



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13096/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 13th June 2018

Decision & Reasons Promulgated
On 25th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

ABDUL [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Counsel

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born on 25th December 1970. The Appellant claims to have left Afghanistan on 12th January 2016 by aeroplane arriving in the UK the following day whereupon he claimed asylum on arrival at Heathrow Airport. The Appellant claimed asylum on the basis that he had a well-founded fear of persecution in Afghanistan on the basis of his imputed political opinion, in that he would be considered to be a communist. That application was refused by Notice of Refusal of

the Secretary of State dated 9th November 2016. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Williams sitting at Manchester on 12th October 2017. In a decision and reasons promulgated on 31st October 2017 the Appellant's appeal was allowed on humanitarian protection grounds and pursuant to Article 8 of the European Convention of Human Rights.

2. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those Grounds of Appeal contended that the judge had failed to give adequate reasons and in particular it was submitted that the judge had failed to consider whether the Appellant did in fact require a support network. Further so far as the claim pursuant to Article 8 was concerned the Secretary of State contended that the judge had made findings that the Appellant met the Immigration Rules but had failed to explain which Rules the Appellant met and had failed to explain his reasons.
3. On 13th December 2017 Designated Judge of the First-tier Tribunal Woodcraft granted permission to appeal. It is relevant to note that in granting permission Judge Woodcraft acknowledged that the First-tier Tribunal Judge had rejected the Appellant's claim that he was at risk upon return because of his involvement with an earlier communist regime but had allowed the appeal, finding the Appellant would be at risk in Kabul because without a support network he would find it difficult to obtain employment, housing and healthcare. The Secretary of State's grounds of onward appeal argued that the judge had not followed the country guidance authority of *AK Afghanistan CG [2012] UKUT 163* and queried whether the Appellant did in fact need a support network. Judge Woodcraft noted that the Appellant is now 47 and lived in Afghanistan until he was 44 and that it was arguable that the judge had misapplied the country guidance and given inadequate weight to the Appellant's age and maturity.
4. On 20th January 2018 the Appellant filed a response to the Appellant's Grounds of Appeal pursuant to Rule 24. The Rule 24 response is settled by Counsel and is in effect a skeleton argument. I have given due consideration to it.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. However for the purpose of continuity throughout the appeal process Mr [K] is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant appears by his instructed Counsel, Mr Greer. Mr Greer is extremely familiar with this matter. He appeared before the First-tier Tribunal and he is also the author of the Rule 24 response. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

Case Law

6. Whilst the grant of permission makes reference to the country guidance authority of 2012 I am referred by the legal representatives to the most recent authority of *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)*. The head note of that authority states

Risk on return to Kabul from the Taliban

- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

Internal relocation to Kabul

- (ii) *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.*
- (iii) *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 the general position set out above.*
- (iv) *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.*
- (v) *Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.*

Previous Country Guidance

- (vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*
- (viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) also remains unaffected by this decision.*

7. I particularly note therein the reference to paragraph (iii) and (iv) which made findings that can well have a bearing on this particular decision.

Submission/Discussion

8. Mr Bates acknowledges that the decision in *AS* was not promulgated when this matter came before the First-tier Tribunal nor indeed had been promulgated when Judge Woodcraft granted permission to appeal. He points out that in general principle it confirms the decision of *AK* (which was referred to) but has made updated comments with regard to return. He accepts the judge has indicated that the Appellant will not have family support and that that may be true. He points out that it is unclear as to whether or not his family members in Afghanistan (a brother and sister) would not be able to vouch for him. He states that there is no suggestion that they are not in contact with him and that the First-tier Tribunal Judge appears to have ignored the fact that the Appellant moves around Afghanistan repeatedly and that the last place that he resided in was Kabul. He takes me to paragraph 13 of the Appellant's witness statements where he points out that he had two houses, one of which was in Kabul and another in Kapisa and that he spent his time living between the two places.
9. Mr Bates suggested that the judge has lacked consideration of the fact that this is someone who says he has a property in Kabul and reminds me that the family unit was previously self-funding. He refers me to paragraph 72 of Tim Foxley's expert's report, pointing out that as the Appellant had a home in Kabul following the analysis of Mr Foxley it would be difficult to argue due to Kabul's cosmopolitan nature that the Appellant could be perceived to have been westernised having integrated himself into UK culture.
10. He notes Judge Williams has made reference to problems of gender based violence and a lack of male support that can be a problem within Afghanistan on return but argues that the Appellant is head of his household and queries why in such circumstances, but bearing in mind the facts of this case, the Appellant would be at risk in Kabul. He notes that *AS* makes reference to the risk of return for lone males but points out that the Appellant is a family man and queries where there is an explanation in the judge's reasoning as to why as a family person this would create a problem to the Appellant.
11. Mr Bates submits that the central submission of the Secretary of State's argument is that the Appellant does not need the financial support of his family. He points out that their central argument is that the Appellant has previously been self-funding and has never needed family support so why would he need it now. He submits that this is a reasons challenge and that the judge has not looked at the country guidance authority in the round. He asks me to find that there is a material error of law, to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.
12. Mr Greer takes me to his Rule 24 response, pointing out that there is nothing on the face of the authority of *AK Afghanistan* to suggest that an Article 15(c) claim in respect of an individual claimant fearing return to Kabul cannot succeed. He acknowledges that the Appellant in *AK* did not succeed but that in that case the Appellant was a young male without specific circumstances that would put him at a heightened risk. He submits that in the present case, from a fair reading of the First-tier Tribunal Judge's determination, it is clear which of the Respondent and his family's personal

