



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00789/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 March 2018

Decision & Reasons Promulgated  
On 28 March 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

NS  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms V Easty, Counsel, instructed by Brighton Housing Trust

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Reid (the judge), promulgated on 17 July 2017, in which she dismissed the appellant's appeal against the respondent's decision dated 17 January 2017 refusing his asylum claim.

## Factual Background

2. The appellant is a national of Afghanistan, with an estimated date of birth of 1 March 1999. His mother is Tajik and his father Pashtu. He entered the UK on 30 June 2016 aged 17 and claimed asylum on 19 July 2016.
3. The appellant's father, who died before he was born, and a deceased older brother were both involved with the Taliban (his father was a commander) and were killed by the governor of Balkh province, in which they lived, as a result of their involvement. The family then moved to Panjshir Province when the appellant was about 1 year old and lived on his maternal uncle's land. The appellant's other older brother, WS, left Afghanistan when the appellant was aged 8 or 9 because of threats made by the Governor of Panjshir province who assumed that WS, a young teenager, would be involved with the Taliban and because the Governor wanted to use him against the group. WS came to the UK and was eventually granted asylum after an appeal (he was found credible and to have a well-founded fear of persecution in Panjshir Province and, although there was no real risk that he would be at risk of harm from the Province's governor in Kabul, as he was a minor and with no family support internal relocation to Kabul was not reasonable) and is now a British citizen.
4. When growing up the appellant would occasionally be approached by armed men in his village (Mujahedin fighters) who worked for the Governor of the Province and would ask about his father and the appellant's future plans. The appellant and his mother moved to Kabul in October 2014 after spending 1½ months in Pakistan for WS's wedding to LS. LS joined them in Kabul in a property rented by WS. The appellant, who had very limited previous educational experience, had a private tutor in Kabul. WS visited the appellant in Kabul. The appellant left Afghanistan in August 2015 when he was 16 after arrangements were made by his uncle. His mother eventually returned to their home village to live with her brother after LS came to the UK.
5. The respondent accepted that the appellant was from Afghanistan and had lived in Kabul prior to coming to the UK. It was also accepted that the appellant's father may have had some Taliban involvement and that the appellant may have experienced some problems due to his ethnicity and his father but not to the extent claimed. The respondent did not accept the appellant's claim that men from his village were looking for him and found that he could, in any event, relocate to Kabul.

## The decision of the First-tier Tribunal

6. The judge had before her a bundle of documents prepared on the appellant's behalf and containing, *inter alia*, witness statements from the appellant and his brother (WS) and sister-in-law (LS), a psychological report prepared by Ms Richards, and an expert country report prepared by Dr Giustozzi. For the

reasons outlined in the psychological report the appellant did not give oral evidence. The judge heard oral evidence from WS and LS.

7. In her decision the judge gave detailed consideration to the appellant's account and carefully cross referenced the evidence before her. The judge accepted that the appellant's father was involved with the Taliban and found it plausible that he and his mother would be approached when an older child by the Mujahedin in a manner similar to that described by WS. Although no threats to harm or kill the appellant were actually made the judge found that it was not safe for the appellant to return to his home village. The judge however considered that the appellant could reasonably be expected to relocate to Kabul.
8. The judge found that the appellant had an identity document of some type that enabled him to visit Pakistan in 2011 and 2012 as well as 2014, even if he did not have a Tazkera. The judge found that the move to Kabul in 2014 had been twofold, based on concern as to what might happen to the appellant given the questioning by the Mujahedin, and to enable him to get some formal education. The appellant and his mother and sister-in-law lived in Kabul for around 10 months and he attended school for a short time although he stopped because he was struggling with classes and because of his learning difficulties. There were no problems from the Mujahedin or anyone else in Kabul and no problems during WS's visit there in March 2017 to see his wife and mother. The judge found that although the appellant's uncle had been put under pressure and informed the Mujahedin that the appellant was in Kabul he himself had not been harmed. The judge did not accept that the appellant's mother had any significant health problems and found that her depression was unlikely to be affecting her to such an extent that she could not look after herself or help the appellant.
9. The appellant was a young adult who had 'mild learning difficulties' and limited education. The judge considered that the appellant had 'mild learning difficulties' with reference to the psychological report prepared by Ms Rogers, a HCPC registered psychologist. At [39] the judge stated, with reference to the psychologist's findings,

"I accept her opinion that the cognitive tests are not entirely a reliable indicator (page A26) because, as she notes, the Appellant had had little education (see also para 6.1.26) and the tests are based on a Western population which is educated, the test is not culturally sensitive and was done via an interpreter, and the result was not consistent with his functional ability which was higher than the test result. Ms Rogers concludes that the Appellant's assessment (page 25 paragraph 3.1, at the lower end of the moderate range) is in fact lower than his actual ability (paragraph 3.2). I find, based on her opinion, that the Appellant's abilities are not solely a result of a lack of education but that his problems are exacerbated by other factors including lack of education (paragraph 6.1.27). I therefore find that as his actual functional ability is higher than

the lower end of the moderate range of learning disability as identified in the assessment, that the Appellant's learning disability is within the mild range. As such he may be limited to menial jobs (Dr Giustozzi page A80 paragraph 34)."

