



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03002/2019

THE IMMIGRATION ACTS

**Birmingham Civil Justice Centre
On the 3rd May 2022**

**Decision & Reasons Promulgated
On the 24 October 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**SS
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

1. The appellant is a national of Afghanistan. He claims to have arrived in the UK on 11 April 2012. He claimed asylum that day. The claim was refused by the respondent for reasons set out in a decision dated 3 July

2013. However the appellant was granted discretionary leave to remain valid until 30 June 2014. On 25 June 2014, he applied for further leave to remain. His application was refused by the respondent on 7 January 2015. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Gurung-Thapa for reasons set out in her decision promulgated on 20 August 2015. Permission to appeal was refused by both the First-tier Tribunal and the Upper Tribunal. The appellant had exhausted his appeal rights on 14 December 2015.

2. On 15 October 2018, the appellant made further submissions to the respondent. Having considered the further submissions and the material relied upon by the appellant, the respondent concluded the applicant does not qualify for asylum or humanitarian protection for reasons set out in a decision dated 7 March 2019. That decision gave rise to a right of appeal. The appellant's appeal was heard by First-tier Tribunal Judge Malcolm in April 2019 and dismissed for reasons set out in her decision promulgated on 11 June 2019. The appellant was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Boyes on 14th July 2019.
3. The appeal to the Upper Tribunal was heard by Deputy Upper Tribunal Judge Lewis and the decision of First-tier Tribunal Judge Malcolm was set aside for error of law. Deputy Upper Tribunal Judge Lewis noted that the First-tier Tribunal Judge had accepted the appellant would be at risk in his home area. It was common ground before the Upper Tribunal that the decision of the First-tier Tribunal Judge, at least as far as it relates to the question of internal relocation to Kabul, could not stand. Deputy Upper Tribunal Judge Lewis directed the decision will therefore be remade, with particular reference to internal relocation to Kabul, on the premise of the findings of First-tier Tribunal Judge Malcolm, and in light of any further country guidance.
4. The appeal was listed for hearing on 13 October 2021. That hearing was adjourned. In a letter dated 12 October 2021, Duncan Lewis, the

appellant's previous solicitors, indicated that they were no longer instructed in respect of the appellant's appeal and asked to be removed from the Tribunal's records. On 14th October 2021, Upper Tribunal Judge Blum said:

"4. The original scope of the hearing to remake the First-tier Tribunal's decision was limited to the issue of the availability of internal relocation to Kabul, the First-tier Tribunal having found that the level of violence in the appellant's home region of Laghman Province to be at such a high level as to put him at real risk of serious harm (essentially a finding in respect of Article 15(c) of the Qualification Directive). The First-tier Tribunal Judge found that the appellant fabricated his claim to have been targeted by the Taliban and that he was not at risk from the Taliban.

5. Given the significant change in Afghanistan since the end of August 2021 the issue of whether the appellant still faces an Article 15(c) risk in his home area of Laghman Province may need to be re-examined. To this end, and in accordance with the overriding objective to decide cases fairly and justly, the following direction is issued."

5. Upper Tribunal Judge Blum directed that no later than 7 days before the resumed hearing, the appellant and the respondent are to inform the Upper Tribunal, in writing, of their respective positions regarding the scope of the remaking hearing (i.e. whether the rehearing should include consideration of whether the appellant could be expected to return to his home area).
6. The appeal was listed for a resumed hearing before me to remake the decision. The appeal was listed to commence at 2:00pm. By 2:20pm, there was no appearance by or on behalf of the appellant. The appellant was previously represented by Duncan Lewis Solicitors, but they no longer represent the appellant. I was satisfied that the 'Notice of Resumed Hearing' had been sent by the Tribunal to the appellant at the address for the appellant provided to the Tribunal by Duncan Lewis Solicitors in their email to the Tribunal at 09:59 hrs on 13th October 2021. On reviewing the Tribunal file, I noted that there is nothing to suggest that the Notice of Resumed Hearing has not been delivered to the appellant or has been returned to the Tribunal as undelivered. Mr Tan confirmed the last contact made by the appellant with the respondent was in 2021. The appellant had made an application for voluntary return

but stopped communicating with the respondent, and so in February 2021, that application for voluntary return was treated as withdrawn. For the avoidance of any doubt, at 2:15pm a tannoy announcement was made in the building, but there was no response from the appellant.

