



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04408/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 May 2019

Decision & Reasons Promulgated  
On 31 May 2019

Before

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

Between

**HAIDER [H]**  
(ANONYMITY ORDER NOT MADE)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Eaton (for Duncan Lewis Solicitors)

For the Respondent: Ms S Cunha (Specialist Appeals Team)

**DECISION AND REASONS**

1. This is the appeal of Haider [H], a citizen of Afghanistan born 1 January 1989, against the decision of the First-tier Tribunal dismissing his appeal of 1 March 2019, itself brought against the Secretary of State's decision (of 3 April 2018) to refuse his asylum application.
2. The Appellant originally entered the UK on 1 April 2008, claimed asylum, based on his difficulties due to his activities with Hezb-e-Islami, his appeal

being dismissed. Judge Mace rejected the Appellant's account of six months of personal involvement with Hezb-e-Islami, but accepted that it was possible that the Appellant's father was involved with Hezb-e-Islami and may even have been killed fighting for them. Nevertheless, the Appellant had not established he was not at risk of persecution, having regard to the lack of any evidence of difficulties with the authorities and the finding in *PM Afghanistan CG* [2007] UKAIT 00089 that there was no satisfactory evidence that a person who has been associated in the past with Hizb-i-Islami will always be regarded as such.

3. Once his appeal rights were exhausted, the Appellant was removed to Afghanistan on 19 February 2013. He returned to Europe and claimed asylum in Sweden on 6 November 2015; Sweden returned him to the UK on 10 May 2016, where he lodged further submissions on arrival.
4. His claim on his return to the UK as summarised in the refusal letter is that he was kidnapped and interrogated by the Taliban because of his westernised mannerisms, and accused of being a spy. He was detained for four nights. He was then released with the village elders acting as his guarantors, as a result of which he was unable to leave the village. In 2015 he was taken by from the mosque by the Taliban and required to fight against ISIS. He was allowed to return home after the fighting, but the Taliban returned to require him to fight again. His brother told the Taliban that he was not at home, and reported back to the Appellant that they required him to be at home the next day. His brother subsequently told the Taliban that the Appellant would not fight for them again, and was beaten by them. The Appellant decided to take revenge, following them to a stream where he shot one of them in the shoulder with an AK47 gun. The Appellant then fled to Tawai on foot, remaining there for three days before travelling to Saroubi, where he met with an agent who took him on to Sweden.
5. The First-tier Tribunal did not accept the Appellant's evidence as credible, because
  - (a) It was implausible that he would be viewed as westernised if he had previously helped his father with Hezb-e-Islami (and thus anti-government) activities such as distributing leaflets, and had lived in a house where ammunition was stored, and in any event any such suspicions must have been very short-lived given that he was quickly persuaded to fight on the Taliban's behalf;
  - (b) There was a discrepancy between the Appellant's evidence and the summary of his case apparently provided to the psychiatrist by his representative, and between the witness statement and the account he gave to the psychiatrist as to the circumstances in which he came to the Taliban's attention prior to his detention by them;

- (c) It was implausible that he would take up arms against the Taliban themselves having refused to accept the dangers involved in fighting the police;
  - (d) His account had “no factual support” and his record on credibility was not good.
6. Accordingly the Tribunal concluded that the Appellant had either fabricated his claim in its entirety, or exaggerated the real events.
7. The First-tier Tribunal noted that *AS Afghanistan* established that Kabul was generally safe for a healthy young adult, which was the Appellant's situation subject to the psychiatric report. There were factual issues regarding that report as addressed above. The Appellant had raised no psychiatric issues when he came to the UK in 2008 and whatever he had suffered in 2007 did not necessitate psychiatric treatment thereafter. His depression could be due to his unsettled immigration status. There was no “reliable evidence” that he suffered from PTSD; he had presented himself to the psychiatrist with a view to “bolster his claim and to persuade, successfully, that his symptoms show that he suffers from PTSD and depression”.
8. Grounds of appeal contended that the First-tier Tribunal had erred in law because it had overlooked material evidence relevant to the Appellant's credibility:
- (a) Credibility findings had been made in a vacuum without regard to the evidence of Dr Burman-Roy (the psychiatrist) and Tim Foxley (the country expert) without regard to the former's evidence that the Appellant's mental capacity was such that his ability “to give an account of his experiences is likely to fluctuate depending on his circumstances and mental state”;
  - (b) The evidence from Mr Foxley regarding the use of forced recruitment by the Taliban, risks due to being perceived as westernised, intervention of elders and the prevalence of weaponry in Afghanistan, all relevant to the Appellant's account's plausibility;
  - (c) The psychiatric report from Dr Burman-Roy referred to the likelihood that the Appellant's ability to give an account of his experiences might fluctuate depending on his circumstances, and would be likely to deteriorate if he was acutely distressed, and required attention to be given to his vulnerability as a witness generally.
9. Furthermore, the First-tier Tribunal was said to have erred in law in assessing the risks the Appellant would face on a return because it overlooked
- (a) The Appellant's PTSD symptoms when assessing the reasonableness of Kabul as an internal relocation alternative, bearing in mind the passages in the Country Guidelines decision (*AS Afghanistan*) that made clear that mental health was a material consideration;

