



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08999/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 September 2019

Decision & Reasons Promulgated  
On 16 September 2019

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AB

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mr P Nathan, Counsel, instructed by Duncan Lewis & Co  
Solicitors

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, AB 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.

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge I Howard dated 13 June 2019 which allowed the appellant's appeal on refugee grounds, that claim brought in the context of deportation.
2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to AB as the appellant, reflecting their positions before the First-tier Tribunal.
3. The issue in dispute in this appeal is narrow and I therefore do not set out in detail the appellant's immigration history or background to the deportation order made against him on 16 July 2014. It is sufficient to indicate that he has two very serious convictions, the first in 2011 when he was given a sentence of imprisonment for 42 months for violent disorder, two counts of arson and destroying property. The second was for fraud in 2012 for which, on appeal, he received a sentence of imprisonment of four years. The respondent took deportation action against the appellant following those convictions. In a decision dated 20 May 2015 First-tier Tribunal Rothwell found that the Section 72 certificate made by the Secretary of State had not been rebutted, that the applicant was therefore excluded from the protection of the Refugee Convention, that he had not shown a risk of a breach of Article 3 on return and that his Article 8 rights would not be breached if he were to be deported.
4. The appellant then made further protection and human rights submissions which were not found to amount to a fresh claim by the respondent but following judicial review proceedings, a further decision dated 2 July 2018 refused his further protection claim, certified his asylum claim under s.72 and refused the Article 3 and 8 ECHR claims.
5. The appellant's appeal against that decision came before First-tier Tribunal Judge Howard on 27 March 2019.
6. First-tier Tribunal Judge Howard found in paragraphs 26 to 32 of the decision that the appellant had rebutted the presumption of the s.72 certificate that he was someone who posed a danger to the community of the UK. In doing so he took into account the findings of the previous judge following the ratio of Devaseelan (Second Appeals, ECHR, Extra-territorial Effect) [2002] UKIAT 702. The grounds of appeal before me do not challenge that part of Judge Howard's decision and the finding that the Section 72 certificate was rebutted stands.
7. First-tier Tribunal Judge Howard went on to allow the appellant's refugee claim. The basis of the claim was that the appellant is the son of an Afghan banker who has worked outside of Afghanistan since approximately 2003. In paragraph 33 of the decision the First-tier Tribunal noted that this claim was the same as that argued before Judge Rothwell which had not been found by her to show a real risk of mistreatment on return. First-tier Tribunal Judge Howard noted that Judge Rothwell had an expert report from Mr Foxley before her when she made her decision. In paragraph 34 the judge sets out that in addition to having the decision of Judge

Rothwell and the earlier report of Mr Foxley before him, he had two further expert reports prepared by Dr Majidi dated 10 February 2016 and Dr Giustozzi dated 7 September 2016. These two reports both addressed the risk of kidnapping in Afghanistan generally and the risk to the appellant in particular.

8. Judge Howard said this in paragraph 36 of the decision:

“36. The two doctors’ reports set out the material upon which they base their conclusion that there is a real risk that if returned to Afghanistan the appellant would be a kidnap target. The reality is that these activities are motivated by money and are not politically or religiously motivated. Looking at the three case studies cited by Dr Majidi it is a fact that the children of those working in the finance industry are targeted. Dr Giustozzi widens out the research to consider the volume of kidnapping directed against similar individuals and sees a very considerable increase in the volume of this activity in the years up to 2016. The respondent points to the fact both reports were written in 2016, reasoning they are now out of date and that for those at risk, should the appellant be found so to be, there is now sufficiency of protection.”

9. The judge went on to state in paragraph 37:

“37. In Afghanistan family is king. There is no doubt that in certain circles the appellant’s father, BB, is known as a financier. The appellant, AB, is readily identifiable as a member of that family. He would be living in Kabul in circumstances where it is obvious to even the casual observer that he is being funded by a third party. Jobs, without family connections are hard to acquire in Kabul. Additionally his westernisation will be the subject of interest. Even with financial support from his family it will not be possible for the appellant, with his family name, simply to live an anonymous life. Once identifies (sic) as a family member of the managing director of the London subsidiary of the [X] bank will (sic) there be sufficient protection for him.”