7. Having regard to Rule 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008, I am satisfied that the appellant has been notified of the hearing. The absence of the appellant is entirely unexplained, and I am satisfied that it is in the interests of justice to proceed with the hearing in the absence of the appellant.
8. Because it is relevant to my decision and there are preserved findings, it is helpful for me to record in this decision, a little more about the background to the appellant's claim for international protection and the findings made and preserved.

The decision of First-tier Tribunal Judge Gurung-Thapa promulgated 10th August 2015

9. First-tier Tribunal Judge Gurung-Thapa set out the background to the appellant's claim at paragraphs [9] to [20] of her decision. In summary, the appellant claimed that he lived in Mansoor village, Qarghayi District in the Laghman Province, Afghanistan. He lived there with his parents, two brothers and a sister. His father ran a small business trading in material and cloth. He claimed that about four years ago (i.e. in or about 2010/11), he returned home from school and his mother told him that his two brothers had disappeared. He claimed that his father has been missing for about a year. He claimed that one night, while they were sleeping, some men attacked the house and took his father. His mother came to his room crying and told him his father had been taken by the Taliban. The appellant claimed that his mother spoke to his maternal uncle, and they moved in with him. For the following year they did not have any problems.

10. The appellant claims that he was on his way home from school one day when suddenly a small pickup truck pulled up, and two Taliban members dragged him and put him into the back. They were shouting at him and telling him that he had to agree to jihad. He was taken to a 'cave like area' and put into a room which had a door attached. Inside the room, was another boy. The appellant believed he had been held in the room for about five days. During that time, men would bring them food, but their faces tended to be covered. The men would let them relieve themselves outside and when they need to go, they would knock the door and a man would come and take them outside. One day, the appellant noticed that the window to their room was right in front of him as he was relieving himself and he quickly undid the lock. One evening thereafter, the appellant and the other boy decided they had a chance to escape. They undid the bolt and climbed out of the window. They rushed down the mountains not knowing where they were. When they saw some houses they asked the people there and were informed they were in Khajoor village. At that point the appellant was separated from the other boy. The appellant was able to make his way to his maternal uncle's house where his mother was relieved to see him. When his maternal uncle returned home from work, the appellant's mother spoke to him and his maternal uncle organised for the appellant to leave home and Afghanistan.

11. The findings and conclusions of First-tier Tribunal Judge Gurung-Thapa are set out at paragraphs [31] to [67] of her decision. As far as is relevant she said:

"34. ... What is clear from the appellant's evidence is that the kidnapping of his two brothers four years before he left Afghanistan and the kidnapping of his father a year before he left Afghanistan did not precipitate the appellant's own departure from there. It is of interest to note that despite his two brothers being kidnapped, the appellant, his parents and sister continued with their lives, and it is not the appellant's case that they had to move from Mansoor village. He encountered no further problems until his father was kidnapped from the family home and he was told by his mother that his father had been taken by the Taliban. It is the appellant's own evidence that he was not aware why his father would have been taken as he was not involved with them.

...

36. I do give due allowance to the appellant's age, and it is plausible that the appellant would not have known the specific details for example where his brothers disappeared from, and who had taken them (Q42) and he was not aware whether his brothers' disappearance was reported to the police (Q44). However, it is not the appellant's case that his brothers were kidnapped by the Taliban. In his asylum interview he stated that someone took them outside and that he did not know how and who took them (Q42)

37. He also stated that his mother believed his father had been taken by the Taliban as they were wearing white turbans (Q50). Even if I were to accept that his father had been kidnapped by the Taliban, it is clear that this incident was not a catalyst for the appellant in leaving Afghanistan.

...

41. I accept that it is plausible that the recruitment methods adopted by the Taliban do vary and therefore forced recruitment cannot be discounted. However, having said that I do find it unusual that the males from one family would be targeted in a manner described by the appellant. I note there is no background evidence to suggest that the males from one family would be targeted in such a manner, especially when it is the appellant's own evidence that his family did not have any problems with the Taliban prior to their abduction.

45. ... I therefore reject the appellant's claim that he was recruited whether forcibly or otherwise by the Taliban and I find that he has invented this in order to bolster his claim for asylum.

...

