which gave him the financial ability to pay an agent to assist him to leave. The judge accepted that the Appellant had the problems he claimed in Iran. The judge also accepted that the Appellant had told the truth about his life in Afghanistan. The judge accepted that the Appellant had the problems he claimed when he was 8 years old and that he has no family support in Kabul or elsewhere. The judge accepted that the Appellant could not be said to understand the culture or life in Afghanistan as he has not lived there since he was a very young child ten years ago [25]-[26]. The judge went on to assess what is reasonably likely to happen to the Appellant on his return to Afghanistan and concluded that the Appellant would not be at real risk from the authorities there as there is no evidence that they have any adverse interest in him or in the Taliban due to their lack of reach or specific interest in him when he was 8 years old or now. The judge took into account that the Appellant was just an adult and concluded that, even though he cannot be said to understand the culture or life in Afghanistan, it would be reasonable to require him to internally relocate to Kabul or elsewhere as he is a fit and healthy young man who speaks Dari and has shown himself to be resourceful enough to travel

across Europe for many months where he also did not understand the culture and life and he can work in Kabul or elsewhere to establish himself.

5. The renewed Grounds of Appeal to the Upper Tribunal rely on three asserted errors. It is firstly contended that the judge failed to conduct a proper and fair assessment of the risk which would be faced by the Appellant on return to Afghanistan. It is contended that the judge failed to take account of the fact that the Appellant is of Sadat ethnicity and a Shia Muslim and that he has never been back to Afghanistan since he left when he was 8 years old. It is contended that according to the country information Sadat is a tiny ethnic group that comprises only one per cent of the population of Afghanistan. They are Shia Muslim whilst the majority of people in Afghanistan are Sunni Muslim and that, similar to Hazara, they suffer discrimination, harassment and ill-treatment in Afghanistan. The second Ground contends that the Appellant's parents are deceased and he has no family support in Kabul or elsewhere. It is contended that the Appellant does not have any Afghan identity documents and will need to obtain identity documents in order to stay in Afghanistan. It is contended that it would not be possible for him to obtain an ID card as he has no family there. It is contended that the country information shows that there is ethnic tension in Afghanistan and in Kabul and that the UNHCR recognise that individuals belonging to one of Afghanistan's minority ethnic groups, particularly in areas where they do not constitute an ethnic majority, may be in need of international refugee protection. The third Ground contends that the Appellant's father's involvement in the fighting in Syria would put the Appellant at real risk from the Afghan authorities as the Afghan authorities would be interested to find out whether the Appellant was himself connected to any armed groups and/or insurgents. Also, as a young man of fighting age, the Appellant would face a real risk of forced recruitment by the Taliban or other armed groups active in Afghanistan.
6. Permission to appeal was granted by Upper Tribunal Judge Finch on the basis that the Appellant was only 18 and was not legally represented at the appeal hearing and therefore it was even more important to apply anxious scrutiny to all of the evidence in support of his appeal. The Upper Tribunal Judge noted that in the decision and reasons the First-tier Tribunal Judge did not take into account the fact that in his screening interview the Appellant said that he was of the Sadat ethnic group and that the objective evidence submitted in support of his Grounds of Appeal indicates that this group makes up only one per cent of the population of Afghanistan and shows that it is the UNHCR's view that individuals belonging to an ethnic minority may be in need of international protection.
7. In the Rule 24 notice the Respondent pointed out that it is not clear that the Appellant relied upon his Sadat ethnicity at his appeal hearing or what evidence was before the judge in relation to this. It is contended that the UNHCR's view that individuals from ethnic minorities may be in need of international protection does not suggest that being of Sadat ethnicity

alone is enough to require international protection. It is contended that there is no error disclosed in the reasoning.

## **Submissions**

8. Mr Aitken submitted that it is the Appellant's case that he is of Sadat ethnicity and is a Shia Muslim, that he left Afghanistan when he was 8 years old. It is contended that the judge should have considered the evidence from the UNHCR. It is contended that the Appellant was unrepresented and was just 18. At the hearing before the First-tier Tribunal therefore the judge's duty was heightened and the failure to consider his ethnicity amounted to an error of law. He accepted that in the asylum interview the Appellant did not refer to his ethnicity but at question 176 he said that he was a Shia Muslim and Mr Aitken submitted that this should have alerted the judge to his vulnerability. Mr Aitken also accepted that there is no reference in the reasons for refusal letter to the Appellant's claimed Sadat ethnicity or to the claim that he is a Shia Muslim. He submitted that the judge failed to adequately consider the fact that the Appellant's father was killed in Syria and the fact that this would elevate the risk to the Appellant. He submitted that this was highlighted in the expert report which he accepted was not before the judge.
9. In relation to the second ground Mr Aitken submitted that the judge erred in his assessment in relation to internal relocation. The judge attached undue weight to the fact of the Appellant's travel from Iran to the UK. Mr Aitken submitted that the judge made further errors in paragraph 27 of the decision where he said:

"In my judgment however, bearing in mind the guidance case law to which I have referred, even though he cannot be said to understand the culture or life in Afghanistan, it would be reasonable to require him to internally relocate to Kabul or elsewhere as he is a fit and healthy young man who speaks Dari and has shown himself to be resourceful enough to travel across Europe for many months, where he also did not understand the culture or life, and can work in Kabul or elsewhere to establish himself."

