



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00817/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 15 May 2018

Decision & Reasons Promulgated  
On 24 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S M

(ANONYMITY DIRECTION MADE)

Respondent

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.

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Mr J Gajjar, Counsel instructed by Malik & Malik Solicitors

## **DECISION AND REASONS**

1. I shall refer to the parties as they were before the First-tier Tribunal. Therefore the Secretary of State is once more the Respondent and Mr M is the Appellant.
2. This is a challenge by the Respondent to the decision of First-tier Tribunal Judge Carroll (the Judge), promulgated on 27 February 2018, in which she allowed the Appellant's appeal against the Respondent's decision of 4 January 2018, refusing his protection claim. The central elements of the Appellant's case were that he had worked for a charity in Afghanistan, which I will call "XX", that he had converted to Christianity, and that he has come to the adverse attention of the Taliban as a result.

### **The judge's decision**

3. At [16-29] the judge rejects almost all of the Appellant's account in robust terms. She finds that the Appellant's evidence contained very significant inconsistencies, was implausible in several respects, and that other aspects of his case were "highly contrived". She specifically rejected the reliability of documentary evidence provided by the Appellant and his claimed conversion to Christianity. Then at [30] the judge finds as follows:

"The only aspect of the Appellant's account which I find to be credible is his employment by [XX]. The objective evidence points to a significant number of casualties amongst NGO workers by anti-government elements who see such workers as supportive of the government. The evidence does not show that there is, in reality, state protection or that it would be open to the Appellant safely to relocate within Afghanistan. Accordingly, I find that his case engages the United Kingdom's obligations under the Protection Regulations and I find also that return to Afghanistan would give rise to a real risk of a breach of Article 3 of the 1950 Convention."

On the basis of this passage alone, the judge duly allowed the Appellant's appeal on refugee grounds.

### **The grounds of appeal and grant of permission**

4. The Respondent's grounds put forward a reasons challenge to the judge's decision. It is acknowledged that country information did indicate that some NGOs may be targeted by non-state actors, but it is said that it was not the case that all employees of NGOs were "automatically" at risk throughout Afghanistan. It is said that the judge failed to provide reasons, or at least adequate reasons, as to why the Appellant would be personally at risk from the Taliban throughout Afghanistan.
5. Permission to appeal was granted by First-tier Tribunal Judge J N Holmes on 15 March 2018.

### The hearing before me

6. Mr Clarke relied on the grounds of appeal and noted that the Appellant's success before the First-tier Tribunal was based upon a single and very narrow factual finding, namely that he had in fact been an employee of XX. He submitted that the country information did not show that there was a risk to any and all NGO workers throughout the country.
7. Mr Gajjar referred me to [12] and [13] of the judge's decision in which she sets out the country information relied upon when reaching her conclusions in [30]. It was open to the judge to find that the Appellant had been an employee of XX and, in light of the country information, it was also open to the judge to conclude that there was a risk to him on return.

### Decision on error of law

8. As I announced to the parties at the hearing I conclude that there are material errors of law in the judge's decision and that I should exercise my discretion under section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007 and set the judge's decision aside. My reasons for this conclusion are as follows.
9. [30] contains only the bare finding that the Appellant was any employee of XX. There are no specific findings as to what he actually did for the charity, whether the charity had any particular profile in Afghanistan, or whether it had been targeted by the Taliban or anyone else in respect of its activities. Given the judge's almost wholesale rejection of the Appellant's claim in general, it can really only have been the case that the judge was assessing risk on return in the context of the Appellant simply being a "normal" employee with no prominent profile. It is certainly the case that he was not a Christian convert, nor that he had ever come to the adverse attention of any non-state actor.
10. The judge then set this very narrow factual finding in the context of the country information cited in [12] and [13] of her decision. I have looked at that country information for myself. Pages 104 to 108 of the Appellant's bundle cover a report by the Canadian Immigration and Refugee Board, dated February 2016. The judge has accurately summarised this evidence in [12]. It is right that the information indicates that there had been an increase in attacks on aid agencies in districts where the security situation had been transferred to Afghan forces. It is also the case that one source indicated that there were "prominent cases" in 2015 where Afghan NGOs were targeted by armed groups. It is, however, stated that the targeting of NGOs directly was "rare". At page 105 of the Appellant's bundle there is reference to information suggesting that the Taliban continued to target local aid workers and local staff of international organisations. Provinces including the Appellant's home area of Ghazni were said to have experienced relatively higher levels of incidents

involving NGO workers than other parts of the country. At page 108 it is said that the police did not have the resources or capacity to deal with threats or security problems encountered by NGO employees as a result of their work.

