



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

Appeal Number: UI-2022-000068
PA/11360/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 12 July 2022**

**Decision & Reasons Promulgated
On 21 July 2022**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Frost, Counsel instructed by J D Spicer Zeb Solicitors
(140 Kilburn)

For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

**Direction regarding anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

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 his 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.

1. I have made an anonymity order because this is an international protection case, wherein the importance of facilitating the discharge of the United Kingdom's obligations under the Refugee Convention and the ECHR outweighs the principle of open justice.
2. The appellant has appealed against a decision of First-tier Tribunal ('FtT') Judge Bird dated 8 September 2021. Permission to appeal was granted by Upper Tribunal Judge Frances in a decision dated 2 March 2022 and the matter comes before me to determine whether or not Judge Bird committed a material error of law.

Error of law

3. At the beginning of the hearing Ms Cunha on behalf of the respondent accepted that Judge Bird made a material error of law. In my judgment, Ms Cunha was right to make that concession for these reasons.
4. The grounds of appeal do not challenge Judge Bird's decision regarding the Refugee Convention. This is because the appellant was convicted of serious sexual offences against women and Judge Bird concluded that he posed a real risk to the public and as such the respondent was entitled to rely upon the 'section 72 certificate'. Judge Bird concluded that the appellant was not entitled to protection under the Refugee Convention. That has not been appealed.
5. The appellant has only appealed pursuant to Article 3, ECHR. Judge Bird found that the appellant was at risk in his home area of Afghanistan. This was based upon the appellant's claim that he had been previously targeted by the Taliban and would come to the adverse attention of the Taliban if returned to his home area. Although the reasons provided by Judge Bird when making this finding at paragraph 62 are brief, there has been no challenge to this finding by the respondent in the way of a Rule 24 notice or otherwise. It follows that this finding stands.
6. The appellant has, however, challenged Judge Bird's conclusion at paragraph 63 regarding internal relocation, which says this:

"The appellant is however being returned to Kabul where the country information report from the respondent shows that the Taliban may have the capability to track down well known opponents. It is likely that in Kabul where the appellant has no family or support and no personal security arrangements as a young male recently returned from the UK he would draw adverse attention to himself. This is likely to be more so now with the Taliban having taken control of Kabul. I find that it is unlikely that the appellant is someone who will be of any adverse interest to the Taliban."

Ms Cunha conceded that this failed to apply the relevant country guidance (see below) or to apply the well-known risk factors to the

appellant's circumstances. In addition, Judge Bird failed to apply the appropriate test on internal relocation as recently clarified in SC (Jamaica) v SSHD [2022] UKSC 15 at [95], including the endorsement at [98] that the test applies to Article 3 cases as well.

7. I agree that Judge Bird erred in the assessment of internal relocation, and I accept Ms Cunha's concession to that effect.

Re-making the decision

8. I invited Ms Cunha to indicate whether the matter should be adjourned for the respondent to reflect upon her position or whether the matter could be remade today. Ms Cunha confirmed that the matter should be remade today in the light of the country background information and the respondent's position as set out in the *Country-of-origin information report on fear of the Taliban in Afghanistan, April 2022* ('COI). This states as follows:

"2.6.1 Where the person has a well-founded fear of persecution or serious harm from the Taliban, they are unlikely to be able to relocate to escape that risk.

2.6.2 In regard to internal relocation to Kabul, the country guidance case AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 (IAC) (1 May 2020), held that:

'Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera.

'However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the limited options for employment, capability to undertake manual work may be relevant.

'A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return. A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether,

and if so how quickly and successfully, he will be able to build a network' (paragraphs 253(iii) to 253(v)).'

2.6.3 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation taking full account of the individual circumstances of the particular person. While the onus is on the person to establish a well-founded fear of persecution or real risk of serious harm, if there is a safe place the person can relocate to escape that risk, decision makers must demonstrate that internal relocation is reasonable having regard to the individual circumstances of the person.2.6.1 that there can be no internal relocation to escape risks from Taliban in the home area."

9. Ms Cunha made it clear that she had considered the COI and determined that the appellant could not safely or reasonably relocate given the unappealed finding that he faces a risk from the Taliban in his home area and his lack of family or other support in Kabul. Ms Cunha quite properly acknowledged that the COI supported allowing the appeal for that reason on Article 3 grounds only. Mr Frost accepted that this was the proper course.
10. Having considered the FtT's decision as a whole and the findings that are preserved there, together with the COI in its entirety, I accept the respondent's concession that the appeal should be re-made and allowed on Article 3 grounds. This is an appellant who faces risk in his home area and the COI makes it clear that he is unlikely to be able to relocate to escape that risk. I stress that this conclusion is only made in relation to Article 3 because the Refugee Convention ground is no longer before this Tribunal, having been finally decided by the FtT.
11. I therefore allow the appeal on Article 3 grounds only.

Notice of decision

12. The decision of the First-tier Tribunal contains an error of law and is set aside. I remake the decision by allowing the appeal on human rights grounds only.

Signed: UTJ Melanie Plimmer
Upper Tribunal Judge Plimmer

Date: 21 July 2022