Mr Aitken submitted that this paragraph demonstrates a failure on the part of the judge to appreciate that the journey made by the Appellant was under the control of agents. He submitted that travelling through Europe is different from travelling from Kabul to a remote area of Afghanistan.

10. Mr Aitken highlighted a further alleged error at paragraphs 20 and 24 of the decision where the judge said that it was the Respondent's case that the Appellant's failure to claim asylum in France undermines his credibility and at paragraph 24 where the judge said that the Appellant's credibility is

damaged by his failure to claim asylum en route. However at paragraph 29 of the reasons for refusal letter, in considering Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Respondent concluded that weight had been placed upon the fact that the Appellant was a minor when he travelled to the UK and it was considered reasonable that he relied on his father's advice and his credibility was found not to have been damaged by his failure to claim asylum en route under section 8(4). He submitted that the judge should have provided reasons why he was departing from this acceptance on the part of the Secretary of State. Mr Aitken further submitted that there had been no reference to the background information as to how the Appellant would establish himself or to find work or accommodation in Kabul. The judge failed to have regard to the fact that the Appellant has no identification documents which would make it difficult for him to establish himself. He referred to paragraph 43 of the asylum interview where the Appellant was asked if he had any identification in Afghanistan and he said that he had not. Mr Aitken submitted that the background country information shows that the difficulties in obtaining Taskira document which is required in Afghanistan. Mr Aitken accepted that there was nothing before the judge to that effect but again emphasised that the Appellant was unrepresented and was only just 18 at the time.

11. In relation to the third ground, Mr Aitken submitted that the judge had failed to properly assess the Article 8 claim. The Immigration Rules are the starting point for an assessment of Article 8. He accepted that there was no evidence that the Appellant met any of the other Immigration Rules but submitted that the judge was required to consider the Appellant's private life aspect under paragraph 276ADE(1)(vi) and to carry out an assessment as to whether there were very significant obstacles to the Appellant returning to Afghanistan.
12. Mr Tarlow submitted that the UNHCR document submitted by the Appellant in connection with the Grounds of Appeal states that ethnic minorities may be in need of international protection but there is no evidence that that threshold has been crossed in this case. He accepted that the Appellant was unrepresented in the First-tier Tribunal but asserted that it was still for him to make his claim. He submitted that at paragraphs 26 and 27 the judge made findings open to him in relation to internal relocation to Kabul. He accepted that the assessment of Article 8 at paragraph 29 is sparse but he submitted that it dealt with the key point. Therefore he submitted that any errors made were not material to the conclusion. He submitted that membership of the Sadat ethnic group is not sufficient to enable the Appellant's appeal to be successful. In terms of the error in relation to Section 8 he that at paragraph 24 the judge says that the Appellant's credibility is damaged by his failure to claim asylum en route but says that he must still assess the merits of the claim, therefore any error in this regard is not material.
13. In response Mr Aitken submitted that the UNHCR Report was capable of crossing the threshold in terms of international protection. Therefore the

judge may have found that the UNHCR evidence brought the Appellant over the threshold but that evidence was not considered. He accepted that it was for the Appellant to advance his case but submitted that the Appellant was young and was unrepresented and had been absent from Afghanistan for a number of years. He accepted that the factors at paragraph 27 were relevant to the assessment under Article 8 but the judge had not given sufficient reasons for his decision that the Appellant's Article 8 claim fails.

