



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: LP/00049/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House via Teams  
On 30 September 2021**

**Decision & Reasons  
Promulgated  
On 08 November 2021**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

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

Appellant

**and**

**EMK**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Mr J Collins

**DECISION AND REASONS**

1. I shall refer to the appellant as the ‘respondent’ and the respondent as the ‘appellant’, as they appeared respectively before the First-tier Tribunal. The appellant was born in 1992 and is a male citizen of Afghanistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 29 November 2019 refusing his application for international protection. The First-tier Tribunal, in a decision dated 15 September 2020, allowed his appeal on asylum and human rights grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. There was a brief discussion at the outset of the initial hearing as to whether the appeal should be adjourned in the light of the recent regime change in Afghanistan. Mr Tan, who appeared for the Secretary of State, did not press the matter and both representatives were content to proceed. I was satisfied that, given the particular issues in this appeal, it was in the interests of justice to proceed.
3. There are two grounds of appeal. Neither ground addresses the judge's decision that the appellant succeeds on human rights (Article 3 ECHR) grounds. Consequently, that decision will, in any event, remain undisturbed.
4. First, the Secretary of State argues that the judge erred in law by finding that the appellant's 'inability to integrate' in Afghan society 'is a convention reason'. In addition, the respondent submits that the judge had 'no firm evidence' of the appellant's medical condition (the judge found [65] that the appellant is suffering from anxiety and depression') which would justify the finding that the appellant could not integrate on return.
5. I agree with Mr Collins, who appeared for the appellant before the First-tier Tribunal and Upper Tribunal, that the grounds are confusing and difficult to understand. It is not clear why sentences which do not contain questions should terminate in a question mark.
6. I also agree with his characterisation of the grounds as little more than disagreement with the findings of the judge. I am satisfied that all the findings of fact made by the judge were properly available to her on the evidence. She found [57] that the appellant would be at real risk in his home area of Afghanistan (Nangarhar) where there was a 'high Taliban presence' and where, significantly, the appellant (who the judge found had fled Afghanistan to avoid being recruited by the Taliban, a group whose ideology he opposes) 'would be perceived as a spy'. Contrary to what is asserted in the grounds, the judge has given cogent reasons for that latter finding. Given the 'fluid security situation' in the appellant's home area [57] and the inability of the government to protect the appellant there, it was manifestly open to the judge to conclude that the appellant had a well-founded fear of persecution in his home area. The author of the grounds of appeal is wholly wrong to suggest that the judge considered that the appellant should succeed on asylum grounds because of 'an inability to integrate'; rather, she found that it was reasonably likely that the appellant would be perceived as a spy by the Taliban from whom he would have no effective protection.
7. The judge's finding that the appellant suffers from depression was plainly open to her on the evidence. Whilst the appellant did not adduce a medical report, it was open to judge to accept the appellant's evidence that he had been prescribed a widely-used anti-depressant, Mirtazapine. Having made that finding, the judge properly took the appellant's mental health and his lack of a support network in Afghanistan into consideration in her application of the relevant country guidance (*AS (Safety of Kabul)*)

*Afghanistan CG* [2020] UKUT 130 (IAC)). Again, contrary to what is asserted in the grounds, the judge has reached rational findings, which are firmly based on all the evidence, in respect of the appellant's ability to integrate in Afghanistan.

8. For the reasons which I have given, the First-tier Tribunal did not err in law such that its decision should be set aside. Accordingly, the Secretary of State's appeal is dismissed.

### **Notice of Decision**

The Secretary of State's appeal is dismissed.

Signed

Date 6 October 2021

Upper Tribunal Judge Lane

### **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.