10. The judge went on to assess the material before him concerning sufficiency of protection. He identified that parts of that evidence post-dated the country guidance case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 0018 (IAC). He indicated in paragraph 42 of the decision that the more recent documents from the UNHCR and EASO, prepared in late 2018 and in 2019 showed that the situation in Afghanistan was deteriorating. In paragraph 43 of the decision the judge sets out an extract from the UNHCR report which concluded that matters had deteriorated so much across the country and in Kabul that “UNHCR considers that an IFA/IRA is generally not available in Kabul”.

11. Judge Howard then concluded in paragraphs 44 to 47 as follows:

“44. Based upon this material I consider the characteristics of the appellant. He is 31 years old. He has acquired skills that have proved to be of assistance in his finding work in the UK. I am satisfied that his family is of sufficient collective wealth as to be able to provide more than adequately for his financial needs in Afghanistan. Notwithstanding the findings of the

UNHCR about the scarcity of the basic necessities for life, his age and lack of support I am not satisfied to the requisite standard that the struggle he would encounter in order to survive in Kabul is unduly harsh. However, it is the fact the support he would receive from the UK that would mark him out against the background portrayed in the most recent material from UNHCR.

45. He would stand out as a returnee from the west. He would have means not derived from his labours. He has the family name of a senior Afghani financier. He has no family living in Kabul. These factors collectively mean there is a risk that he will be the victim of a criminal kidnap.
46. I have considered whether being the son of a financier is a particular social group. It is an immutable characteristic. The fact those who target him are criminals who most likely are not ideologically motivated is not relevant.
47. The appellant is a refugee."

12. The respondent challenges the finding that the appellant is a refugee on the basis of the risk of a kidnapping as follows:

- "5. Given the father's absence from Afghanistan since 2003 apart from a visit in 2009, there is no objective evidence to support the proposition that the son of a small subsidiary of [X Bank] would be identified and be at risk of kidnapping for financial gain.
6. It is respectfully submitted that the expert reports of Dr Majidi and Dr Giustozzi are not sufficient to go behind the findings of FtTJ Rothwell.  
  
Dr Majidi refers to Heart (sic) as the *kidnapping capital* of Afghanistan (page 9). Although useful as background information the focus needs to be on Kabul, the point of return and the individual circumstances of the appellant.
8. Again reference to three family members of the DA Afghanistan Bank (two in Kabul, one in Jalalabad) being kidnapped (page 9) may be more relevant but is largely background and that three case studies from 2015 is not sufficient to demonstrate a current risk to this appellant.
9. In a similar way Dr Giustozzi (sic) report is useful as background evidence but fails to deal with the individual circumstances of the appellant as to how he would be identified as the son of a bank official, when his father is not in Afghanistan working in a small subsidiary, the expert fails to identify why the appellant would be individually targeted given the obvious differences with those identified in his report.
10. As identified in **AS Afghanistan [2018] UKUT 118 (IAC) 120** that can still be relied on currently with the exception to the question of extended risk to returned asylum seekers (190-9), that would include paragraph 187

*187. We do not find a person on return to Kabul, or more widely to Afghanistan to be at risk on the basis of 'Westernisation'.*

13. The respondent was granted permission to appeal against the decision of Judge Howard in a decision of the Upper Tribunal dated 2 August 2019. The grant of permission specified that permission was granted on a limited basis and only on the "westernisation" point. The grant of permission stated:

“Arguably, the Judge should have engaged with the country guidance concerning the lack of risk upon return arising from ‘Westernisation’ before concluding that such the appellant would face risk upon return on that basis. In the absence of any analysis of the relevant extracts from the country guidance concerning westernisation, the judge arguably fell into a material error of law. The findings of the Upper Tribunal in AS concerning westernisation were not impugned by the Court of Appeal in AS v Secretary of State for the Home Department [2019] EWCA Civ 873.”

