



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
PA/09360/2019**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 6 January 2022**

**On 24 January 2022**

**Before**

**Upper Tribunal Judge Perkins  
Deputy Upper Tribunal Judge Mailer**

**Between**

**A M**

**ANONYMITY DIRECTION MADE**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Mr E Fripp, counsel, instructed by McCarthy  
Solicitors**

**For the Respondent: Ms J Isherwood, Senior Home Office Presenting  
Officer**

**Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

## **DECISION AND REASONS**

1. The appellant is a national of Afghanistan born on 1 January 1983. He appeals with permission against the decision of First-tier Tribunal Judge SJ Steer promulgated on 16 July 2021, dismissing his appeal against the decision of the respondent, made on 8 May 2019, refusing his asylum and human rights application.
2. The appellant first arrived in the UK in 2003. He claimed asylum under an alias name, Romal, on 6 October 2003, which was refused on 13 October 2003. His appeal against that decision was dismissed by Adjudicator P R Boardman in a decision promulgated on 18 February 2004. The appellant did not give oral evidence at this appeal.
3. Adjudicator Boardman considered the appellant's interview, his additional notes, his SEF statement and his witness statement. He found that the appellant was generally an unreliable witness. He held that his fear of persecution from his father's cousins because of a land dispute was not protected by the Refugee Convention [39]. His return to Afghanistan would not involve a breach of either Article 2 or Article 3 of the Human Rights Convention [40].
4. Adjudicator Boardman then considered the contention that internal relocation was not a viable option, given the appellant's physical and mental condition. He concluded at [41(h)] that '....the situation so far treating the appellant's physical and mental condition, is likely to be better in Kabul than in the appellant's own village'. Returning him to Kabul in his existing physical and mental condition will not itself be a breach of Article 3 - [41(i)]. It was clear from the background evidence that some psychiatric treatment is available in Kabul. The lack of availability and affordability of itself did not cross the high threshold of severity needed to amount to a breach of Article 3 - [41((k))].
5. He also dismissed the claim under Article 8 of the Human Rights Convention taking into account his physical and mental condition and the relative lack of availability and affordability of medical treatment in Kabul compared with availability and affordability in the UK. He concluded that there was no evidence that serious harm would be caused to the appellant. The public interest in maintaining effective immigration control would normally outweigh respect for his private life.
6. The appellant was removed to Afghanistan in 2008.
7. He arrived in the UK on a second occasion on 22 April 2014 and claimed asylum on 24 April 2014. The respondent refused his asylum and associated human rights claims on 8 May 2019.
8. His appeal against the respondent's decision was dismissed by First-tier Tribunal Judge Moon in a decision dated 30 November 2020. On 15 January 2021 Resident Judge Martin reviewed the Decision and Reasons promulgated, and under powers delegated to her under Rule 32 of the Tribunal (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014, set the decision on

the basis that appellant's representatives emailed the Tribunal the day after the hearing stating that there had been problems with the interpreter not accurately translating the appellant's evidence. That letter had not been referred to by Judge Moon. Resident Judge Martin directed that the 'matter' be reheard at Hatton Cross.

9. Pursuant to that direction the appeal came before First-tier Tribunal Judge SJ Steer on 17 June 2021. The appellant was represented by Mr R Sharma, of counsel.
10. Judge Steer summarised the appellant's claim at [4] of the decision: The appellant maintained that on return to Afghanistan in 2008, he had worked as a mechanic for ECC, a construction company and engineering company responsible for the repair of U.S. army vehicles, and as a result was threatened by the Taliban. He reported the threats to the police, who were not able to protect him. The Taliban kidnapped and detained him for two months during which time he was tortured. He was released on payment of a bribe by his father in law. The Taliban subsequently killed his brother in law.
11. The appellant feared harm from the Taliban if returned to Nangarhar Province. Internal relocation to Kabul would be unduly harsh given that he was wanted by the Taliban due to the previous interest shown in him, his poor mental health and his declining linguistic skills, and that he had no support in Kabul. Alternatively, his removal would be a disproportionate interference with his right to private life under Article 8 of the Human Rights Convention [4].
12. Judge Steer set out the agreed issues to be decided at [7]:
  - (a) Whether the appellant worked for the ECC and was tortured by the Taliban as a result, and that he had a well-founded fear of persecution on return to his home area;
  - (b) Whether he could relocate to Kabul;
  - (c) Whether his removal would be a disproportionate interference with his right to private life. The appellant gave evidence with the assistance of a Dari interpreter [14]. His evidence is summarised from [15] to [18].
13. Judge Steer found that:
  - (a) the appellant is a national of Afghanistan [31];
  - (b) he was not working for ECC in Afghanistan prior to returning to the UK for a second time [41] and
  - (c) he was not detained and beaten by the Taliban [41].
14. She found that the appellant's account in oral evidence, of his knowledge of his release from detention by the Taliban, was vague, inconsistent and implausible [43]. The medical evidence did not support his claim of detention and beatings by the Taliban [44].
15. With regard to the evidence of the appellant's mental health, Judge Steer noted that for his 2014 claim the appellant provided a mental health assessment, dated 24 April 2020, that he was suffering from PTSD due to detention and

