



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11930/2016

THE IMMIGRATION ACTS

Heard at North Shields  
On 10 August 2018

Decision & Reasons Promulgated  
On 28 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

M O  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Liew of Collingwood Immigration Services

For the Respondent: Mr M Dwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. To preserve the anonymity direction made by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Buchanan promulgated on 09/02/2018, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 01/03/1993 and is a national of Afghanistan. The appellant claimed asylum when the appellant arrived in the UK in June 2010 as an unaccompanied minor. That application was refused by the respondent, but the appellant was granted discretionary leave to remain until 31 August 2011. On 30 August 2011 the appellant applied for further leave to remain. That application was refused. The appellant appealed against that decision unsuccessfully. On 12 October 2016 the respondent refused a further application which the appellant made for asylum on 4 October 2016.

## The Judge's Decision

4. The Appellant appealed the decision of 12 October 2016 to the First-tier Tribunal. First-tier Tribunal Judge Buchanan ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 14 March 2018 Judge Nightingale gave permission to appeal stating

3. It is arguable that the Judge erred in failing to consider whether the appellant's evidence that he has lost contact with his family was in accordance with the background evidence. It is also arguable that, at paragraph 43, the Judge failed to consider the appellant's mental health in assessing whether it would be unduly harsh for him to relocate to Kabul. These grounds are arguable

4. There is no merit in the challenge to the Judge's findings in respect of article 8. It was open to the Judge to conclude that whilst the appellant was involved in his nephews life, care can be provided by the child's parents in the appellant's absence. This finding was open to the Judge on the evidence before the tribunal and no arguable (error of) law arises on this ground.

## The Hearing

5. (a) For the appellant, Ms Liew moved the grounds of appeal. She told me that the first ground of appeal drives at [40] of the decision. There the Judge says that there is no evidence that the appellant does not have family in Afghanistan. Ms Liew told me that paragraph 9 of the appellant's witness statement provides details of the loss of contact the appellant's family when the Taliban took control of Kunduz. She told me that that account is supported by background information, and that the Judge's finding at [40] is a material error of law.

(b) Ms Liew told me that the second ground of appeal drives at [43] of the decision. She told me that the Judge was wrong to find that internal relocation is not unduly harsh, arguing that the Judge failed to take account of the appellant's mental health problems and the length of time that he has been in the UK. Ms Liew told me that the appellant is westernised. She asked me to allow the appeal and set the decision aside.

6. Mr Dwnycz, for the respondent, told me that the decision does not contain errors of law. He told me that if there is a weakness in the decision it is the manner in which the appellant's mental health was dealt with, but that overall the decision is a carefully reasoned decision which withstands criticism.

### Analysis

7. At [43] of the decision the Judge finds that the appellant can safely relocate to Kabul. Part of the argument placed before me is that the appellant is now westernised because he has been in the UK for the last eight years.

8. In AWQ and DH v The Netherlands (Application No 25077/06) ECtHR the Appellant claimed to be at risk in Afghanistan because of the general security situation and because amongst other things he had lived abroad for a long period. It was held that the appellant was not at risk.

9. Although not part of the headnote, the tribunal in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 did not find that a person returning to Kabul or more widely to Afghanistan would be at risk on the basis of "Westernisation". At most there was some evidence of a possible adverse social impact or suspicion affecting social and family interactions. The evidence from a very small number of fear based on "Westernisation" fell far short of establishing an objective fear of persecution on that basis for the purposes of the Refugee Convention.

10. The real focus of the grounds of appeal is on the appellant's mental health difficulties. The supplementary bundle placed before the First-tier tribunal contained a psychiatric report dated 15 September 2017 together with the appellant's GP records. The author of the report says that the appellant suffers from a depressive disorder which is treated with oral medication. In the past the appellant has self-harmed and expressed suicidal thoughts. He has been treated in the past with talking therapy and cognitive behavioural therapy.

11. The Judge, at [38], correctly takes an earlier decision of his fellow First-tier Judge (promulgated in 2012) as his starting point. At [39] the Judge correctly starts to look for evidence which was not before his fellow First-tier Tribunal Judge. At [39] the Judge gives clear reasons for rejecting documentary evidence, and those reasons are not challenged. At [40] the Judge bemoans the paucity of evidence of the lack of contact with the appellant's large family. At [42] the Judge specifically says that he has considered all the background information advanced with the appellant's application together with the most recent country guidance caselaw.

12. At paragraph 49 of MA (Somalia) [2010] UKSC 49 it was said that

Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned.

13. The Judge's conclusion at [40] that the appellant does not give reliable evidence that he has lost contact with his large family in Afghanistan is a conclusion which was well within the range of reasonable conclusions available to the Judge. It is adequately reasoned. At [6] of the decision the Judge lists the documentary evidence produced for the appellant, and says he has considered it. At [42] and [44] he reiterates that he has considered the background information produced. There is no merit in the first ground of appeal. There is no flaw in the manner in which the Judge considered the evidence placed before him.

14. The assessment of internal relocation necessarily involves consideration of the appellant's mental health condition. Emphasis is placed on the appellant's fragile mental health in the skeleton argument before the First-tier Tribunal and in the grounds of appeal.

15. In AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 the Upper Tribunal held that having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul. However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within that general position. A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

16. Paragraph 234 of AS says

In our conclusions, we refer throughout to a single male in good health as this is the primary group of people under consideration in this appeal and reflects the position of this particular Appellant. It is uncontroversial that a person who is in good health or fit and able is likely to have better employment prospects, particularly given the availability of low or unskilled jobs involving manual labour in Kabul. We were not provided with any specific evidence of the likely impact of poor physical or mental health on the safety or reasonableness of internal relocation to Kabul but consider it reasonable to infer that this could be relevant to the issue and the specific situation of the individual would need to be carefully considered.

17. The decision in AS was not available until 3 months after the Judge's decision was promulgated. The guidance given in AS creates difficulty with the Judge's findings at [43]. There was clear evidence before the Judge of the appellant's mental health condition. The Judge manifestly considered the evidence in relation to articles 3 and 8 ECHR grounds of appeal, but no consideration of the effect of the appellant's mental

disorder will have on the viability of internal relocation is given at [43] of the decision. AS says that consideration of poor mental health is relevant to the consideration of viability of internal relocation.

18. The absence of relevant considerations is a material error of law. I therefore set the decision aside.

19. I consider whether I can substitute my own decision but find that I cannot because further fact-finding is necessary.

#### Remittal to First-Tier Tribunal

20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

21. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

22. I remit the matter to the First-tier Tribunal sitting at North Shields to be heard before any First-tier Judge other than Judge Buchanan.

#### **Decision**

**23. The decision of the First-tier Tribunal is tainted by material errors of law.**

**24. I set aside the Judge's decision promulgated on 09 February 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.**

Signed

Date 17 August 2018



Deputy Upper Tribunal Judge Doyle