### **Error of law**

14. The judge found the Appellant's account to be credible. This meant that it was accepted that the Appellant left Afghanistan when he was 8 years old and that he has no family there and the judge found that he does not understand the culture or life in Afghanistan. It is not in dispute that the Appellant is a Shia Muslim. The Appellant said in his screening interview that he is of Sadat ethnicity. This is not disputed in the Reasons for Refusal letter. This was the judge's starting point in assessing the reasonableness of internal relocation in Kabul.
15. The judge found that the appellant's credibility is damaged by his failure to claim asylum en route. However the judge failed to take into account as accepted by the Secretary of State, that the Appellant was under 18 when he travelled to the UK and that it is considered reasonable that he followed his father's advice (paragraph 29 Reasons for Refusal letter).
16. The judge attached very significant weight to the fact that the Appellant travelled across Europe for many months in deciding that it would be reasonable to expect him to relocate to Kabul. This, along with the fact that he speaks Dari, seems to have been the main reasons why he found that it is reasonable to expect the Appellant to relocate in Kabul.
17. The submissions on his behalf emphasise that the Appellant was unrepresented at the hearing before the judge and that he was only 18 years old. The judge did consider this throughout the decision, particularly in his consideration of the Appellant's credibility. However I accept that the judge failed in his duty to give anxious scrutiny to the Appellant's case in his consideration of internal relocation. He failed to take account of the fact that the Appellant is a member of the Sadat ethnic group, as stated in his screening interview, and the fact that this is a minority group (as set out in the UNHCR document before the First-tier Tribunal). The judge failed to take account of the fact that he is a Shia Muslim as stated in his asylum interview where he said that the Taliban kills Shia Muslims (Q176). In reaching his conclusion about the Appellant's journey to the UK the judge failed to consider the role of the agent in organising the journey. The fact that the Appellant used an agent potentially reduces the weight of the fact

that the Appellant had undertaken the journey and undermines the assessment that he was 'resourceful enough to travel across Europe for many months' [27]. Further, the judge failed to take account of the fact that the Appellant has no identity documents as stated in the screening interview.

18. Considering all of these matters I therefore conclude that the First-tier Tribunal Judge erred in failing to give full consideration to all of the evidence before him in assessing the reasonableness of internal relocation to Kabul.
19. There is no challenge to any of the findings of fact or to the (implied) finding that the Appellant is at risk in his home area. I therefore preserve the findings of the First-tier Tribunal in relation to these issues and I set aside the findings as to internal relocation.

### **Remaking the decision**

20. In remaking the decision as to internal relocation I take account of the evidence before the First-tier Tribunal and the further bundle of documents served on the Upper Tribunal on the Appellant's behalf as well as the submissions made by Mr Tarlow and Mr Aitken.
21. I have considered the bundle of documents submitted to the First-tier Tribunal including the Appellant's witness statement. The background information in that bundle contains information about events in Afghanistan. However I see nothing in that bundle relating to the issues now being put forward in terms of the Appellant's ethnic background or religious background. In the Appellant's new bundle there is a report from the Washington Post at page 47 dated 24<sup>th</sup> July 2016 which indicates that there were increased fears sectarian violence could be unleashed by the Sunni majority Muslim population. There is a further report from the Foreign Policy Journal of 21<sup>st</sup> November 2016 which refers to ethnic rivalries in Afghanistan.
22. There is a report from the Independent of 1<sup>st</sup> November 2011 which states that Kabul is becoming increasingly divided along ethnic lines as residents relocate to neighbourhoods that would allow them a speedy getaway to their home provinces and ancestral villages in the event that the country descends back into civil war.
23. In relation to remaking the decision Mr Tarlow relied on the reasons for refusal letter. He submitted that there was no evidence that being of the Sadat ethnicity would cause any problems to the Appellant on return. The Appellant has worked in various countries for a long time. He is resourceful and he can relate to Kabul or elsewhere. Even looking at paragraph 276ADE(1)(vi) there is no reason why the Appellant cannot be returned to Afghanistan.

24. Mr Aitken submitted that it was unchallenged that the Appellant was a member of the Sadat ethnic group. He submitted that pages 35 to 36 of the Appellant's new bundle shows that one per cent of the population is Sadat. Whilst he accepted that this evidence was from 2012 he submitted that there was no recent evidence to the contrary. He relied on the UNHCR Report at page 37 of the Appellant's new bundle which states that:

"Individuals who belong to one of Afghanistan's minority ethnic groups, particularly in areas where they do not constitute an ethnic majority, may be in need of international refugee protection on the basis of their nationality or ethnicity/race, or other relevant grounds, depending on the individual circumstances of the case. Relevant considerations include the relative power position of the ethnic group in the applicant's area of origin, and the history of inter-ethnic relations in that area."

25. Mr Aitken relied on the expert report at pages 10 to 34 of the Appellant's new bundle. He relied on paragraph 16 of the expert report which states:

"Afghanistan is a country formed by different ethnic groups. There are nearly 55 different ethnic groups, who speak 30 languages and dialects. The major ethnic groups are the Pashtuns 42%, Tajik 27%, Hazara 9% and Uzbek 9%. Each one of the other ethnic groups of Afghanistan form 1% or less than 1% of the population. The Sadat ethnic group are one of the minority Shia Muslim groups of Afghanistan. The Sadat does not have influential members in the Afghan government. There are no powerful communal groups and no major constituency where members of the local councils or parliamentarians represent the Sadat's local and national interests. The major risk to the Sadat ethnic group is their religious identity, as Shia Muslims."