beatings by the Taliban in Afghanistan, but there was no reference to the Istanbul Protocol and the diagnosis was provisional [46].

16. The most recent medical evidence, from a consultant, Dr R Swingler, of the department of neurology, Ealing hospital, noted that the MRI scan of the appellant's head was normal, 7 January 2020, and that he still had left occipital headache radiating all over his head, that he had discomfort in the neck and shoulders and a freezing sensation in his hands, and low mood, "perhaps the principal cause of that is that his immigration status is uncertain and he has not really seen his wife and children for six years." Dr Swingler 'opined' that the appellant had a combination of migraine and tension type headache associated with low mood - [46].
17. Judge Steer found that he suffers from migraine and tension type headaches, but there was no cause given for that condition consistent with his account of detention and torture by the Taliban -11(iii)] and [46].
18. She set out his oral evidence including his cross examination from [14-16]. She recorded the detailed submissions of the representatives.
19. She concluded that he is not at risk on return to Afghanistan from the Taliban and does not have a well-founded fear of persecution [47]. It would not be unreasonable for him to relocate to Kabul [48].
20. On the appellant's current account of his medical condition, and the medical evidence provided in 2023 and 2020/2021, there has been no change in his medical condition. He has been suffering from the same medical conditions since June 2003. He was able to work in Kabul and managed his medical conditions previously, and there was no evidence provided as to why that would not be possible on return now [48].
21. There would not now be very significant obstacles to his integration into Afghanistan. Further, the decision is proportionate to the aim of maintaining effective immigration controls and did not breach his right to private or family life [52-53].
22. Two grounds of appeal were raised by Mr Sharma in the appellant's application the permission to appeal, dated 30 July 2021: First, it is contended that in reaching credibility findings, the Judge erred in failing to consider whether any apparent lack of credibility could be impacted by the diagnosed PTSD or other mental health issues and what impact, if any, those difficulties would have on his ability to remember dates within the Gregorian calendar.
23. Secondly, it is contended that question is not whether the appellant's mental health condition is consistent with his claim to have been tortured but rather whether, on account of his mental health condition, he is likely to receive the necessary support and/or be subject to persecution through societal stigma.
24. On 18 October 2021 First-tier Tribunal Judge Barker found that Judge Steer arguably erred in her approach regarding the assessment of credibility and the relevance of the appellant's mental health issues to that assessment. He noted that whilst the challenge in relation to the appellant's Article 3 appeal is less obvious, he nonetheless granted permission in respect of all grounds.

