



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11315/2019**

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
via Skype for Business
On 16 October 2020** **Decision & Reasons Promulgated
On 10th November 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**JM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tettey

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who was born in 1997, is a male citizen of Afghanistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 5 November 2019 refusing his application for international protection. The First-tier Tribunal (Judge Malik), in a decision promulgated on 11 March 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. This appeal arises out of a fresh claim brought by the appellant following the dismissal of a previous appeal in July 2016. The previous Tribunal had found that the appellant's claim to be at risk from the Taliban was not credible. Following the principles of *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 *, Judge Malik also found the appellant's account to be incredible and, in the alternative, found that it would not be unduly harsh for the appellant to exercise the option of internal flight within Afghanistan by moving to Kabul.
3. The grounds are lengthy and somewhat discursive but, in essence, the appellant argues that the judge fell into error by failing to consider adequately the recent expert report of Dr Jawad Zadeh which, the appellant argues, was capable of altering the credibility assessment of the previous Tribunal.
4. Both parties accept that the judge dealt somewhat briefly with the expert report. At [24], the judge wrote:

“Given it was found that the appellant's previous appeal that he was not at risk from the Taliban, it having been found by First-tier Tribunal Judge M Davis that it was not reasonably likely he was ever targeted by the Taliban in his home area, there is nothing to suggest he would be targeted now on return to Kabul.”

As regards the Dr Zadeh's consideration of the appellant's account of past events, I find that this is no more than a new opinion on particulars of claim which had been rejected as incredible. Significantly, the grounds of appeal to not descend into detail by seeking to explain exactly how the expert report proves that the appellant's account should, in the context of all the evidence, be believed. Instead, the grounds assert more than once Judge Malik failed to acknowledge that such a report was capable of reversing a previous adverse credibility assessment. There is no reason to consider that Judge Malik has failed to understand the ratio *D (Tamil)* [2002] UKIAT 00702 *. I accept that she has considered all the evidence adduced by the appellant. It is implicit in her analysis that she found nothing in the expert report which might cause her to reverse previous Tribunal's credibility assessment. In so far as the expert report addresses matters of credibility, it was open to the judge to find that the report constituted no more than a disagreement with the findings of the previous Tribunal. Moreover, the question arises as to why the matters discussed by the expert concerning an account which is not changed since the beginning of the appellant's claim for asylum were not brought before the previous Tribunal; without such an explanation, then *D (Tamil)* [2002] indicates that such evidence should be treated with caution. I find that the First-tier Tribunal has not erred in law in its assessment of the report of Dr Zadeh.

5. Mr McVeety, who appeared in the initial hearing for the Secretary of State, submitted that this appeal was always bound to fail given the judge's alternative findings in respect of the availability internal flight to Kabul. Judge Malik applied *AS (safety of Kabul) Afghanistan CG [2018]* UKUT

00118, the relevant country guidance with which the expert, significantly, had not sought to disagree. Indeed, if we consider the most recent 2020 country guidance of *AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC)*, it remains clear that it would not be unduly harsh for the appellant to relocate to Kabul. The appellant asserts that he would be at additional risk on account of his Hazara ethnicity, because you would have no one to help him find accommodation and because he had been away from Afghanistan, having lived both in the United Kingdom and previously in Pakistan. As Mr McVeety submitted, the latest 2020 country guidance addresses the question of absence from Afghanistan but rejects it as a factor capable of excluding the availability of internal flight:

“252. Taking a holistic view, and considering all of the circumstances together, we are satisfied that generally it would not be unreasonable for a single healthy man to relocate to Kabul, even if he does not have any family or network in the city and lacks a Tazkera. However, in all cases an individualised case-by-case assessment is required, taking into account an individual's personal circumstances including factors such as his age, health, disability, languages spoken, educational and professional background, length of time outside of Afghanistan, connections to and experience of Kabul and family situation and relationships”

253. We give the following country guidance:

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.”

6. I am satisfied that the judge has properly addressed the appellant's fresh evidence, including the expert report, in reaching her determination of the appeal. I find that she has applied the relevant case law, including *D (Tamil) [2002] UKIAT 00702 **, accurately. I find that, in light of the most recent guidance concerning internal flight within Afghanistan, this appeal would be bound to fail even if (which I do not accept) Judge Malik should have accepted the appellant's account as credible. It follows that, even if the judge had fallen into error for the reasons advanced in the grounds of appeal, then it would not have been appropriate to set aside her decision.
7. Finally, as regards Article 8 ECHR, I refer to the written submissions of the Secretary of State:

“20. It is submitted that this is essentially an argument about weight, again it being trite law that weight is a matter for the FtJ hearing the appeal. It is not suggested in the grounds of appeal that such a finding is perverse.

21. It is submitted that 'appropriate' weight was given to the relationship, which is why it engaged family life for the purposes of the ECHR, not something that would have been given to relationship describing as 'boyfriend and girlfriend' who did not cohabit, which is how the grounds case the relationship from 2016. The Appellant's ground also ignores that it was not argued that the Appellant could meet family life under Appendix FM [29], presumably due to a lack of two years cohabitation.

22. Whilst noting cohabitation, the FtTJ considered that the relationship had not moved on in terms of marriage and children which was the Appellant's intention as stated before the previous composition of the FtT (IAC) four years previously and in terms of s117B(4) of the NIAA 2002 that the relationship was formed at a time when the Appellant's immigration status was precarious [34] affording the relationship little weight, which it is submitted is why such finding is more than sufficiently reasoned."

Mr Tettey, who appeared for the appellant, acknowledged that this ground of appeal is 'much weaker'. I agree with that view and with the submissions of the respondent. The argument advanced by the appellant in respect of Article 8 ECHR is no more than a disagreement with findings which were available to the judge on the evidence which was before the Tribunal.

8. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed
2020
Upper Tribunal Judge Lane

Date 30 October

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.