53. Even if I were to accept that there has been a failure by the respondent in their endeavour to trace the appellant's family I do not find that this is fatal to his case. This is because I do not accept the appellant's account that he was targeted by the Taliban in the manner described by him. I have rejected his account in this regard. For this reason I do not accept that the appellant has lost contact with his mother and maternal uncle in his home country. At this juncture, it is relevant to note the appellant's answers he gave during his substantive asylum interview in relation to having family in the UK. He had mentioned that his mother has two cousins here and that he is not seen them since he arrived (Qs 109 and 110). When he was asked if he has any contact details for them his response was that he has given the telephone number but he has not tried it and he has given it to his social worker and to his solicitor (Q111). There is no evidence before me to suggest that the appellant with the aid of his legal representatives has attempted to contact his mother's cousins in the UK in order to make enquiries of his family in Afghanistan. Indeed, his appeal statement is silent on this issue.

54. Should the appellant not wish to return to his home area he has the option of returning to Kabul...."

The decision of First-tier Tribunal Judge Malcolm

12. First-tier Tribunal Judge Malcolm summarised the background to the appellant's claim for international protection at paragraphs [15] to [19] of his decision. He considered the further evidence before the Tribunal from the appellant, and the reports prepared by Dr Krishma Jethwa and Dr Tim

Foxley, which, it was submitted, undermine the findings previously made by First-tier Tribunal Judge Gurung-Thapa. The findings and conclusions of First-tier Tribunal Judge Malcolm are set out at paragraphs [77] to [119] of her decision.

13. As far as is relevant Judge Malcolm said:

“85. I accept that the Country Expert Report does provide information of forced recruitment by the Taliban. I do not however accept that Dr Jethwa’s report lends any additional weight in considering whether the account given by the Appellant at the earlier Tribunal was credible.

...

93. I do not consider that the information and evidence presented was sufficient to allow me to depart from the earlier First-tier Tribunal Judge’s findings on the credibility of the appellant in respect of the core of his claim for asylum (his abduction and detention and subsequent escape from the Taliban). The information in Mr Foxley’s report whilst corroborative of this type of incident I do not consider it is sufficient to allow me to depart from the earlier First-tier Tribunal findings on this matter.

...

95. ... I accept that there was no conclusive finding on whether or not the appellant’s father had been kidnapped, however it was clear that the First-tier Tribunal Judge accepted that the kidnapping of his two brothers four years before he left Afghanistan and the kidnapping of his father the year before the appellant left Afghanistan did not precipitate his own departure, further noting that despite the appellant’s two brothers being kidnapped the appellant, his parents and sister continued with their lives (as set out in paragraph 34 of the determination)...

96. As set out above I do not consider that the information and evidence presented to me allowed me to make a different finding from the earlier Tribunal on the core claim for asylum being made by the Appellant.

97. In relation to contact with family the first-tier Tribunal Judge quite clearly sets out (at paragraph 57) that he has concluded that he does not accept the appellant’s claim that he has lost contact with his family in Afghanistan.

...

102. I have also given consideration to the updated report provided by Mr Tim Foxley and have noted Mr Foxley’s comments (at page 30) that the security situation in the appellant’s home area of Laghman remains very difficult, being one of the few provinces where indiscriminate violence is at such a high level as to put someone at real risk of serious harm by returning to the province.

...

104. In any event I accept that given the situation in the appellant’s home area that return to his home area is not a viable option.

105. I have given consideration as to whether the appellant could relocate to Kabul.

...

14. First-tier Tribunal Judge Malcolm noted, at [111], that the appellant is a young man who has made a life for himself in the UK and clearly wishes to continue with his life in the UK. She referred to the relevant country guidance and found the appellant would be able to internally relocate to Kabul. As I have already noted, it was common ground before Deputy Upper Tribunal Judge Lewis that the decision of First-tier Tribunal Judge Malcolm, at least so far as it relates to the question of internal relocation to Kabul, cannot stand.

Remaking the decision

15. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom's obligations under the 1951 Refugee Convention.
16. The appellant bears the burden of proving that he falls within the definition of "refugee". In essence, the appellant has to establish that there are substantial grounds for believing, more simply expressed as a 'real risk', that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country. Paragraph 339C of the immigration rules provides that an applicant who does not qualify as a refugee will nonetheless be granted humanitarian protection if there are substantial grounds for believing that if returned, they will face a real risk of suffering serious harm and they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.
17. Although the appellant did not attend the hearing, I have had regard to the report of Dr Sharna Lewis, a Chartered Clinical Psychologist, that was

relied upon by the appellant, and post-dates the decisions of the First-tier Tribunal previously. The report of Dr Lewis is dated 7th July 2020 and is based upon background information obtained from a letter of instruction, and an interview with the appellant on 29th June 2020. Dr Lewis states, at [2.1] that the interview was conducted in English and translated into Pushto. The appellant engaged well and to the best of his ability. Dr Lewis confirms, at [5.10], that the appellant did not present with any significant mental health problems. He has not consulted his GP for reasons related to mental health apart from his Cannabis use and he has not required any input from mental health services since arriving in the UK. Dr Lewis opines that the appellant has capacity to participate in the current proceedings as long as reasonable adjustments are made to the Court process in order to accommodate his low IQ and specific learning difficulties. Although recommendations are set out regarding the reasonable adjustments that should be adopted, in the end, they were not required because the appellant did not attend the hearing.