**Consideration of the challenges at error of law hearing**

25. We were initially unable to establish contact with Mr Fripp. He eventually managed to establish telephone contact and we were able to hear his oral submissions clearly. He indicated that he was able to hear all the participants. We were also able to see and hear Ms Isherwood.
26. Mr Fripp referred to his skeleton argument dated 21 December 2021. He contended at the outset that there have been 'important intervening developments' since the last consideration of the appellant's case.
27. The central change has been the collapse of the then Islamic Republic of Afghanistan 2021. The withdrawal of United States support from the government which faced a major offensive by Taliban forces, resulted in many cities falling to the Taliban. President Ghani left Afghanistan and the whole territory is now dominated by the Taliban. The appellant would now face serious adverse treatment if returned, including his absence from Afghanistan in Europe and related 'Westernisation'.
28. He submitted that there is thus 'a degree of artificiality' about the focus on the facts and evidence as at 17 June 2021. He acknowledged however that the immediate question which has to be resolved is whether the First-tier Tribunal Judge materially erred in law by reference to the facts and evidence at that date.
29. Mr Fripp relied on the two grounds of appeal set out above. With regard to ground 1, he submitted that the appellant was a vulnerable witness. Whilst Judge Steer stated at [30] that she took into account the impact of migraine and tension type headaches on his evidence, she did not look at any specific link between the appellant's mental health activities and its effect on his credibility. This did not feature with respect to the credibility assessment.
30. Although no complaint is made of the Judge's summary from [39-40] of the mental health assessment and the evidence associated with that, he again asserted that she does not indicate in the assessment how this 'goes to' the credibility issue.
31. With regard to ground 2 he adopted the submission, noting that Judge Steer found that there had been no change in the appellant's medical condition since 2003. He intimated that the first ground of appeal 'is the stronger ground'.
32. Ms Isherwood submitted that the Judge had undertaken a proper assessment and had 'looked at the evidence in the round' - [41]. She took into account his vulnerability as required under the Presidential Guidance and considered the appellant's tension headaches and any impact it had on his evidence.
33. She submitted that the Judge properly assessed his credibility against all the available evidence including the available ECC evidence. She was entitled to find, taking into account the recent medical evidence, that there was no cause given for his condition consistent with his account of detention and torture by the Taliban.
34. Mr Fripp did not reply.

35. Having heard submissions on the grounds on which permission was granted, we find that they do not disclose any material error of law. Our reasons are as follows:
36. We find that First-tier Judge Steer did have proper regard at [30] to the joint Presidential Guidance Notes No. 2 of 2010 with regard to vulnerable adults and had regard to the impact on the appellant's evidence. She indicated at [41] that she was looking at the evidence in the round.
37. She considered in her assessment not only the oral evidence given but also the screening, asylum interviews and the statements produced.
38. She referred to documentary evidence that the ECC was an American company operating in Afghanistan at the time. She found that the ECC was providing services to the U.S. military as claimed [33]. She noted that the appellant stated in his asylum interview that he started to work for ECC within three months of his return to Afghanistan in 2008, approximately July 2008. He asserted that he continued to work for them for a period exceeding five years until threatened by the Taliban on 23 October 2013. She had regard to his inconsistent evidence regarding the time he worked for ECC, claiming it had been for more than five years; between three and four years and in his witness statement for four and a half years - [34(i)].
39. She had regard to the ECC reference letter dated 25 September 2011 intimating that the appellant had left the company and that the reference was for a future employer.
40. Having fully considered the oral and documentary evidence on this issue, she was entitled to find that the letter dated the cessation of the appellant's employment after three years, which meant that there would have been no reason for the Taliban to threaten him on 23 October 2013 - [33(ii)].
41. She also referred to the inconsistency in respect of the reference letter: it was accepted by his counsel that he gave inconsistent answers in relation to whether he had received the letter before or after employment with the ECC terminated [33(ii)].
42. She referred to the lack of documentary evidence provided with regard to wages by the ECC. The appellant maintained he was given a laminated security pass by the ECC and that when the pass expired he was given a new pass. However she found it inconsistent with that claim that the expiry date on the pass produced was December 2011 and not current with the date on the police report.
43. His counsel at the hearing accepted that the year in the translation of the police report - 2013 - was inconsistent with the year given by the appellant otherwise in his account as to when he left Afghanistan, namely 2011.
44. It was also accepted by his counsel that on the face of it, the appellant's accounts in his witness statement and in oral evidence, were inconsistent, as to how the police report had reached the UK. In oral evidence he said that he left Afghanistan with that report in his possession which was inconsistent with the account in his witness statement that it was sent to him by post - [37].

