



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/08108/2012

THE IMMIGRATION ACTS

Heard at Bradford  
On 15 November 2013

Determination Sent  
On 5 December 2013

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Before

MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE ROBERTS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

WALI KHAN

Respondent

Representation:

For the Appellant: Ms R Pettersen, Senior Home Office Presenting Officer.  
For the Respondent: Mr S Tetley, instructed by Parker Rhodes Hickmotts Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals to this Tribunal against the determination of First-tier Tribunal Judge G A Black allowing on human rights grounds an appeal by Wali Khan (the "Claimant") against a decision to remove him as an illegal immigrant.

2. The Claimant is a national of Afghanistan. Following a previous decision by First-tier Tribunal Judge A M Black he is to be treated as born on 1 January 1989. He came to the United Kingdom when he was about 17. He has been here since then, and has received the help to which he was entitled as a child in need and subsequently as a former relevant child. He is not a refugee.
3. His claim before the First-tier Tribunal was that his removal from the United Kingdom would be a breach of his rights under Article 8 of the European Convention on Human Rights, primarily because removal would deprive him of the benefits he receives as a former relevant child, including access to university education and assistance with housing. In her submissions to the First-tier Tribunal, Miss Khan (who does not represent the Claimant before us) is recorded as saying that the Claimant “was entitled to the full obligations under these [Children Act 1989] provisions until the age of 25 years”. Earlier, the judge had noted that ‘it was conceded that the Children Leaving Care Act provides assistance up to the age of 25 years’. At paragraph [58] the judge says this:

“Turning to the Children Leaving Care provisions, it is clear that the appellant has been given support and assistance in accordance with the duties arising under Section 17 of the Children’s Act [sic] incorporated into the Pathway Plan. As submitted by Ms Khan it is clear that the respondent accepted and met her obligations under this legislation thus far. The Children Leaving Care Act specifically extends parental duties and responsibilities until the age of 25 years. There is no reason for such obligations to be cut short for this appellant as to do so would be an arbitrary decision and a failure to meet the commitments expressed in statute and explicitly applicable to asylum seeking children. I propose to deal with this issue in the context of the appellant’s Article 8 rights. This was not an issue that was raised before or dealt with by Immigration Judge A Black. It is a strong argument in the appellant’s favour and which must properly be considered in the balancing exercise. The appellant as an unaccompanied minor has been provided with support by the local authority and the authority has acted as corporate parent for the appellant. The appellant has an expectation that having been treated as a vulnerable child and given support including educational opportunities, accordingly that support and care should continue until the age of 25. I accept that beyond that age the appellant would no longer be able to avail himself of assistance and/or any obligations under the Children’s Act, notwithstanding that by that stage he would not have completed his planned studies. I conclude that the respondent has accepted responsibility for her obligations as a corporate parent and under Section 55 of 2009 Act. This duty and responsibility is of significance and tips the balance as regards proportionality in the appellant’s favour under Article 8. I direct that the respondent therefore grant the appellant a further period of discretionary leave to remain until the age of his 25<sup>th</sup> birthday.”

4. It is that conclusion against which the Secretary of State appeals, and has permission on the ground that it is arguable that the judge placed excessive weight on the statutory provisions cited.

5. It seemed to us appropriate to attempt to identify precisely what those provisions were. Despite assistance from Ms Pettersen, Mr Tettey and the internet via the latter's tablet, we have had some difficulty in doing so. The attaining of the age of 25 is relevant for a person pursuing education or training for the purposes of s 23CA of the Children Act, but it is difficult to see how that section can be what the judge was referring to, as it was not inserted by the Children Leaving Care Act 2000 and cannot realistically be described as extending parental duties and responsibilities until the age of 25 years in any general sense. For some, at least of the other duties under the Children Act, the final cut-off is the person's 24<sup>th</sup> birthday, and it is noteworthy that the evidence before the judge was that the local authority regarded its duties as extending, at latest, to the Claimant's 24<sup>th</sup> birthday. There does not appear to have been any assessment of the specific needs of the Claimant on the basis that s 23CA applied to him and we have difficulty in seeing, on the material before us, that any duty to provide assistance under s 23CA(5) has been shown to have arisen. A further point is that if duty does arise, it does not necessarily cease at 25: see subsection (6).
6. The matter therefore remains somewhat mysterious. We suspect that the judge erred in law on the effect of the statutory provisions: certainly nobody was able to provide to us any route by which she could have reached her interpretation or description of them.
7. The question whether she placed too much weight on them is therefore equally difficult to answer; but we consider that if the provisions were as she said she failed to appreciate that access to benefits of any sort will typically not be sufficient to justify a decision that removal of them, so causing their loss, will be a disproportionate interference in Article 8 rights. Further, the leaving care provisions have as their aim and justification the need to cover the transition between being in care and leading an independent life in the United Kingdom: the particular provisions necessary to cover a transition to leading an independent life in Afghanistan were not the subject of evidence and it is simply not arguable that of itself the lesser of the former is a disproportionate interference in the life of a person who needs, if anything, the latter.
8. We are therefore inclined to conclude that the judge erred in law in her weighing of the factors going to proportionality.
9. However, Ms Pettersen has come nowhere near showing that on the correct interpretation of the law and an appropriate weighing of the facts, an article 8 appeal ought not to have succeeded. After all, the Claimant has been here for a considerable time, and is the beneficiary of a considerable investment of taxpayers' money in his higher education: these again are not determinative factors, but they tend to show that the assessment of article 8 in this case is a complex matter: set against that is the fact that the judge's conclusion was limited to the period before 1 January 2014, now only six weeks away, during which period it is exceedingly unlikely that a proper assessment could be re-made (or indeed that the Secretary of State could actually remove the Claimant if we allowed her appeal).

10. As we indicated at the hearing therefore, and with a measure of agreement from the parties, we will dismiss the Secretary of State's appeal. In doing so we make it clear that the effect of the First-tier Tribunal's decision is only that the Claimant is entitled not to be removed before 1 January 2014. Any relief after that date he will need to secure by application; and if he does nothing further, the Secretary of State will, we think, be entitled to issue a further decision against him after that date.
11. Appeal dismissed.

C M G OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 3 December 2013