18. Dr Lewis was asked whether the appellant has any learning difficulty. Dr Lewis states the appellant was found to have a low IQ and a deficit in his information processing skills but could not give an opinion on the severity of his learning difficulty with the information available. At paragraph [6.5], Dr Lewis states the appellant's learning difficulties will impact upon his ability to integrate in a new city and make the necessary decisions aimed at starting a new life. They will also impact on his ability to communicate with others and establish a social network. It is said the appellant will be able to take care of his basic needs like self-care (e.g. washing and dressing), shopping and cooking, accessing the local area within a short distance from his home, but without support, he will struggle with more complex tasks such as managing finances, securing accommodation, securing employment, or tasks that involve reading and writing. At paragraph [6.7], Dr Lewis claims the appellant's overall adaptive functioning is below average compared to his peers, and as a result of his learning difficulties and low IQ he would require a significant

amount of support in order to successfully integrate in Kabul. Without support he would be very vulnerable.

19. The country guidance case AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 (IAC) (1 May 2020), heard on 19 and 20 November 2019 and 14 January 2020 held that *'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'* (paragraph 253(i)).
20. On behalf of the respondent, Mr Tan submits the most recent background material demonstrates the level of violence in Afghanistan has reduced significantly. The humanitarian situation is poor, but the overall position is such that a male with no health concerns will not be at risk. The security situation in the appellant's home area has changed since the findings made by the First-tier Tribunal. He submits the risk upon return should now be assessed based upon the current security situation.
21. Mr Tan referred me to the respondent's Country Policy and Information note: fear of the Taliban, Afghanistan, April 2022. Paragraph [2.4.9] identifies the persons likely to be at risk of persecution, because they may be considered a threat or do not conform to the Taliban's strict interpretation of Sharia law. He submits that on the findings already made, the appellant does not fall into any of the risk categories identified. He also refers to the respondent's Country Policy and Information Note Afghanistan: Security situation Version 2.0, April 2022, which, at [2.4.7] to [2.4.13] confirms the Taliban is now in de-facto control of the whole country and fighting with the former government's security forces has ceased, though clashes with the National Resistance Front (NRF) occur. The United Nations recorded 985 security-related incidents between 19 August and 31 December 2021, a 91% decrease compared to the same period in 2020. At paragraph [2.4.11] it is said that since August 2021, the levels of indiscriminate violence arising out of conflict have significantly diminished in all areas of the country.

Although there remain hotspots in Kabul and Nangarhar, even here levels are lower than they once were. It is said the levels of violence are significantly lower than was prevailing at time of the previous CG cases. The CPIN states:

“2.4.12 Given the significant decrease in the levels of violence, there is no part of Afghanistan where, in general, conditions are such as to result in serious harm because there exists a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence generally across the country Comparable to the Upper Tribunal’s findings in AK. Indiscriminate violence is not at such a high level that it represents, in general, a real risk of harm contrary to paragraphs 339C and 339CA(iv) of the Immigration Rules.

2.4.13 Even where there is not, in general, a real risk of serious harm by reason of indiscriminate violence, decision makers must consider whether there are particular factors relevant to the person’s circumstances which might nevertheless place them at risk. The more a person is able to show that they are specifically affected by factors particular to their personal circumstances, the lower the level of indiscriminate violence required for them to be at a real risk of serious harm.

2.4.14 Therefore, a person may still face a real risk of serious harm, even where generally there is not such a risk, if they are able to show that there are specific reasons over and above simply being a civilian for being affected by the indiscriminate violence..”