14. It is not my conclusion that the grounds are capable of showing a material error in the finding of First-tier Tribunal Judge Howard that the appellant was a refugee. Read fairly, it is clear from paragraph 37 that the judge found the appellant to be at risk of mistreatment because of his profile as the son of a financier. The issue of his “westernisation” was a factor which would give rise to “interest” rather than being a risk factor in itself.
15. The grounds are not correct in stating that there was no objective evidence to support the claim that the appellant would be identified as the son of a banker. The judge was provided with the reports of Dr Majidi and Dr Giustozzi from 2016 and also an updated report dated 23 January 2018 from Mr Foxley.
16. Dr Majidi’s report set out her view on the risk of kidnappings in general in Afghanistan. She found that the risk was relatively high and that they were “a common occurrence and a business in Afghanistan”. On page 8 of her report she stated as follows:
 

“Specifically, they are a threat to those tied to the banking sector and in high profile commercial ventures, including in the construction sector. Indeed, certain sectors are more targeted than others but the end goal remains criminal in nature: to gain financial leverage by kidnapping those more likely to pay ransom. The banking sector is specifically targeted as employees hold direct access to funds and can also provide bank details that allow kidnap gangs to prey on business tycoons.”
17. Dr Majidi goes on on page 9 of her report to state:
 

“Kidnappings of family members of employees in the financial sector and of businessmen are the most common occurrence. AB’s father is linked to three individuals from DA Afghanistan Bank whose family members were kidnapped and held in ransom over the last two years. AB is in fear of reprisals as a result of this affiliation and of his father’s job in the banking sector. Indeed, it is rarely the senior level bank officials who get kidnapped but their sons.”
18. Further down page 9 of her report Dr Majidi states:
 

“According to statistics given by the Chamber of Commerce and Industries (ACCI) in 2010, in two months alone, 38 businessmen or sons of businessmen were kidnapped from various provinces around the country. In the last three years, 173 were kidnapped with a number of them having been killed. “

19. In Section 3 of her report on page 15 Dr Majidi identifies that the social information networks amongst the Afghan community made it likely that AB's family background would become known. She states:

"There is truth to the fact that someone with associations to a state owned bank in Afghanistan would be at the centre of much gossip, especially if return is forced and against his will, as it would cause fears, uproar and general talk, among Afghans in the UK. These conversations would then be relayed to Afghans at home. Through such channels of information, and because of a success of kidnappings depend on the solidity of information channels, this would put him at a visible threat if AB were to return."

20. Dr Majidi sets out her conclusions on page 23 of her report stating as follows:

- a. There has been a trend of increasing attacks and targeted killings and kidnappings aimed at both high profile targets (police, army, government) and civilians (bank officials and wealthy Afghans). The risk on return - both in terms of recruitment and physical insecurity - is therefore high especially at a time where the local security forces are being targeted and weakened by opposition groups.
- b. Should AB be returned to Afghanistan, his trace will be found, through informal networks. This time, they will know of his time spent in the UK and might accuse him of being an infidel, of being contaminated, accusations that have led in the past to murder and torture.
- c. Protection by authorities is not plausible - whether physical or social protection given the limited capacity and funding available to the government of Afghanistan to implement such programmes effectively."

21. The report of Dr Giustozzi was in very similar terms to that of Dr Majidi. Dr Giustozzi comments in paragraph 4 of his report that "kidnapping in Afghanistan has turned into an industry after 2001". He considered the numbers officially reported concerning kidnappings to be much higher in reality as not all families would report an incident for fear of reprisals or complications. In paragraph 6 of his report he states:

"6. Since the years discussed above, the kidnapping industry has expanded dramatically. Kabul police now receives 2-3 reports of kidnappings a week, corresponding to 10-15 reports a month. Not long ago, in 2015, only 2-3 kidnappings a month were being reported. The biggest increase in the number of kidnappings took place in Kabul, followed by Nangarhar, Herat and Balkh. More and more businessmen are leaving Afghanistan out of concern with the kidnappings. According to the Kabul Chamber of Commerce, 45 businessmen or relatives of businessmen were kidnapped between the beginning of May and mid-July, not only in Kabul but also in Jalalabad, Kandahar, Herat and Mazar-e-Sharif."

