



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09026/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC via skype.
On 24 September 2020

Decision & Reasons Promulgated
On 07th October 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

GK
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadeshm instructed by Greater Manchester Immigration
Aid Unit

For the Respondent: Mrs Pettersen Senior Home Office Presenting Officer.

DECISION AND REASONS

1. In a decision promulgated on the 30 June 2028 it was found a Judge of the First-tier Tribunal, through no fault of his own, had erred in the assessment of whether it was reasonable in all the circumstances for the appellant to internally relocate to Kabul as such assessment had been undertaken on the basis of incomplete evidence.

2. Directions were given for there to be a Resume hearing which took place on the 24 September 2020 remotely with the appellant attending assisted by a representative of the Greater Manchester Immigration Aid Unit. No interpreter was present, but the appellant is clearly fluent in English and all parties were content to proceed on the basis the matter did not require additional evidence to be given on the basis the matter was able to proceed by way of submissions only.
3. The preserved findings from the decision of the First-tier Tribunal are that the appellant faces a credible real risk in his home area but that he will be able to return to Kabul and live there with his brother. The scope of the Resumed hearing was limited to consideration of the reasonableness of internal relocation to Kabul when considering all relevant aspects, including the appellant's age, medical condition, finding of family support the family can provide for a short or initial period, and other issues identified in detail in the country guidance case of AS (safety of Kabul) (Afghanistan) [2020] UKUT 130(IAC).

Decision

4. It was not disputed that the appellant, who was born on 14 March 2003, has serious medical issues. Although Mr Jagadeshm's submission that although there was support it would only be temporary and that the appellant would need work to contribute to the family finances was challenged by Mrs Pettersen who did not believe the appellant would be effectively abandoned by his brother, which is an argument that may have merit, Mrs Pettersen accepted that there was very little she could say to counter Mr Jagadeshm's submissions in relation to the appellant's physical and mental health.
5. In his skeleton argument in relation to these issues Mr Jagadeshm writes:

Physical and mental health

13. This is dealt with in detail in the correspondence and reports at [AB/6-21]. In summary, the Appellant's "liver is severely scarred and damaged (cirrhosis), as a result of the continuous injury exerted by the two viruses that he is chronically infected with (hepatitis B virus and hepatitis delta virus, also called HBV and HDV respectively)"; see email of 10 September 2020 [AB/21] from Dr Giorgio Calisti, Consultant in Infectious Diseases.
14. In relation to treatment and the Appellant's overall prognosis, Dr Calisti explains (ibid):

"The problem is that, at present, there are very limited treatment options to treat his infections, in particular hepatitis delta. We have struggled to treat him with Interferon, the only (partially effective) drug available to date for hepatitis delta. Interferon treatment has been limited by the mood changes that [G] is having, as a consequence of the difficult life experiences he has gone through since early childhood and the concern that he may be repatriated to Afghanistan. Unfortunately, in the presence of mental health problems, we can't use Interferon, because Interferon could make these problems worse. Without effective treatment, [G]'s cirrhosis will progress more quickly and he is at greater risk of developing cancer of the liver.

...

The other important treatment option that [G] is very likely to require at some point in the future is liver transplantation. Clinical Indications for liver transplantation are liver failure (end stage of cirrhosis) and liver cancer. Liver transplantation can lead to eradication of hepatitis delta. **I am not aware of a liver transplantation programme in Kabul or elsewhere in Afghanistan. In fact, it is very unlikely, if not impossible, that [G] will have access to liver transplantation in Afghanistan when he is going to need it.**

In answer to your question, given the premises above, it is my opinion that [G]’s life expectancy would be significantly reduced if he is repatriated to Afghanistan” (emphasis in original).