26. I accept that the Appellant may face difficulties in Afghanistan as a result of his ethnicity. As the group is very small he will be unable to access the community support he may need because he has no family members there.

27. Mr Aitken also relied on paragraph 17 of the expert's report which states that "a person who returns to Afghanistan from Iran or Pakistan or from other countries may encounter many administrative barriers before he can obtain a Taskira document". It states that "repatriating refugees are undocumented and have to satisfy the following conditions before they can obtain a Taskira:

- To obtain a Taskira document issued to one's grandfather;
- To obtain a Taskira document issued to one's father;
- To submit a Taskira document issued to oneself;
- To provide testimony from tribe, ethnic group chiefs and elders. "



At paragraph 19 the expert says that in “Afghanistan a Taskira document is the more important form of identity which also confirms one’s citizenship. It is used for enrolling in schools, renting an accommodation, and for employment”. It states that “following a major terrorist incident the police forces carry out spot checks or random house to house searches where people are expected to show a Taskira as proof of their identity and if they cannot show a Taskira detention is highly likely”. In the expert’s opinion the Appellant if he does not have resourceful and influential relatives who can make sure he is issued with one will not be able to receive a Taskira. In light of the fact that the Appellant does not have any family members in Afghanistan it is unlikely that he will be able to obtain a Taskira. Given the size of his ethnic group it is not likely that he will be able to access their support in seeking the identity documentation.

28. Mr Aitken also pointed to paragraph 20 of the expert’s report which refers to the fact that the Appellant’s father died in the war in Syria. According to the report the Islamic world is divided into two parts in relation to the Syrian conflict. One side is the Shia Iran, Russia and other Shia Muslims of Iraq and Lebanon who support Bashar al-Assad and his government whilst the other are the Sunni Muslims and western powers that do not support him. According to the expert, nearly 80% of the Afghanistan population are Sunni Muslims and they support any war being waged against Shia Islam. According to the expert, if people in Afghanistan find out that the Appellant’s father died in Syria whilst support Bashar al-Assad he would receive ill-treatment from members of Afghan society. In the opinion of the expert if the Appellant relocates to Kabul he is likely to be targeted by the Taliban and their supporters. I accept that it is possible that the Appellant could face further difficulties because his father fought in Syria.
29. The expert’s opinion highlights some of the risks to which the Appellant may be exposed. At paragraph 21 the expert says that a young person relocating to Kabul has two accommodation options. One is living in shared accommodation with other men or the other is living in small rooms located in the inns. He states at paragraph 22 that he believes that the Appellant is likely to be exposed to risks such as drugs, male sex abuse, trafficking and other criminal activities living in this type of accommodation. At page 26 the expert concludes that the Appellant, a member of Sadat, is a vulnerable and unrepresented ethnic group in Afghanistan. The Appellant is attributed to the Shia Sunni conflict by the fact that his father fought and died in Syria. The Appellant is an undocumented citizen who may not be able to prove his Afghani citizenship status. In the opinion of the expert the Appellant will not be able to apply for a job or rent an accommodation if he cannot obtain a Taskira document. If he is forced to live in the slums where there are crime-ridden inns, then he will be exposed to direct contact with drug dealers, human traffickers and members of terrorist groups and there is a strong possibility that criminal and terrorist groups actively look for people like the Appellant who have to commit crimes for survival.

30. Mr Aitken also referred to the Appellant's updated witness statement dated 22<sup>nd</sup> March 2017 where at paragraph 19 he states that he is no longer a practising Muslim and suggests that this may place him at further risk in Afghanistan.
31. I take account of the fact that the Appellant left Afghanistan when he was 8 years old. He has no family there. He would be returning there with little support from his ethnic group. His ethnicity and religion may make him vulnerable. He will have difficulty accessing identity documents and therefore accommodation and employment. In light of all of this evidence I find that it would not be reasonable to expect the Appellant to relocate to Kabul. Therefore the Appellant has established that he is entitled to protection as a refugee.
32. Mr Aitken accepted that Article 2 and 3 stand or fall with the asylum appeal. There is no need to determine the Humanitarian Protection appeal in light of my findings on asylum.

### **Notice of Decision**

The decision of the First-tier Tribunal contains a material error of law.

I set the decision aside and remake it by allowing the appeal on asylum and human rights grounds.

### **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 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: 3<sup>rd</sup> May 2017

Deputy Upper Tribunal Judge Grimes

### **TO THE RESPONDENT** **FEE AWARD**

There is no fee award because no fee has been paid or payable.

Signed

Date: 3<sup>rd</sup> May 2017

Deputy Upper Tribunal Judge Grimes