22. As far as internal relocation is concerned, the respondent’s Country Policy and Information Note Afghanistan: Security situation Version 2.0, April 2022 states, at [2.5.3]:

“Whilst there continues to be some indiscriminate violence, the widespread and persistent conflict-related violence in Kabul, as well as elsewhere in the country, all but ceased following the Taliban takeover. The security situation has improved since AK and AS (Safety of Kabul) were promulgated and it remains the case that a single, adult male may be able to relocate to Kabul depending on his circumstances. As the conflict has diminished across the country and indiscriminate violence is not at such a high level that it represents, in general, a real risk of harm contrary to paragraphs 339C and 339CA(iv) of the Immigration Rules, a single adult male may also be able to relocate to areas outside of Kabul”

23. Finally, Mr Tan refers to the respondent’s Country Policy and Information Note Afghanistan: Humanitarian situation Version 2.0 April 2022. Paragraphs [2.4.4] to [2.4.11], which confirm the political and security situation, as well as the socio-economic situation, has changed significantly since conditions were considered by the Upper Tribunal in

the previous country guidance decisions. It is said in paragraph [2.4.11] that the humanitarian situation is not so severe that in general, a single adult male in good health is likely to face a real risk of serious harm. This is because the conditions do not amount to torture or inhuman or degrading treatment, as defined in paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the European Convention on Human Rights (ECHR).

24. Given the significant change in country circumstances, I am satisfied there are very strong grounds supported by cogent evidence to justify a departure from the guidance set out in paragraph 253(i) of AS (Safety of Kabul); See *SG (Iraq) v SSHD [2012] EWCA Civ 940 at [46] and [47]*. The Taliban assumed de facto control of the country on 15 August 2021. I note that the respondent's Country Policy and Information note: fear of the Taliban, Afghanistan, April 2022 states, at [2.4.2], that after gaining control, the Taliban announced a 'general amnesty' for anyone who had fought against them. However, there are reports indicating this amnesty and other guidance and policy announced by the Taliban leadership has not been followed across the country and that some Taliban members are acting in revenge, arbitrarily and under their own authority. Reports indicate that the Taliban have conducted door to door house searches to find former security forces personnel or those who have worked for international organisations, and those deemed to be critical of the Taliban regime.
25. I find the appellant does not fall into any of the risk categories identified in paragraph [2.4.9] of the respondent's Country Policy and Information note: fear of the Taliban, Afghanistan, April 2022 and that the appellant will not now be at risk upon return to his home area, in Mansoor, a village in the Qarghayi District, the largest district in Laghman Province. The appellant did not attend the hearing before me and I have not been provided with any background material that he relies upon regarding the current situation in his home area, or indeed, in Kabul. There is no background material or expert evidence before me now to confirm that

the security situation in the appellant's home area of Laghman remains very difficult, or that it remains a province where indiscriminate violence is at such a high level as to put someone at real risk of serious harm by returning to the province.

26. The First-tier Tribunal has previously rejected the appellant's claim that he has lost contact with his family in Afghanistan. The First-tier Tribunal rejected the appellant's claim that he has lost contact with his mother and maternal uncle in Afghanistan. The appellant has a low IQ and a deficit in his information processing skills. However, Dr Lewis is of the opinion that the appellant is able to take care of his basic needs like self-care, shopping, cooking and accessing the local area. It is said that without support, he will struggle with more complex tasks, such as managing finances, securing accommodation, employment or with tasks involving reading and writing. Although Dr Lewis states the appellant would require a significant amount of support in order to successfully integrate in Kabul, it is not clear what background material was relied upon regarding the situation in Kabul. In any event, the question for me is not whether the appellant can successfully integrate in Kabul, but whether on the evidence before me, the appellant has established that it would be unduly harsh for him to internally relocate.

27. Even if the appellant remains unable to return to his home area, I have no hesitation in finding that it would not be unduly harsh for the appellant to internally relocate to Kabul. The appellant may have a low IQ but he is able to take care of his basic needs. On the background material that I have been referred to by Mr Tan, I am satisfied the humanitarian situation is not so severe that in general, a single adult male in generally good health is likely to face a real risk of serious harm there. As far as the appellant's reliance upon the report of Dr Lewis is concerned, I attach little weight to the opinion expressed that the appellant would require a significant amount of support in order to successfully integrate in Kabul, and that without support, he would be very vulnerable. The appellant did not attend the hearing before me and

the evidence regarding the support available to the appellant is very vague. The appellant has previously had the support of his mother and maternal uncle previously and I am quite satisfied that he would have their support on return to Afghanistan.

28. It follows that in my judgment, the appellant will not be at risk upon return to Afghanistan and I dismiss the appeal.

Decision:

29. The appeal is dismissed.

Signed **V. Mandalia** Date 14th September
2022

Upper Tribunal Judge Mandalia