10. Having found that the appellant had a 'mild learning disability' the judge noted that he was nevertheless able to travel alone to see the psychologist in London from Kent and that he was alone in the UK for 6 weeks when his brother was in India and then Kabul. As the appellant was able to follow simple directions, play computer games, use a mobile phone and had appropriate social skills the judge did not accept that the appellant was functionally unable to cope at all on his own. At [41] the judge concluded that, whilst the appellant was more vulnerable than someone without a mild learning disability, he was "not highly or acutely vulnerable because of it."
11. At [42] the judge accepted that the appellant had mild-moderate depression and mild-moderate PTSD. The judge did not however accept that the appellant was as vulnerable as stated by the psychologist because the judge did not accept the evidence concerning the health of the appellant's mother, because he was not wholly uneducated and because he would have family support reducing his vulnerability to exploitation. Although he suffered from depression there was nothing to suggest appropriate treatment was not available in Kabul. He had some familiarity with the city and would be able to obtain some practical and emotional support from LS's family who lived in the city, from his uncle who had travelled in the past to the city, and from his mother who could return to Kabul. The judge did not find that the appellant would be at risk in Kabul given the lack of any adverse attention when he lived there before and the absence of any action taken against his uncle and mother in their home village. In reaching this conclusion the judge referred to Dr Giustozzi's report but maintained that the expert had not factored in the appellant's residence in the city for 10 months, his attendance at school and the fact that his uncle had informed the Mujahedin that he was in the city. Having found that internal relocation to Kabul was reasonable, the judge dismissed the appeal.

### **The grounds of appeal and the error of law hearing**

12. The grounds challenge the judge's approach to the psychologist's evidence. At 6.1.28 of her report the psychologist stated,

"[NS's] scores indicate a very low level of intelligence, at the lower end of the Moderate learning Disability range; his general functioning indicates that his intellectual capacity is not as low as suggested here. With guidance he is able to find his way around independently. He has some functional skills and can manage self-care with reminding. [NS's] intelligence is likely to be in the mild-moderate learning disability range, rather than at the low end of the moderate learning disability indicated by the scores achieved here."

13. And at 7.6.3 offer report the expert stated,

“[NS] has extensive learning difficulties, probably in the mild-moderate learning disability range; the assessment of (NS) indicated difficulties across the skills assessed even when the cultural insensitivity is taken into account.”

14. The grounds, amplified by Ms Easty during her oral submissions, content that the judge erred in finding that the appellant has a “mild learning difficulty” and that she gave no reasons why she disagreed with the expert assessment. The judge, it is submitted, erred in law by re-assessing the appellant’s learning difficulties as ‘mild’ notwithstanding the expert’s clear assessment that he fell within the ‘mild-moderate’ range. The judge supplanted an assessed range given by the expert with a fixed point, and improperly considered the appellant’s vulnerability with reference to this fixed point, materially affecting her conclusion that it would not be unduly harsh to return him to Kabul and undermining her finding that he would be able function adequately and find employment. This error was compounded by the judge’s failure to consider the appellant’s vulnerability holistically with reference to his depression and PTSD. It is submitted that the judge failed to consider the expert report ‘in the round’ including the expert’s finding that the appellant operated functionally at the level of a considerably younger child than his chronological age (paragraph 3.1 of the expert report), that he has an ‘exceptionally low self-esteem (paragraph 3.3), that his low learning level rendered him more vulnerable to traumatic experiences (supra), that the appellant was afraid of returning to Afghanistan and that exposure to further loss and trauma would be highly damaging to his psychological well-being and mental health (7.5.1).

15. The grounds additionally contend that the judge failed to consider Dr Giustozzi’s report at page 58 where he stated,

“It would therefore be widely assumed that (NS) would share the political leaning of the rest of his family. Because the family has always been opposed to Shura-i Nezar, aligning with its enemies at different stages of the civil wars affecting Afghanistan, they would even today be assumed to be hostile to Shura-i Nezar and potential danger. Members of Shura-i Nezar in the security apparatus would in all likelihood be hostile to (NS).”

16. It was submitted that the judge failed to consider the experts view that Shura-i Nezar might use the government institutions to track down the appellant and that the authorities would be unable to provide a sufficiency of protection, and the expert’s view that the appellant’s presence in Afghanistan would not stay secret for long particular since he would have to obtain a job in accommodation and because the ongoing war and worsening insurgency would make the punishment of alleged traitors such as the appellant’s family priority for the authorities.

