



IAC-AH-DN-V1

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

Appeal Number: AA/07176/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17th December 2015**

**Decision & Reasons Promulgated
On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**YK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A de Ruano

For the Respondent: Mrs S Sreeraman, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Pears of the First-tier Tribunal (the FtT) promulgated on 26th August 2015.
2. The Appellant is a male Afghan citizen and is 19 years of age. His appeal was considered by the FtT on 13th August 2015. There had been a previous appeal hearing on 14th November 2014 which had resulted in Judge Clapham of the FtT dismissing the appeal on asylum grounds, but

allowing the appeal on human rights grounds in relation to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).

3. The Secretary of State was given permission to appeal to the Upper Tribunal and on 20th March 2015 Deputy Upper Tribunal Judge Zucker set aside the decision of the FtT and remitted the appeal back to the FtT, to be considered by a judge other than Judge Clapham. Directions were given that the issues to be considered related to Article 8, in relation to the Appellant's claimed family life in the UK, and the issue of internal relocation within Afghanistan, and whether or not it would be unduly harsh for the Appellant to relocate to Kabul. The directions stated that the credibility findings in respect of the asylum claim should be preserved.
4. In a decision promulgated on 26th August 2015 the FtT found that the Appellant had a reasonable option of relocation to Kabul and that this would not be unduly harsh.
5. The FtT considered paragraph 276ADE(1)(vi) in relation to the Appellant's private life, and concluded that he had not shown that there would be very significant obstacles to his integration into Afghanistan.
6. The FtT found that the Appellant had not established family life that would engage Article 8 with his adult sister and her family. There was no dependence beyond normal emotional ties.
7. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by Judge Grant-Hutchison of the FtT and I set out below the grant of permission which summarises the application, and confirms that permission to appeal was granted on limited grounds:
 - "1. The Appellant seeks permission in time to appeal against a decision of the First-tier Tribunal (Judge Pears) promulgated on 26th August 2015 whereby it dismissed the Appellant's appeal against the Secretary of State's decision to refuse the Appellant asylum.
 2. It is submitted that as there have been developments in the case of R (on the application of) Naziri and Others v SSHD (JR - scope - evidence) IJR [2015] UKUT 437 (IAC) since the date of hearing and before the decision was promulgated to grant the Appellants interim relief in the form of a stay on removal of all 30 Appellants and in view of the general security situation in Afghanistan there is at present a reasonable degree of generic risk on return and that the risk of harm under Qualification Directive 15(c) for returnees remains unresolved following the grant of permission to appeal.
 3. The grounds disclose no arguable error of law because (a) the judge can only consider matters as at the date of hearing; (b) there was no request made to reconvene the hearing before the judge promulgated his Decision and Reasons and (c) a stay on removal for others does not mean to say these Appellants will be successful. Each case has to be dealt with on its merits.
 4. However it is arguable that the judge has misdirected himself (a) by not making adequate findings in relation to the expert report and (b)

by not making adequate findings in relation to why there would not be very significant obstacles to the Appellant's integration in Afghanistan under paragraph 276ADE(vi) of the Immigration Rules when he has no family support in Afghanistan as his family live in the UK or Pakistan and taking into account he is only 19."

8. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision should be set aside.

The Appellant's Submissions

9. Mr de Ruano relied upon the grounds contained within the application for permission to appeal, and paragraph 4 of the grant of permission. I was asked to conclude that the FtT had made inadequate findings in relation to the expert report and the FtT should have made more specific findings on that report and the FtT had not stated specifically which conclusions of the expert report were not accepted, and no reasons were given for not accepting those conclusions.
10. In relation to paragraph 276ADE(vi) Mr de Ruano pointed out that in paragraph 46 the FtT had simply stated that the Appellant had not shown there would be very significant obstacles to his integration into Afghanistan, and there was inadequate reasoning given for that conclusion.

The Respondent's Submissions

11. Mrs Sreeraman stated that she was relying upon a Rule 24 response. Neither the Tribunal nor Mr de Ruano had received this response. Mrs Sreeraman was unable to provide an unmarked copy, and therefore summarised the contents. It was submitted that the FtT had adequately analysed the expert report and had clearly engaged with the contents of the report, and I was referred in particular to paragraph 34 of the decision.
12. In that paragraph the FtT commented upon the contents of the report, and reached a sustainable conclusion in paragraph 40, that the expert report was based on a number of hypothetical assumptions, and not accepted by the FtT.
13. In relation to paragraph 276ADE, the FtT had taken into account the country guidance case AK Afghanistan CG [2012] UKUT 00163, which indicated that in general, return to Kabul would not be unsafe or unreasonable. The FtT had been entitled to take this into account, together with other background evidence referred to at paragraphs 32 and 33, and it had been open to the FtT to conclude that there would be no very significant obstacles to the Appellant's integration into Kabul.