- (b) The fact that UNHCR's eligibility guidelines had materially changed since the decision of the Upper Tribunal in *AS* and now stated that there was no internal relocation alternative generally available in Kabul;
  - (c) The risks to the Appellant arising from the internal armed conflict, which was particularly relevant given he came from Hesarak district, Nangahar Province.
10. On 2 April 2019 the First-tier Tribunal granted permission to appeal, on the basis that the grounds were arguable; the *Mibanga* point was thought the strongest one.
  11. Ms Cunha accepted that the First-tier Tribunal had committed at least one significant error of law by failing to evaluate the medical evidence before making credibility findings. However, she maintained that this was not a *material* error of law as the Appellant could not make good his case applying the relevant country guidance, as the psychiatric evidence had not been accepted below, given that the First-tier Tribunal effectively found that the psychiatrist had been fooled by the Appellant, who accordingly fell to be treated as essentially a healthy young man who could thus relocate internally to Kabul.
  12. Mr Eaton submitted that the Judge's findings on the medical evidence were unreliable, given that they were predicated on a rejection of the Appellant's credibility that was itself unsafe. The First-tier Tribunal appeared to have made its own finding on the likelihood of the Appellant having PTSD without properly engaging with the carefully reasoned approach of the medical report. The psychiatrist had found that the Appellant suffered from depression and PTSD such that his evidence should be assessed in the light of the Vulnerable Witnesses Guidance. There were repeated references to mental health in *AS Afghanistan* as relevant to the assessment of the reasonableness of internal relocation.

### Decision and reasons

13. I accept that there was an error of law committed by the First-tier Tribunal by leaving the expert evidence out of account prior to making credibility findings.
14. Dr Burman-Roy's report stated, materially, that the Appellant's ability to take stock of his position and to integrate in Afghanistan would be affected by increased levels of anxiety, avoidance of challenging situations, and memory and concentration problems; indeed social isolation and self-neglect were common consequences of PTSD; he also stated that

"I did not feel that there was any indication Mr [H] was feigning or exaggerating symptoms ...

Increased levels of anxiety, avoidance of challenging situations and difficulties in memory and concentration are recognised symptoms of

PTSD ... It was particularly notable that he struggled to maintain focus during the interview and found the process cognitively challenging. I would recommend that [he] be treated as a vulnerable witness ...”

15. It was essential for detailed material of this kind to be considered as part of the global assessment of the Appellant’s credibility. Failing so to do was essentially the same error as identified in *Mibanga*, or as summarised in *Virjon B* [2002] EWHC 1469 §21, making “adverse findings of credibility with regard to the claimant ... as the means whereby to reject the important and significant evidence [from other sources]. That was putting the cart before the horse.” And as stated in *HE* [2004] UKIAT 00321 at §22:

"Where the report is specifically relied on as a factor relevant to credibility, the adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusion to which he would otherwise come."

16. I also consider that the error was a material one. I cannot accept Ms Cunha’s submission that the First-tier Tribunal’s treatment of the psychiatric evidence was lawful. There was no reference to the Presidential Guidance note on Vulnerable Witnesses. Indeed, the content of the psychiatric report was relied on as a source of discrepancies which were then said to undermine the Appellant's evidence overall.
17. It was essential that the Appellant’s evidence be assessed in the light of that medical evidence, having regard to his potential vulnerability and any effect this might have on the manner in which his evidence presented itself. Dr Burman-Roy had expressly considered, and discounted, the possibility of simulation, and it was essential that express regard be had to that aspect of his account before the Judge came to their own view on the matter.
18. The assessment of the Appellant’s mental health was accordingly unlawful. Were he to be accepted as having mental health problems, then these would have to be assessed in the light of the Guidelines in *AS Afghanistan CG* [2018] UKUT 118 (IAC) which cited the EASO Report: “Afghanistan – Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif and Herat City” (August 2017).

