



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000682
First-tier Tribunal No:
PA/03138/2020

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 25th January 2023

Decision & Reasons Promulgated
On the 13 February 2023

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RAHMATULLAH JABARKHEL

Respondent/Claimant

NO ANONYMITY ORDER MADE

Representation:

For the Appellant: Mr S Whitwell (Home Office Presenting Officer)

For the Respondent: Mr J Collins (Counsel)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The Secretary of State is the appellant in this matter who appeals against the decision of the First-tier Tribunal

(Judge Sweet)(FtT) promulgated on 28.7.2021 in which the Claimant's asylum and human rights appeal was allowed. I refer to the appellant in the First tier as "the Claimant".

Background

2. The Claimant is a citizen of Afghanistan born on 30.5.1992. He entered the UK as a minor in 2009. His asylum claim was refused but he was granted discretionary leave as a minor. His asylum appeal was dismissed in 2010 before FTJ Blum who found his claim lacking in credibility. The Claimant did not attend that hearing. Thereafter he made a further claim for asylum which was refused on 12.3.2020. Before the FtT his case was argued on the grounds that he feared return to his home area in Nangahar province which was a protected area and that he would be perceived as "Westernised"(relying on the expert report of Dr A Giustozzi) and which would be accentuated by the fact that he was in a relationship with a Romanian national and they were not married. At the date of hearing in July 2021 the situation in Afghanistan had changed with foreign troops leaving and the Taliban exercising more control. It was alternatively argued that the appeal fell to be allowed under paragraph 276ADE or Article 8 ECHR.

Grounds of appeal

3. In grounds of appeal the Secretary of State argued that the FtT erred by failing to give adequate reasons as to how the Claimant was at risk on return to Afghanistan in allowing the asylum appeal.

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Mills (FTJ). In granting permission the FTJ observed that the country conditions in Afghanistan had significantly changed for the worse and it was likely that the Claimant's appeal would succeed.

The UT hearing

5. At the hearing I did not have a copy of the decision of the FtT but was able to read that provided by Mr Whitwell who later forwarded a copy to the FH correspondence team and which has now been provided to me. For the hearing Mr Collins provided a Rule 24 response.

6. In the Rule 24 response it was argued that the FtT had given proper reasons in clear and brief terms (**Budhathoki** (reasons for decisions) [2014] UKUT 00341 (IAC)).

Submissions

7. At the hearing before me Mr Whitwell argued that it was significant that the previous Tribunal in 2010 had found the appellant lacking in credibility which was an issue at large. The FtT focused in the main on the Article 8 issue but as to the asylum appeal provided reasons so slim as to be inadequate which rendered the decision unsustainable. Mr Whitwell conceded that whilst there were difficulties with the decision, the outcome would not be any different given the country conditions.
8. In response Mr Collins contended that it was obvious why the Claimant's appeal had been allowed on asylum grounds because of the significant and unarguable deterioration in the country conditions in Afghanistan [17]. The Claimant lived in the UK and was "Westernised" and had a Romanian partner for whom it would be unreasonable to relocate to Afghanistan; the findings under Article 8 were more than adequate. There was no challenge to the previous FTT decision made in 2010 which was some 11 years old. Whilst the FtT could have provided more detailed reasons in the decision, it was clear that the evidence had been fully considered with reference in particular to the expert evidence and reports (CPIN re Westernisation 17.6.21, Amnesty Reports 13.7.21 on returns, reports of Dr Guistozi, two reports dated 14.7.21 16.7.21). This was a reasons challenge and given the state of the country conditions there was no real need for detailed reasons - the Secretary of State understood the reason why the appeal was successful.

Discussion and conclusion

9. This was an appeal on asylum and human rights grounds where the Claimant was from Afghanistan and at the time the hearing took place there was a significant deterioration in the country conditions with the Taliban about to take control and Western troops were leaving. The decision in my view must be seen in the context of Afghanistan and the position taken by UNHCR guidance re Returns August 2021. The FtT [13] clearly took into account the background and expert evidence provided to him and made clear findings as to the Claimant's situation in the UK and his relationship with a Romanian woman [15]. The FtT [13] found that the situation in Afghanistan had "changed significantly" since the date of the refusal and since the most recent country guidance of **AS** (Safety of Kabul) Afghanistan [2020] UKUT 130 (IAC). It is also clear that the FtT considered the expert reports [14] and reached a conclusion that the Claimant would be at risk and that Afghanistan "was not a safe country to return to"[17-

18]. I am satisfied that looked at in this country specific context there was sufficient reasoning given by the FtT to explain to the Secretary of State why they lost the appeal. I fully acknowledge that the reasons were brief but they were adequate and sufficed as a concise judicial decision. I reject the argument put by Mr Whitwell as to the relevance of the poor credibility finding of Judge Blum in 2010, in light of the fact that the FtT considered this point at [14] and observed that Judge's Blum's decision was unchallenged. The FtT makes it abundantly clear from [17] that he fully accepted the Claimant's submissions made as to the deteriorating situation in Afghanistan; finding that the Taliban presence had significantly increased and the security situation declined and making reference to the expert evidence.

10. The reasoning with regard to Article 8 is more detailed and in my view adequate. It is found that the Claimant would face very significant obstacles on return and at [16] the FtT makes clear findings in relation to his partner.
11. It is of note that both representatives were of the view that if there was any question of "materiality", then the current and further significant changes in Afghanistan make it hard to imagine that this appeal would fail. A view with which I concur.

Decision

12. There is no material error of law disclosed in the decision which shall stand.

Signed

Date 30.1.2023

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 30.1.2023

GA Black

Deputy Judge of the Upper Tribunal