circumstances were taken into account and why it is that the judge concluded that these matters cumulatively would put the Respondent at heightened risk notwithstanding the fact that they did not engage the Refugee Convention.

13. He submits that the arguments put forward by the Secretary of State amount to no more than disagreement with well-reasoned findings from the judge. He specifically refers me to paragraph 32 of the judge's decision which he submits is sufficient for the findings and conclusions made at paragraph 33. He submits that Judge Williams has dealt with family support at paragraph 32 and has specifically found that they would be at risk therein.
14. He submits that the Appellant has been absent from Afghanistan for sufficient time to now be considered an outsider and he takes me to question 83 of the Appellant's asylum interview where the Appellant states that he had to liquidate his assets in order to escape from Afghanistan. In such circumstances he submits that the Appellant would be returning as someone starting again and that this is a fact that has not been challenged by the Secretary of State. He submits that there are no material errors of law in the decision of the First-tier Tribunal Judge and asks me to dismiss the appeal.

The Law

15. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
16. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

17. It is the role of the Upper Tribunal in cases of this nature merely to scrutinise the decision of the First-tier Tribunal to see if there are any material errors of law. To that extent errors can arise because it is necessary for the Upper Tribunal to consider the

up-to-date case law. In this case that is to be found in the authority of *AS Afghanistan [2018]*. However despite that decision being published after the First-tier Tribunal hearing, and the lodging of the Grounds of Appeal by the Secretary of State, I am satisfied that it does not in any material way impinge upon the decision reached by the First-tier Tribunal Judge to the extent that he has erred in law. The most recent authority makes reference to the particular circumstances of an individual applicant that must be taken into account in the context of conditions in the place of relocation and the availability of a support network. Further I note that the authority specifically addresses return to Kabul, rather than to Afghanistan generally.

18. My overall conclusion is that the submissions made by Mr Bates on the Secretary of State's behalf amount to little more than disagreement. The crux of this matter is to be found in the relevant assessment to Article 15(c) made at paragraph 52 in the decision of Judge Williams. As has been pointed out to me by Mr Greer therein the judge makes reference to the following
 - (i) the lack of practical support from relatives in Kabul;
 - (ii) the presence of young children in the family group;
 - (iii) the difficulty for a newcomer to Kabul in finding employment;
 - (iv) the difficulty in obtaining adequate housing, education and healthcare;
 - (v) the heightened risk to the Respondent as the relative of members of the security forces;
 - (vi) the heightened risk to the Respondent's wife as a woman;
 - (vii) the fact that the family has been, "westernised," by their time abroad.
19. In reaching his findings therein the judge has taken account of the CPI Note Afghanistan 8.4.5 and the report of the expert, Mr Foxley. He has given full reasons therein as to why he is satisfied that the Appellant has established that he is presently in need of humanitarian protection.
20. I am satisfied that the judge has performed his assessment of Article 15(c) risk in line of what is required of him and that he has addressed all issues and given reasons within his determination that he was entitled to. In such circumstances I am satisfied that there is no material error of law in the judge's assessment of humanitarian protection and that he has reached and made findings that he was perfectly entitled to.
21. I am further satisfied that whilst the judge has only gone on briefly thereafter to address the issues under Article 8 – this being an approach which I acknowledge is correct – that having made his findings that the Appellant meets the requirement of paragraph 339C of the Immigration Rules that thereafter at paragraph 32 having made findings of the obstacles facing the family on return that the judge has given due

consideration to the very significant obstacles that the family would face in seeking to establish a private life upon return to Afghanistan. He has properly performed the assessment of Section 55 and the best interests of the child being at the centre of the consideration, bearing in mind the children have been particularly disadvantaged by the conflict in Afghanistan as acknowledged by the judge at paragraph 43. Consequently whilst I note that the judge did not specifically refer to it in terms the judge has effectively applied the test at paragraph 276ADE(1)(vi) of the Immigration Rules and has made findings which he was entitled to and given reasons thereon. In such circumstances the determination in respect of Article 8 contains no material error of law.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 22 June 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 22 June 2018

Deputy Upper Tribunal Judge D N Harris