“142. In terms of mental health care, the same EASO Report recorded very high levels of mental health problems in Afghanistan (particularly depression, anxiety and PTSD) creating significant needs but that there was a lack of trained professionals (psychiatrists, social workers, psychologists) and an inadequate infrastructure. Although the Public Health Minister reported that psychological services were available at some 1,500 health centres around the country with 300 dedicated mental health clinics; there was only one dedicated mental health hospital in Kabul and Samuel Hall’s study in 2016 referred to there being only three trained psychiatrists and ten psychologists in the whole of Afghanistan.

143. In Kabul specifically, there is better access to healthcare than in the provinces and the most qualified staff work there with specialist clinics and hospitals; albeit there is still significant room for improvement. There remains a shortage of equipment and demand which outstrips supply. Nearly half of Kabul residents can not afford medical treatment (as patients need to buy their own medicines and, in any event, pharmacies are poorly equipped). There are also instances of health facilities being targeted by armed groups, including in Kabul.”

19. The Upper Tribunal stated in *AS Afghanistan*:

“234. 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.

...

241. ... (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.”

20. A further material error of law arose in the light of the UNHCR’s Eligibility Guidelines of 30 August 2018, which state:

“Against a background of general concerns about rising poverty levels in Afghanistan, with the proportion of the population living below the national poverty line reportedly having increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017, the Asia Foundation’s 2017 Survey of the Afghan People found that perceptions of a worsening financial situation was most common in the Central/Kabul region, at 43.9 per cent. In January 2017 it was reported that 55 per cent of households in Kabul informal settlements were severely food insecure.

OCHA’s 2018 Humanitarian Needs Overview ranks Kabul among the 10 provinces (out of a total of 34 provinces) that are “the most conflict-affected”. In addition, the Humanitarian Needs Overview notes that “needs are particularly pronounced in large urban centres, including Kabul and Jalalabad City, where both IDP and returnee populations have congregated in search of income and livelihoods opportunities as well as access to basic and essential services. Humanitarian needs in

these two provinces comprise 42 percent of all those relating to internal displacement and cross-border influxes.”

Against the background of the considerations relating to the relevance and reasonableness analysis for Kabul as a proposed area of IFA/IRA, and taking into account the overall situation of conflict and human rights violations, as well as the adverse impact this has on the broader socio-economic context, UNHCR considers that an IFA/IRA is generally not available in Kabul. “

21. UNHCR occupy an important place in the international community’s approach to refugee status determination. Their views are not determinative, but carry significant weight. The First Tier Tribunal had no regard to the very significant shift in their assessment of the viability of internal relocation to Kabul generally. This was a material error of law.
22. Unfortunately the errors set out above are fundamental one which undermine the entirety of the First-tier Tribunal’s conclusions. Accordingly the matter requires re-hearing, and given the scale of the necessary fact-finding, remittal is appropriate.
23. The Appellant's problems in his home area will require lawful re-assessment in the light of whatever future credibility findings are made on his account. So too will his claim to fear the consequences for civilians of the internal armed conflict in his home area. The First-tier Tribunal will then need to consider whether the Appellant could be reasonably expected to relocate to Kabul, given the psychiatric evidence and the material cited above, and in the light of *AS (Afghanistan)* [2019] EWCA Civ 873.

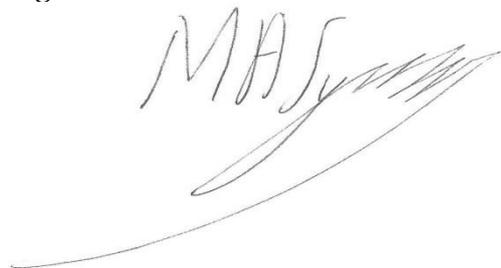
### Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and its decision is set aside.

The appeal is remitted for re-hearing afresh.

Signed

Date 24 May 2019



Deputy Upper Tribunal Judge Symes