15. This followed on from an earlier email dated 14 February 2020, where Dr Calisti explained that the Appellant “...has a serious medical condition (liver cirrhosis) and is at risk of developing fatal complications (e.g. liver cancer, gastrointestinal haemorrhages) within the next few years...” [AB/18].
16. It is evident that the Appellant is the subject of specialist monitoring on a regular basis. In a letter dated 9 January 2020 from Dr Pippa Newton, Consultant in General Medicine and Infectious Diseases, she referred to the fact that [AB/12] “...He will need to be closely monitored on this treatment and will need to regularly attend the clinic every few weeks in the first instance to check that his liver function tests remain stable...He is awaiting an endoscopy to look for varices and will need long-term 6 monthly abdominal ultrasounds to check for the development of a hepatocellular carcinoma...” In a subsequent letter dated 15 February 2020, Dr Newton highlighted that [AB/16] “...His liver function tests had worsened” and explains that “...An urgent MRI liver scan was performed...”
17. It is also of note that the Appellant is said to be experiencing “...side effects of treatment including intermittent dizziness, chest pain and palpitations, increased lethargy and fatigue, a disturbed sleep pattern” (e.g. see letter dated 9 January 2020 [AB/10]).
18. In relation to the interplay between the Appellant’s mental and physical health issues, the correspondence from the Appellant’s current social worker, Tom Stephenson, dated 11 September 2020 [AB/6-7], is of particular note. Mr Stephenson states, “...Whilst [G] therefore has a number of both physical and mental health difficulties, those same mental health difficulties mean that he finds it hard to engage with professionals in order to receive the appropriate support...” This follows on from earlier concerns raised about the Appellant, as detailed by his previous social worker [AB/8] and a Specialist LAC Nurse in a letter of 5 December 2019 [AB/10], where she also referred to concerns about “learning needs and cognitive development” and the Appellant’s ability to tell his account and his anxiety and potential confusion; concerns about possible physical/sexual abuse, trafficking/exploitation; and concerns about his emotional health and well-being.
19. It is thus submitted that in relocating to Kabul the Appellant will be particularly vulnerable (see AS [2020], headnote (v)) due to his physical and mental health issues, as well as the further issues set out below. This is also in the context of Kabul being described as “becoming the epicenter of the virus” (see article, 31 July 2020 [AB/262]). Furthermore, any support provided by the

Appellant's brother will not be sufficient to counter in particular the Appellant's physical and mental health issues and the absence of the necessary treatment.

20. Indeed, it is submitted that the Appellant will not have available to him/be able to access the necessary specialist treatment he requires as summarised above. When addressing the availability of healthcare in Kabul, the UT in AS [2018] referred to the EASO Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif and Herat City (August 2017); see [140]-[143] and later relied on this evidence at [221], albeit with reference to someone in "good health". The EASO report: "Afghanistan Key socio-economic indicators Focus on Kabul City, Mazar-e Sharif and Herat City" (August 2020) sets out a concerning picture of healthcare in Afghanistan bearing in mind the specialist and regular treatment and monitoring the Appellant requires; see section 2.6 "Health care" at [AB/172]; see also reports/articles at [AB/102, 105, 111]. In relation to mental healthcare/support, see the EASO report at section 2.6.3 [AB/179-180] and see the HRW report at [AB/114]. It is of note that as regards mental healthcare, in AS [2020] the UT noted:

"242. The evidence before us is consistent with the Panel's findings: the conflict has resulted in mental health problems for many inhabitants of Kabul, but there is a lack of facilities (and professionals) available to provide treatment. There is no new evidence on this issue to warrant a departure from the findings of the Panel."

21. The Appellant relies also on the report of Dr Giustozzi of 18 September 2020 addressing the availability of healthcare and, in particular, the absence of availability of liver transplants (para 11 [AB/61]).
6. It is not disputed that the Supreme Court in AM (Zimbabwe) [2020] UKSC 17 lowered the threshold previously established in N v UK but it still maintained a high threshold by reference to the applicable test. The medical evidence, including the expert reports, supports the claim the appellant will face a real risk of being exposed to a serious, rapid, and irreversible decline in his state of health resulting in intense suffering or a significant reduction in life expectancy and that any serious, rapid, or reversible decline in health leading to intense suffering or the substantial reduction in life expectancy will arise as a result of the absence of appropriate treatment in Afghanistan or the lack of access to such treatment.
7. Mrs Pettersen was unable to show that medical assistance or treatment that was required is available in Afghanistan or that the appellant will have access to the same.
8. I find it established, pursuant to AM, that there will be a breach of article 3 ECHR at the very least on medical grounds if the appellant is returned to Afghanistan. Such a scenario makes it unreasonable in all the circumstances to expect the appellant to return and internally relocate to Kabul even if his brother is able to provide him with accommodation and practical support.
9. It is a preserved finding that the appellant faces a real risk of persecution in his home area. As it has not been found there is a reasonable viable relocation option

the appellant is entitled to succeed with his asylum claim. The appeal is allowed on this basis.

Decision

10. **I remake the decision as follows. This appeal is allowed on asylum grounds.**

Anonymity.

11. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 2 October 2020