45. Judge Steer had regard to Adjudicator Boardman's finding that the appellant's evidence was "vague and unpersuasive" and dismissed his appeal 'in its entirety'. Moreover, Adjudicator Boardman found that the medical evidence produced in 2003 with regard to a severe head injury, did not comment as to whether or not the injury was even consistent with the appellant's account of its cause, let alone whether it is only consistent with that account. Nor did the medical report attribute the rest of the appellant's physical and mental symptoms to that injury but states that the appellant himself puts the symptoms down to that injury [38].
46. Judge Steer also considered the mental health assessment produced in the current appeal, dated 24 April 2020, that the appellant was suffering from PTSD, although the assessment did not reference the Istanbul Protocol [39].
47. We find that Judge Steer has undertaken a proper assessment of the appellant's medical condition as part of the evidence as a whole. She referred to and set out the medical evidence adduced, including the evidence of the MRI scan, which was normal. She was entitled to find that his evidence that he started to notice the migraines and tension type headaches associated with low mood about two years earlier, was inconsistent with the medical evidence provided for the 2003 appeal.
48. She considered the current medical report at [46]. The MRI scan was normal. The appellant still had left occipital headache radiating all over his head especially when speaking to people, that he had discomfort in the neck and shoulders and a freezing sensation in his hands and low mood, and that "perhaps the principal cause of that is that his immigration status is uncertain and is not really seen his wife and children for six years". Her finding on the most recent evidence that he suffers from migraine and tension type headaches, but there was no cause given for that condition consistent with the appellant's account of detention and torture by the Taliban is sustainable.
49. Having considered the evidence in the round, her findings at [41], that the appellant was not working for the ECC in Afghanistan prior to returning to the UK for a second time and that he was not detained nor beaten by the Taliban, are sustainable.
50. On the basis of 'the above reasons' she concluded that the appellant is not at risk on return to Afghanistan from the Taliban and he does not have a well-founded fear of persecution due to membership of a particular social group, namely an Afghan with mental health problems [47].
51. We also find that she has properly assessed whether it would be unreasonable for the appellant to relocate to Kabul on account of his medical condition, or whether there would be very significant obstacles to his integration into Afghanistan now.
52. She was entitled to conclude on the evidence and facts found that there had been no change in his medical condition over the years. He has been suffering the same medical conditions since 2003. He was able to work in Kabul and manage his medical conditions previously and there was no evidence of why it would not be possible on his return now [48].

53. He had worked in Kabul after his first return there from the UK. He reconnected with a friend despite having had no contact whilst he was in the UK. There was no plausible reason why he could not locate his uncle on return. He had lived in Afghanistan until he was twenty years old and returned there aged twenty seven. He had reintegrated for a period of at least three years. In 2008 he reconnected with a friend and on his account, found work in Kabul. His mental condition had not changed since he first entered the UK in 2003 and there was no country information as to the unavailability of requisite treatment for those conditions. None of these findings have been challenged.
54. Judge Steer has given sustainable reasons for concluding that the appellant will understand life in Afghanistan; will be able to participate in society and operate on a day to day basis within a reasonable time and build up a variety of relationships to give substance to his private life [48-53]. Nor was there any evidence that he would be subject to persecution or societal stigma.
55. With regard to his appeal under paragraph 276ADE(1)(vi) of the Immigration Rules, she directed herself appropriately at [50]. She found that there were no very significant obstacles to his integration into Afghanistan. She also found that his medical conditions had not changed since he first entered the UK in 2003. She was not referred to any country information as to the unavailability of the requisite treatment for those conditions.
56. She has given sustainable reasons for concluding that the appellant will be able to operate on a day to day basis and within a reasonable time build up a variety of relationships to give substance to his private life [52].
57. The First-tier Tribunal decision contains a detailed and thorough rehearsal of the evidence and submissions, including the applicable law. This was followed by a careful analysis of the evidence and submissions set within the framework of the applicable law resulting in well-reasoned findings of fact.
58. For the reasons given we reject the appellant's challenge: we can identify no error of law in the decision of the First-tier Tribunal in respect of the appellant. The decision dismissing his appeal stands.
59. Mr Fripp is quite right to comment on the change of circumstances that now exist in Afghanistan. It may be that the appellant can show that he is entitled to some kind of protection particularly because he may not be able to establish himself in contemporary Kabul in his present state of health but that is speculation on our part and even if it is well founded it does not make the decision complained of erroneous.

### **Notice of Decision**

60. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.
61. Anonymity direction continued.

Clifford Mailer



Signed

Date 24 January 2022

Deputy Upper Tribunal Judge Mailer