Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12560/2017

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 19 October 2018	**On 08 November 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

AHMAD [D]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel, Counsel, instructed by Duncan Lewis & Co Solicitors (Harrow Office)
For the Respondent: Mr D Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Afghanistan, has permission to challenge the decision of Judge Foudy of the First-tier Tribunal (FtT) sent on 4 July 2018 dismissing his appeal against the decision made by the respondent on 15 November 2017 refusing his protection claim.

2. The grounds contend that the judge erred in failing

   (1) to consider material matters/evidence;

   (2) to properly consider the expert evidence;

   (3) to consider the country evidence; and

   (4) to apply the country guidance case of **AS (Afghanistan) CG [**2018] UKUT 00118 to the appellant's circumstances.

3. I heard helpful submissions from both representatives.

4. I consider ground (1) no more than a disagreement with the judge's findings of fact regarding the issue of whether the appellant had given a credible account of the Taliban writing to his father to tell him to stop working for the US Forces and for the appellant to stop dancing and to work as spies for the Taliban.

5. Ground (2) take aim at the judge's finding at paragraph 53 that no-one in Afghanistan would continue to expect the appellant to be a dancing boy as he was now over 20. They seek to argue that having accepted that the appellant was a Bacha Brees (dancing boy) and that his father may have been killed by the Taliban, the judge should have attached weight to the view expressed by the expert Mr Foxley that it was plausible that someone in their early to mid-20s could be seen as having potential for Bacha Bazi and other forms of sexually abusive activity. However, whilst stating that this scenario was plausible, Mr Foxley made clear that dancing boys are "released from their roles when they are 18 years old" (paragraph 34).

6. The grounds separately contend that the judge misconstrued the expert report on this issue because the expert did go on to state that the appellant's past history in bacha bazi activities might draw him to the attention of the Taliban or other groups either as someone to be punished or exploited (paragraph 52). However, the judge clearly had this aspect of the expert report in mind, stating at paragraph 27:

> "I also find it incredible that he would be targeted in Kabul either by Commander Assad or by anyone wishing to sexually assault him because of his history of dancing. Not only would that history of being a dancer be unknown in Kabul, but the expert was mistaken in thinking that the Appellant is a victim of sexual abuse. The Appellant emphatically states that he was not abused in his dancing years. Mr Foxley has either misunderstood the Appellant's evidence in that regard or was misinformed of it. Therefore, Mr Foxley's opinions on the likelihood of further abuse are not helpful as they are set against his belief that the Appellant has already been sexually abused when he was not."

7. Whilst the judge's focus in paragraph 27 is on internal relocation, her assessment shows that she was clearly aware of Dr Foxley's opinions on risks to dancing boys after the age of 18. In my judgement it was within the range of reasonable responses for the judge to have assessed that as the appellant had not as a dancing boy been subject to any sexual abuse, that made it much less likely he would face exploitation or harm upon return as a man in his early 20s. In this regard the judge was quite entitled to treat as a factor reducing the value of Dr Foxley's report in the context of this appeal that the latter had assumed – wrongly – that the appellant's case was that he had been sexually abused. (see paragraph 35 of his report: "I find it very plausible that forms of organised sexual abuse have been directed at your client …").

8. To recapitulate, I do not consider that the grounds succeed in impugning any of the judge's findings of fact regarding the appellant's particular circumstances. In my judgment, with one possible caveat to which I shall return below, the judge was entitled to conclude that the appellant would not face a real risk of persecution or serious harm in his home area.

9. Mr Bates did state in his submissions that he would agree with the appellant's grounds that the judge was wrong to conclude the appellant could safely return to his home area. He cited the fact that the judge had accepted that the appellant's father may have been killed by the Taliban. However, it is clear from the judge's findings that whilst she accepted the father may have been killed, she did not accept it had been for the reasons claimed by the appellant: see paragraph 22. Because I consider this was a finding open to the appellant, I disagree with Mr Bates' position (which was also Ms Patel's position on this). I have benefited from the submissions of the parties but in the end, it is for me to decide whether errors of law have been made. The only caveat I would make concerns the issue of possible risk to the appellant arising from his past history as a dancing boy and that is best dealt with in the context of in the analysis of the other grounds which principally challenge the judge's findings on internal relocation to Kabul.

