



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

Appeal Number: AA/04459/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 7 October 2013**

**Determination issued
on 9 October 2013**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant identifies himself as a citizen of Afghanistan. His date of birth is recorded as 1 January 1995.
- 2) The respondent accepted at paragraph 34 of a letter dated 26 April 2013 that the appellant "provided a consistent, credible and coherent account" of his reasons for seeking asylum.
- 3) The appellant's account was that his father was a member of the Taliban. He was considering leaving them for the government, for which the Taliban shot him dead, maintaining that he had been killed by the other side. They indoctrinated the appellant and his brother into acting as suicide bombers. He and his brother were at a roadside, equipped and willing to blow themselves up along with an American convoy which was due to travel by.

This plan came to nothing because a friend of their maternal uncle, passing by chance, picked them up and drove them away. Their uncle explained to them the Taliban's lies. The Taliban destroyed the family home and threatened to kill the appellant. His uncle arranged his departure from the country.

- 4) Notwithstanding acceptance of that account, the respondent went on to hold that the appellant could relocate, on the view that there was "little objective evidence that the Taliban have a sophisticated communication network" among its various factions, and that it would not be unduly harsh to expect the appellant to relocate to Kabul.
- 5) On appeal to the First-tier Tribunal the appellant sought to support his case with an expert report by Dr A Giustozzi, dated 18 May 2013. First-tier Tribunal Judge Boyd dismissed the appeal, finding the report insufficient for him to deviate from AK Afghanistan CG [2012] UKUT 00163. The judge noted at paragraph 20 that at paragraph 60 of his report Dr Giustozzi considered that the appellant would represent a low priority target for the Taliban in Kabul, who were likely to consider him only as an opportunity target if they became aware of his presence. As Kabul has a population of over 5 million and the Taliban has only a limited presence, the judge thought that the appellant would be able to live in Kabul without coming to Taliban attention.
- 6) Permission to appeal was granted on the view that the judge's conclusions might be insufficiently reasoned.
- 7) Mr Winter submitted as follows. Paragraphs 6 and 8 of the report, dealing with the development of the Taliban's network, show that it has increasingly sophisticated intelligence operations and a very sophisticated ability to track down individuals. At paragraph 15, there is reference to targeting for assassination of those who defect from the movement. While the report describes the appellant as a low priority, the real question is not whether the Taliban is actively trying to track him down, but the risk of identification, and the consequences if he is identified. The report says that he might be at risk as a possible liability to the Taliban, and there is also the obvious possibility, given the nature of the Taliban, that they would not tolerate someone who has defied them or frustrated their plans. AA Afghanistan CG [2012] UKUT 00016 is more relevant than AK. In AA it was accepted for the appellant that the Taliban would not actively be seeking to track him down within Kabul, but his fear was of a "chance encounter with the Taliban". Evidence from Dr Giustozzi in AA's case showed that to be a real risk. At paragraph 131 the Tribunal accepted such a risk. AA was an unattached child who had lost all contact with his family, which helped to make his case, but it turned on a similar risk to the present appellant, not only on the appellant's age. This appellant is over 18, but not by much. The summary of the facts in AA's case at paragraph 1 suggests that he was an individual against whom the Taliban had perhaps less reason to hold a grievance than against this appellant. The judge erred by treating this case as if it turned

on active targeting by the Taliban. It ought to have been decided on the real risk of a chance encounter, given the likely circumstances on return to Kabul, along the same lines as AA.

- 8) Each case turns ultimately on its own facts and circumstances, but I agree that this is a case which has strong parallels with, and is perhaps even stronger than, AA.
- 9) The judge erred in his view that this was a case which in order to succeed required departure from AK. AK was decided on the general viability of Kabul for internal relocation. This case, although it does not deal with an unattached child, has more in common with the case of AA which succeeded for the reasons quoted above.
- 10) Based on the full concession of credibility by the Secretary of State, and on the expert report, with its evidence of a Taliban network, the conclusion properly to be drawn was that there was a real risk, not of personal tracking, but of a chance encounter leading to personal identification. The appellant could not be expected to relocate to Kabul.
- 11) The determination of the First-tier Tribunal is **set aside**. The following decision is substituted: the appeal, as brought by the appellant to the First-tier Tribunal, is **allowed** under the Refugee Convention.
- 12) An anonymity order was made in the First-tier Tribunal. Neither side made any submission about that matter, and it remains in place.



8 October 2013
Judge of the Upper Tribunal