22. In paragraph 9 he sets out:

"9. In total the police estimates that 150 kidnapping gangs operate in Kabul, with about 6,000 members. The NDS has a higher estimate: more than 200 kidnapping gangs, of which 30 are big gangs each with more than 500 members, for a total of

more than 4,000 active gangsters. Just a year ago the number of members of these gangs was estimated by the police at just 3-3,500 and by the NDS at 1,500 (active members only). The NDS also confirms that in 2014-15 there were just 80 gangs operating in Kabul. Most of these gangs enjoy various degrees of political protection within the state apparatus.”


23. In paragraph 10 of his report Dr Giustozzi identifies that the “most active and notorious gangs operate in and around Kabul”. In paragraph 11 he identifies that “the gangs are well connected with Kabul politicians and with the police”. In paragraph 17 he identifies that children of people perceived as being wealthy are preferred targets. He identifies that approximately “80-90% of kidnappees are relatives of wealthy men”. In paragraph 18 he identifies that the “gangs have a well organised intelligence system, with informers in the police, in the banks and in government offices”. In paragraph 23 Mr Giustozzi identifies that the deteriorating security conditions in the country allowed these gangs to operate more easily.
24. In paragraph 24 Mr Giustozzi comments on the risk to the appellant in particular:
- “24. Given that AB’s family owns a property in the UK, their wealth is certainly large enough to turn Mr AB into a potential target for kidnapping. If AB was to display strongly westernised attitudes once back in Afghanistan, that might be a more serious source of trouble for him, depending on the location. ... however, as explained above, the large information gathering apparatus of the gangs is very likely to find out about AB’s family wealth. Given that AB has no family, assets or property in Afghanistan, he will have to rely on support provided by the family abroad, or earn a livelihood himself.”
25. Dr Giustozzi concludes his report in paragraph 26 as follows:
- “26. In sum, Mr AB is highly likely to be at risk of kidnapping in Afghanistan, because of his family background. It is likely that the position of his father will be known and it might also become known that he owns a property in the UK. BB is the managing director of [X Bank] and as such is likely to relatively easily identifiable by the kidnappers. A single property of average value in the UK would constitute already a worthy capital for kidnappers to go after an easy target like AB”.
26. In addition, the First-tier Tribunal Judge had before him the updated 2018 report from Mr Foxley. In his further report Mr Foxley gives evidence which is almost entirely consistent with that of Dr Majidi and Dr Giustozzi. In paragraphs 43 to 48 he considers the current risk of kidnapping because of the appellant’s family background. He comments in paragraph 43 that the appellant “will remain at risk of violent kidnapping because of his family connections”. Mr Foxley states that “this risk has not certainly decreased since my original report.” He makes a similar comment to the other expert witnesses regarding the underreporting of such incidents because of the risk this would bring to the families concerned. He refers in paragraph 43 to the kidnapping of a professional money changer and to other incidents of kidnapping. In paragraph 44 Mr Foxley comments on Dr Giustozzi’s analysis of the breakdown of criminal gangs and finds it to be “highly credible”. He makes a similar comment on the report of Dr Majidi in paragraph 45. In paragraphs

46 and 47 he comments on how criminal gangs would identify the appellant, setting out a number of ways that this is carried out.

27. There was highly cogent and consistent evidence from three expert sources before the First-tier Tribunal on a relatively high risk of the appellant's background being identified on return and his being at risk of kidnapping thereafter. The judge was clearly entitled to place weight on that evidence. The comment in paragraph 6 of the grounds that the reports of Dr Majidi and Dr Giustozzi "are not sufficient to go behind the findings of FtTJ Rothwell" is disagreement. The other criticisms of the expert reports in the grounds are equally without force.
28. It is therefore my conclusion that the finding in paragraph 37 that the appellant would be at risk of kidnapping as he would be identified as a family member of a banker was sustainable. This finding was independent of any additional risk from the appellant having a "westernised" profile, a factor the judge found would add to the likelihood of identification rather than acting as a risk factor in itself. This is clear when paragraph 45 is read together with paragraph 37.
29. For these reasons, it is my conclusion that there is no error in the decision of the First-tier Tribunal.

#### Decision

30. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 10 September 2019