Internal Relocation

10. If the appellant is not at risk in his home area then the issue of internal relocation does not strictly arise, but since return to Afghanistan would be via Kabul these two issues cannot be wholly divorced and in case I am wrong in my assessment of the judge's treatment of risk in the home area, it is relevant that I set out my analysis of her treatment of the internal relocation issue.

11. Grounds 3 and 4 essentially argue that the judge erred in concluding that the appellant could safely and reasonably relocate to Kabul.

12. First of all, for reasons I have already given, the issue of internal relocation or more generally the possibility of the appellant living safely and reasonably in Kabul, can only be considered on the basis that he is not someone who has been targeted by the Taliban or other groups in his home area: that core aspect of his claim was not accepted by the judge and I have upheld her findings. Hence the only characteristics of the appellant that stood to be considered in respect of the issue of relocation to live in Kabul are these intrinsic to him. In that regard it is not in dispute that he is young and that he has no physical or psychological health problems: He is also – and as we have seen this was a fact found by the judge – someone who has a history as a dancing boy. He also had a father who had been killed by the Taliban.

13. Miss Patel submits that the judge failed to take into account that the appellant's history as a dancing boy would put the appellant at risk because he would be recognised in Kabul by powerful persons from his area (who regularly attend functions where there are dancing boys) and also, because he is of Tajik ethnicity, he will more easily be identified and this aspect of his history known. In this regard she relies on the opinion of Dr Foxley especially as set out in paragraph 80 where it was stated:

> "Stigma attached to his previous life could hamper his ability to develop a social life and find safe and secure accommodation and employment whichever part of Afghanistan he returns to."

14. Analysis of the submissions necessitates looking closely at paragraphs 26 and 27 of the judge's decision (the latter which I cited earlier). In paragraph 26 the judge stated that it was unlikely the appellant's background would be known in Kabul. She also cited **AS**, noting that it held that even a person of low-level interest to the Taliban would not be at risk in Kabul. She concluded, by reference to **AS**, that as a single adult male in good health the appellant could relocate to Kabul "even if he knew no-one there". At paragraph 27 she then addressed the issue of whether the appellant's history as a dancing boy would put him at risk, finding that

    (1) his history of being a dancer would not be known; and

    (2) since the appellant had no history of being sexually abused, "Mr Foxley's opinions on the likelihood of further abuse are not helpful".

15. As regards (1), Miss Patel submitted that the appellant would be identified in Kabul as a former dancing boy, especially given the proximity of the appellant's home area, Quarabagh, to Kabul (said by the appellant to be 40-50 minutes by car, by the respondent one hour). Given however, the great size of Kabul (and even taking into account that the appellant is a Tajik) and given that the appellant was now in his early 20s, I consider it was open to the judge to find that the appellant's history as a boy dancer would not be known. I note that even Dr Foxley thought that returning to Kabul would "significantly reduce the risk that he might be specially

targeted by insurgent groups or local village elders, commanders or officials …". As regards (2), I consider the judge was entirely right to regard Dr Foxley's error in thinking that the appellant had been sexually abused as significantly compromising the value of the expert's assessment of risk arising from his history as a dancing boy. In opining that the appellant would be at risk because of his history as a dancing boy, the expert clearly saw past sexual exploitation as a crucial aspect: see paragraphs 34-35, 41-42, 44, 76-78. In short I consider that the judge's treatment of the issue of the safety and reasonableness of the appellant if returned to Kabul and not wishing to return to his home area, was not vitiated by legal error. The judge did apply the guidance given by the UT in the CG case of **AS**.

16. For the above reasons I conclude that the appellant's grounds are not made out and that accordingly the decision of the FtT judge must stand.

No anonymity direction is made.

Signed Date: 26 October 2018

Dr H H Storey
Judge of the Upper Tribunal