



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/00834/2020 (P)

THE IMMIGRATION ACTS

**Decided at Field House
On 13 January 2022**

**Decision & Reasons Promulgated
On 13 January 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Latta ('the Judge') sent to the parties on 19 April 2021 dismissing his appeal against a decision of the respondent to refuse to grant him leave to remain on international protection grounds or, alternatively, on human rights grounds.
2. Upper Tribunal Judge Lane granted the appellant permission to appeal on all grounds by a decision dated 10 August 2021.
3. The appellant is represented by JD Spicer Zeb, Solicitors.
4. The respondent is represented by Mr. A Tan, Senior Presenting Officer.

Decision

5. By means of a rule 24 reply filed by the respondent on 12 January 2022, Mr. Tan observed on behalf of the respondent, *inter alia*:
 - '4. The SSHD accepts that having found the account of the appellant to be credible as to having been kidnapped and detained by the Taliban in Kabul, that the Tribunal Judge (FTTJ) materially erred for the reasons set out in grounds 2 in particular, and also ground 3. It is noted that the FTTJ appeared to place weight on the report of Mr. Foxley at various points in the decision, and whilst referring to the low risk of return at [79] and considering the appellant to be of 'low profile with reference to the report at para. 104, this opinion of the expert appears to be in relation to risk/profile at Kabul airport or elsewhere. Rather, the report set out both at paras. 92 *'I believe the risk would be greater the closer he is to his home area in Kabul'* and para. 104 that the appellant would be at elevated risk in Kabul *'The main risk from the Taliban would be if he returned to his home area in Kabul'*; it is accepted that the FTTJ failed to engage with these points.
 5. The SSHD accepts that there is material error in the decision and invites the Tribunal to set the decision aside in relation to the findings made on risk on return. Given the change of regime in Afghanistan and in line with current CPINS on Afghanistan (Fear of the Taliban version 1.0 October 2021), it being found that the appellant falls into the category of a person who had previously resisted the Taliban (2.4.11), the SSHD concedes that the appellant would be at risk on return and his appeal should succeed under the Refugee Convention.'
6. By means of an email sent to the Tribunal, dated 12 January 2022, the appellant's legal representatives confirmed their client's consent to the course of action proposed by the respondent.
7. Having considered the papers in this paper, I am satisfied that the course identified by the respondent can properly be adopted.
8. I set aside the Judge's decision for material error of law, for the reasons identified by the respondent in her rule 24 response, save that the findings of fact are preserved.
9. Upon considering the preserved findings of fact, I allow the appeal on refugee grounds and human rights (article 3) grounds.

Notice of Decision

10. The Tribunal sets aside a decision of the First-tier Tribunal sent to the parties on 19 April 2021 for material error of law, pursuant to section 12(2) (a) of the Tribunals, Courts and Enforcement Act 2007.

11. The decision is re-made, and the appellant's appeal is allowed on:

- i) Refugee Convention grounds
- ii) Human rights (article 3) grounds

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 13 January 2022

TO THE RESPONDENT
FEE AWARD

No fee award was paid so there can be no fee award.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 13 January 2022