



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: PA/03086/2020

**THE IMMIGRATION ACTS**

**Determined on the papers at Field House**

**Decision & Reasons Promulgated**

**On 18<sup>th</sup> January 2022**

**On 31 January 2022**

**Before**

**THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MH**

**(Anonymity Direction Made)**

**Appellant**

**and**

**The Secretary of State for the Home Department**

**Respondent**

**DECISION AND REASONS**

- 1.** The appellant is an Afghan national born on 3<sup>rd</sup> March 1992. He appealed against the Secretary of State’s decision dated 12<sup>th</sup> March 2020 refusing him asylum, humanitarian protection and protection under the European Convention on Human Rights (Articles 3 and 8).
- 2.** His appeal came before First-tier Tribunal Judge Randall (“the judge”) who dismissed his appeal on 6<sup>th</sup> April 2021 on all grounds but found that he would be at risk of persecution from the Taliban in his home area of Laghman [paragraph 59 of the decision]. The appellant had asserted that prior to leaving Afghanistan he was a bodyguard for the Afghan police

force and the judge accepted that the appellant had received threatening letters from the Taliban which had been verified by the country expert Dr Giustozzi. The judge found however, even with the appellant's mental health problems, he could relocate to Kabul. At [63] the judge appeared to accept that the appellant had previously lived in Kabul but in hiding.

3. An application for permission to appeal was filed on 2<sup>nd</sup> June 2021, inter alia, on the basis that the judge had failed to factor into his assessment the appellant's past persecution by the Taliban, erred in assessing his profile, and had taken a flawed approach to relocation in Kabul. There was a failure to take into account the individual circumstances of the appellant who had lived in Kabul previously but only in hiding.
4. The application for permission to appeal was granted on 2<sup>nd</sup> July 2021 on all grounds.
5. On 10<sup>th</sup> January 2022 the Secretary of State responded to the grant of permission as follows

*"I can confirm that the SSHD responded to the grant of permission to appeal on 02 September 2021, confirming that the SSHD is not seeking to oppose the appellant's application. Given the findings of fact that have been made in the appellant's favour and the subsequent changes in the country conditions in Afghanistan, the SSHD invites the Tribunal to allow the appellant's appeal and vacate the impending hearing".*

6. On enquiry from the Tribunal and the appellant's representative, the respondent replied on 18<sup>th</sup> January 2022 clarifying as follows:

*'The respondent has no objection to the appellant's appeal being allowed on asylum grounds.'*

7. This matter was therefore determined on the papers and the parties notified that the hearing would be vacated.
8. Given the response to the grant of permission by the Secretary of State, we accept the Judge erred materially for the reasons identified above albeit it should be noted he could not have foreseen the changes to the country circumstances. We therefore set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007 by allowing the appeal owing to the risk to the appellant from the Taliban should he relocate to Kabul and in the context of the current country background material in CPIN 'Afghanistan Fear of the Taliban' dated October 2021 particularly paragraphs 2.4.9 and 2.4.11.
9. In the light of the above the appellant's appeal is allowed on asylum grounds and on European Convention on Human Rights (Article 3) grounds and refused on humanitarian protection grounds.

**Notice of Decision**

The appellant's appeal is allowed under the Refugee Convention

The appellant's appeal is dismissed on humanitarian protection grounds

The appellant's appeal is allowed under the European Convention on Human Rights (Article 3).

Signed                      Helen Rimington

Date 18<sup>th</sup> January 2022

Upper Tribunal Judge Rimington