The Appellant's Response

14. Mr de Ruano pointed out that AK was decided as long ago as 2012, and submitted that the situation in Afghanistan had changed significantly since publication of that case. The expert report specifically considered difficulties that the Appellant would face in Kabul. I was asked to note that the Appellant had lived in Pakistan for most of his life. With reference to paragraph 34, Mr de Ruano submitted that comments by the FtT were not in fact findings, and the findings were contained in paragraph 40.
15. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

16. I find no material error disclosed in the consideration by the FtT of the expert report. The FtT recognised in paragraph 28 that the expert report was relied upon by the Appellant in relation to internal relocation to Kabul. I find that the FtT decision indicates that the FtT clearly engaged with the contents of that report.
17. The FtT also considered other background material to which it was referred, and this is evident from reading paragraphs 32 and 33. The FtT also considered the relevant country guidance case, that being AK Afghanistan and the headnote to that decision is set out in paragraph 9. The FtT was aware of the decision made by the Upper Tribunal in Naziri which considered a report and other evidence which postdated AK. The FtT was entitled to note that the Upper Tribunal in Naziri drew no basis for departing from the country guidance decision in AK.
18. In paragraph 34 the FtT summarises the expert report and comments upon it. The comments take the form of the FtT wondering whether the expert has reached a correct conclusion that it is the official position of the Afghan government that the country is not safe for returning failed asylum seekers, and questioning whether the appropriate test has been applied by the expert. It is correct that this paragraph does not contain specific and clear findings.
19. However the FtT decision must be read as a whole, and taking into account paragraphs 40-42, I find that it is clear that the FtT has rejected the conclusions by the expert, that the Appellant would be at risk if returned to Kabul. In those paragraphs the FtT finds the expert report is based upon a number of hypothetical assumptions, and the FtT does not accept "some of his conclusions and views."
20. The FtT does not specify exactly which conclusions and views are not accepted, but in my view it is clear from reading the decision, that the FtT does not accept the expert report's conclusion that the Appellant would be at risk, or that it would be unduly harsh for him to relocate to Kabul.
21. The FtT has a duty to make findings and give adequate reasons for those findings. This may be summarised in the headnote to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) which is set out below:

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they would have lost.”

22. I conclude that the FtT has fulfilled the duties set out above. It is clear that the FtT does not accept the conclusions in the expert report. The FtT found the report was based upon a number of hypothetical assumptions. The FtT noted that the Appellant did not fall within the risk categories such as individuals from dangerous provinces, or those with serious illnesses, and that he was not a child or a lone female. The FtT described the Appellant as a fit young man who speaks English and who has some expertise in his chosen field.
23. Having considered the decision in the round, I find that adequate findings were made in relation to the expert report, and sustainable reasons given for those findings.
24. I then turn to consider paragraph 276ADE(vi) and it is correct that the conclusion in paragraph 46 of the FtT decision, that the Appellant has not shown very significant obstacles to his integration into Afghanistan is brief, if read in isolation.
25. However when the decision is read as a whole, I conclude that adequate findings have been made and adequate reasons given for reaching the conclusion that there would be no very significant obstacles to the Appellant’s integration into Kabul.
26. At paragraph 42 of the decision the FtT has considered Januzi which is a leading authority on the option of internal relocation. The FtT concludes in that paragraph that relocation to Kabul would not be unduly harsh. In paragraph 30 the FtT set out in some detail the Appellant’s oral evidence, and noted his evidence that he had only previously lived in Kabul for about two weeks in 2011 when he was 14 years of age.
27. In assessing whether there would be very significant obstacles, the FtT has taken into account the Appellant’s relatively young age, and his evidence that he does not have family in Kabul. The FtT has also taken into account that he is a fit young man with no medical difficulties who can speak English. The FtT has considered the background material to which it was referred, and there is reference to this in paragraphs 32 and 33 of the decision. This background material is more recent than AK.
28. The FtT was entitled, because AK is a country guidance decision, to take account of the finding in that decision which is summarised in the headnote on country conditions in Afghanistan. The FtT sets out subparagraph (iv) in which guidance is given that if the Respondent asserts that Kabul City would be a viable internal relocation alternative, it is necessary to take into account, both in assessing safety and

reasonableness, not only the level of violence in the city, but also the difficulties experienced by that city's poor and also the many internally displaced persons living there. The guidance confirms that these considerations will not in general make return to Kabul unsafe or unreasonable.

29. The FtT considered the individual circumstances of the Appellant, taking into account the preserved findings from the earlier decision, which are summarised in paragraph 24. The FtT, as I have previously stated, gave adequate reasons for not accepting the conclusions of the expert report, and it is clear that the FtT did engage with background evidence which postdated AK, and also took into account the guidance in AK, and concluded that the Appellant had not proved that he would encounter very significant difficulties on his integration into Kabul.
30. In my view the FtT took into account all the relevant evidence placed before it, and did not omit to consider any relevant evidence, and did not take into account and attach weight to irrelevant factors.
31. Findings made in relation to paragraph 276ADE when the decision is read as a whole, are clear, and are supported by adequate reasoning.
32. The grounds submitted on behalf of the Appellant disclose a disagreement with the findings made by the FtT, but they do not disclose a material error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside.

I do not set aside the decision. The appeal is dismissed.

Anonymity

The First-tier Tribunal made an anonymity direction, and I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 17th December 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee was paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date 17th December 2015

Deputy Upper Tribunal Judge M A Hall