11. It is right to say that there was some support for the judge's conclusion that NGO workers may, in certain circumstances, be targeted and therefore at risk. There was some evidence to suggest that that risk might be higher in the Appellant's home province of Ghazni than it would be elsewhere. Notwithstanding this, and with all due respect to the judge, in my view there are insufficient reasons provided as to why this particular Appellant, in light of all the adverse findings and the lack of any specific positive findings as to his role with XX and such like, would be at risk on return to his home area now. The country information does not indicate that any and all NGO employees (or indeed ex-employees, as the Appellant would be on return) are, on that basis alone, at risk from the Taliban. The judge has failed to explain why the Appellant's profile would place him at risk. There is a material error here.
12. Even if the judge was entitled to find that there was a risk in the home area (where there would be more of a chance of him being recognised), there is no reasoning at all as to why he would be at risk in Kabul. On the basis that he has no profile other than as an ordinary (ex) employee of XX, it required a degree of reasoning to show why the judge concluded that the risk pertained in Kabul (and in effect throughout Afghanistan as a whole). Nothing is said about why or whether the Taliban would want to or be able to track him down in the capital. There is no analysis of whether, if his employment history did come to light, this information would get back to the Taliban who would then have the inclination to do him harm. I conclude that this is a material error of law.
13. Further, or in the alternative, there is no reasoning from the judge as to why, if there were no risk in Kabul, it would nonetheless be unduly harsh for this Appellant to have relocated there. I find this to be a further material error of law.

### Disposal

14. I indicated to the representatives that there was absolutely no reason for this case to be remitted back to the First-tier Tribunal: I could and should remake the decision on the evidence before me, and in light of the very recent country guidance decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) and submissions. Both representatives were agreed on this course of action. I then put the case back for a while in order that both representatives could consider AS and the submissions that they wished to make. The hearing then resumed and the following submissions were put forward.
15. Mr Gajjar acknowledged that he could only rely on the single factual finding made by the judge, namely that the Appellant had been an employee of XX. With reference to pages 104-105 of the Appellant's bundle he submitted that the Appellant was at risk in his home area. In respect of Kabul Mr Gajjar acknowledged that in light of AS

he could not argue that there was a risk under Article 15(c) of the Qualification Directive. In reliance on paragraph 174 of AS he did submit that the Appellant would be at risk in the capital, although he acknowledged the Upper Tribunal's conclusions on the ability and willingness of the Taliban to track people down. In respect of internal relocation, paragraphs 202, 205, 217 and 222 of AS were relied on. The Appellant has a family network in the United Kingdom consisting of his brother and cousins, but would not have any such network in Kabul. The Appellant would struggle to find accommodation on return. It was acknowledged that the brother in the United Kingdom could potentially provide financial support to the Appellant on return but this was not the same as having a practical and immediate support network. Mr Gajjar acknowledged that the Appellant was physically and mentally healthy.

16. Mr Clarke relied on paragraphs 173-188 of AS. He submitted that there was no risk to the Appellant in any part of Afghanistan. If internal relocation was a live issue, he relied on the fact that the Appellant was a single, adult male who was healthy in all respects. It was not necessary for him to have a support network on return. He would be able to access employment and accommodation. The Appellant left Afghanistan as an adult, could get financial assistance from the United Kingdom, had a certain amount of skills, and spoke Pashtu.
17. Mr Gajjar had nothing to add by way of reply.
18. I reserved my decision.

### **The remaking of the decision**

#### *The factual matrix*

19. In terms of the factual basis upon which I will consider the Appellant's situation on return, all adverse credibility matters set out by the judge in her decision shall stand. There has been no challenge to them and they were clearly open to the judge.
20. I, like the judge, find that the Appellant was an employee of XX. For the avoidance of any doubt I find that he was simply an ordinary employee, with no prominent profile and no involvement in the expression or teaching of any Christian values whatsoever. I find that the Appellant had never come to the adverse attention of any organisation whilst in Afghanistan. On the evidence before me I also find that XX has not encountered specific problems from any non-state actors in Afghanistan. There is no reliable evidence before me to indicate to the contrary.
21. I find that the Appellant has been living with his brother in the United Kingdom and that the brother has provided financial and emotional support. I find as a fact that the brother would be willing and able to provide at least financial assistance to the Appellant if the latter were to return to Afghanistan. It is probable too that other cousins living in this country would also be in a position to assist.