17. Mr Bramble accepted that the judge impermissibly re-corrected the psychologist's assessment of the degree of the appellant's learning difficulty, and that this constituted an error of law. He submitted however that the error was not material. The judge gave detailed and legally adequate reasons for finding that the appellant's level of functionality would still enable him to return to Kabul and that he would have the support of his family. The judge had considered the appellant's depression and PTSD at [42]. From [49] onwards the judge identified a number of factors supporting her conclusion that the appellant would not be at risk of ill-treatment from the authorities in Kabul, and that the judge had clearly considered Dr Giustozzi's report.

## Discussion

18. The judge accepted that the appellant would be at risk of serious self-harm if returned to his home area [46]. The judge concluded however that it would not be unreasonable or unduly harsh to expect him to relocate to Kabul. The principal issue before the judge therefore revolved around the issue of the availability of internal relocation.
19. It was not disputed by Mr Bramble that the judge fell into legal error by correcting the psychologist's assessment of the extent of the appellant's learning difficulties. The expert had already 'factored in' the evidence of the appellant's functional ability, the absence of any cultural sensitivity in the cognitive assessment, that the assessment was undertaken through an interpreter and the appellant's limited education (3.1, 3.2, 6.1.28, 7.6.2, 7.6.3). In concluding that the appellant's learning disability was at the 'mild to moderate range', the expert had therefore already taken full account of the appellant's functional ability. There was no basis for the judge to then rely on the appellant's actual functional ability to amend the expert's findings, as she did at [46]. The judge therefore erred in law in approaching the issue of the appellant's vulnerability and the reasonableness of him relocating to Kabul on the basis that he only had a mild learning difficulty.
20. It is not clear from the psychologist's report, or indeed any of the documentation before me, whether there is a marked difference between a person who suffers a learning difficulty in the 'moderate to mild' range, and a person suffering only 'mild' learning difficulties. I fully appreciate the danger in attaching undue weight to what may ultimately be an insufficiently material difference. I cannot however exclude the possibility that the difference may be material when considered and applied in the context of internal relocation. This is particularly so given that the appellant also suffers from mild-moderate depression, mild-moderate PTSD, clinically significant levels of anxiety and exceptionally low self-esteem.
21. Having improperly concluded that the appellant had a mild learning disability, the judge then relied on this finding in concluding that the appellant was not highly or acutely vulnerable as a result of it [41]. While the judge was entitled to

focus on the evidence of the appellant's actual functionality in reaching her conclusion, this failed to take into account the psychologist's conclusions that his low learning level rendered him more vulnerable to traumatic experiences and to the development of mental health difficulties, and the psychologist's conclusion that the appellant is "an extremely vulnerable young person." Moreover, the judge relied on her finding that the appellant only suffered from mild learning difficulties in determining whether he could relocate to Kabul [47] and [51].

22. Nor is it sufficiently clear that the judge determined the nature and degree of the appellant's vulnerability having holistic regard to his other mental health issues. Although the judge indicated, at [42], that she also considered Ms Rogers' findings relating to depression and PTSD, this appears in a separate paragraph to the judge's assessment of the appellant's vulnerability [41].
23. I accept that at [47] and [48] the judge gave a number of clear and cogent reasons why the appellant's personal circumstances, other than any risk from the authorities, did not prevent his relocation to Kabul. These included the fact that the appellant was a young adult and his functional ability, that the appellant was likely to have the support of his brother in the UK, that his sister-in-law's family and maternal uncle may be able to provide some support, and that his mother would be able to move back to Kabul if he were returned. I have carefully considered whether these factors render the judge's errors immaterial and, albeit with some hesitation, I have concluded that they do not. Even if the appellant is able to get support from his family I cannot discount the possibility that a judge, properly applying the psychologist's conclusions, may be entitled to conclude that the impact on the appellant of relocating back to Kabul, given the many factors feeding his vulnerability, would be unduly harsh.
24. Having found that the judge materially erred in her legal approach to the psychologist's evidence, I do not need to consider whether she failed to take into account elements of Dr Giustozzi's report.
25. As the judge's findings in respect of the appellant's vulnerability and his ability to relocate were made on the wrong factual basis, the matter is remitted back to the First-tier Tribunal for a de novo hearing before a judge other than judge of the First-tier Tribunal Reid, all issues open.

### **Notice of Decision**

**The First-tier Tribunal decision is vitiated by material errors of law. The case is remitted to the First-tier Tribunal for a fresh (de novo) hearing to be heard by a judge other than Judge of the First-tier Tribunal Reid.**

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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  
Upper Tribunal Judge Blum

26 March 2018  
Date