## Conclusions

22. In the first instance I conclude that the Appellant is not at risk from non-state actors in his home area. I acknowledge and take into account the country information set out at pages 104 to 108 of the Appellant's bundle. This evidence does indicate that attacks on NGOs do occur and that these may have a higher incidence in the Ghazni province than in other areas of the country. I note that paragraph 174 of AS indicates that NGOs can be targeted. Having said that, in my view the country information and overall conclusions in AS are not nearly strong enough to support a conclusion that *any and all* employees or, importantly, ex-employees of *any* charity operating in Afghanistan are, for that reason alone, at risk from the Taliban. It may well be the case that particular individuals could be at risk because of their particular activities, or that particular charities may be targeted because of the nature of their work. However, in the present case neither the Appellant nor XX have an adverse profile.
23. If I were wrong about this primary conclusion, and if the Appellant were at risk in his home area, perhaps simply because of the possibility of him being physically recognised, I go on to consider the situation in Kabul. In so doing, I take into account the recent country guidance decision in AS. I conclude that the Appellant would not be at risk from the Taliban or anybody else in Kabul. The country information before me in no way indicates that the Taliban would be willing and/or able to track down someone in the Appellant's situation to the capital city in order to do them harm. The decision in AS makes it clear that the Taliban do not, in reality, have the resources to undertake such action (see paragraphs 175-185). I conclude that even if the Appellant's employment history came to light whilst he was in Kabul this would not even of itself bring him to the adverse attention of the Taliban. The possibility of this information being disclosed to the Taliban is so remote as to fall below the threshold of a reasonable likelihood.
24. As to any possible argument that the Appellant would be regarded as being "westernised" and therefore at risk, I would reject that for two reasons. First, the Appellant has been out of the country for only a brief spell; less than three years. The chances of him truly being perceived in such a way are negligible. Second, in any event, AS makes it clear that there is no risk (paragraph 187).
25. The remaining issue is that of internal relocation. I conclude that it would not be unduly harsh for this Appellant to relocate to Kabul. The Appellant is a single, healthy adult male. These simple facts in themselves place him in the category of a person who could be expected to reasonably relocate to Kabul. On the facts of this case there are no countervailing features which would thereby bring the Appellant out of that category. I take into account the fact that he left Afghanistan as an adult, that he has skills which would assist him in finding employment, and that he speaks Pashtu. I would be willing to accept that the Appellant does not have a family support network in Afghanistan, and certainly not in Kabul. However, we know from AS that this is not an essential requirement for relocation to be a reasonable

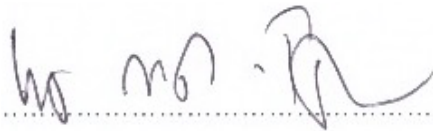
option. In the Appellant's case, he would have a support network based in the United Kingdom, and financial assistance could be provided from this country. I appreciate that that is not the same as having family and/or friends on the ground, as it were. However, it would amount to meaningful support in terms of the Appellant's ability to establish himself, at least in the short to medium term. There are no other factors in this case which would make the Appellant vulnerable in any other material way. As I have already said I conclude that there would be no perception of the Appellant as a westernised person given that he has only spent a short period of time in the United Kingdom. I confirm that I have taken all of the above factors into account, both individually and on a cumulative basis.

26. In light of the foregoing, the Appellant's appeal must be dismissed. For the avoidance of any doubt, no Article 8 argument has been put forward on the Appellant's behalf.

**Notice of Decision**

**The decision of the First-tier Tribunal contained material errors of law and I set it aside under section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.**

**I remake the decision by dismissing the Appellant's appeal on all grounds.**



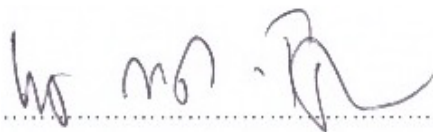
Signed  
Deputy Upper Tribunal Judge Norton-Taylor

Date: 22 May 2018

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.



Signed

Date: 22 May 2018

Deputy Upper Tribunal Judge Norton-Taylor