



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00101/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 17<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR KHALED BEHBODI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss S Caseley, Counsel

For the Respondent: Miss J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Afghanistan born on 24<sup>th</sup> April 1998. His immigration history is set out at Annex A of the detailed reasons for refusal. However, it is noted that he left Afghanistan on the tenth to twelfth day of Ramadan in 2012 and he arrived in the UK clandestinely on 20<sup>th</sup> September 2013 and claimed asylum the following day. The Appellant was granted discretionary leave to remain until 21<sup>st</sup> October 2015. On 20<sup>th</sup> October 2015 the Appellant's application for further leave to remain was lodged. This was refused by Notice of Refusal dated 17<sup>th</sup> December 2015.

2. In refusing the Appellant's application the Secretary of State noted that his claim for asylum was based on his maintained fear that if returned to Afghanistan he would face mistreatment at the hands of the Taliban due to his imputed political opinion.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Wilsher sitting at Taylor House on 11<sup>th</sup> November 2016. In a decision and reasons promulgated on 20<sup>th</sup> December 2016 the Appellant's appeal was dismissed on all grounds.
4. On 3<sup>rd</sup> January 2017 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended
  - (a) that the judge had failed to make a finding on internal relocation to Kabul.
  - (b) Had made material misdirections in law relating to the requirement of corroboration.
  - (c) Had failed to make a finding on whether the Appellant's alternate asylum/human rights claims were established.
5. On 13<sup>th</sup> January 2017 First-tier Tribunal Judge Grant-Hutchison refused permission to appeal.
6. On 25<sup>th</sup> January 2017 renewed Grounds of Appeal were lodged to the Upper Tribunal. On 22<sup>nd</sup> February 2017 Upper Tribunal Judge Jordan granted permission to appeal. Judge Jordan noted that even if the findings of fact made by the First-tier Tribunal Judge were sustainable the judge had found that the Appellant could return to his home area and that he did not therefore need to consider whether internal relocation was a reasonable option open to the Appellant. However, Judge Jordan noted that the First-tier Tribunal Judge also found that the Appellant's home area was Kota village in the Jalrez District of Maydan Wardak Province and recited without rejecting it that the Jalrez District in Wardak Province had fallen to the Taliban in July 2015. Consequently, he considered that it was arguable that the First-tier Tribunal Judge had erred in finding that the Appellant could safely return to an area under Taliban control even though the Appellant failed to establish his claim of being of specific interest to the Taliban in the past. As the judge did not then go on to consider internal relocation if he were wrong as to the risk in the home area (as arguably he should) Judge Jordan considered that the determination was left incomplete.
7. On 8<sup>th</sup> March 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. Therein it is submitted that the Appellant's complaint that the First-tier Tribunal failed to take into account the fact that the Taliban is now in effective control of the Appellant's area wholly represents the EASO 2016 Report and the First-tier Tribunal Judge's reasoning. There is within the Rule 24 response reference to the EASO Report which I considered. Further, it was contended that at paragraphs 19 and 20 the First-tier Tribunal Judge comprehensively assessed the indiscriminate risk in Jalrez by reference to the Appellant's own evidence and it was submitted that in the light of this evidence and the judge's reasoning that it was perfectly open to the First-

tier Tribunal Judge to conclude at paragraph 21 that the Appellant was not facing an Article 15(c) risk in his home area.

8. It was on that basis that the appeal came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. I found that there was solely restricted to the analysis of whether there was an Article 15(c) risk in the Appellant's home district and whether or not internal relocation to Kabul would be either unduly harsh or unreasonable. On that basis I retained the case in the Upper Tribunal. All other findings of the First-tier Tribunal Judge were to stand.
9. The matter subsequently got adjourned on two occasions as the re-hearing was awaiting the country guidance authority in *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)*.
10. It is on that basis that the appeal comes before me for rehearing. It is on that basis alone. I note the following factors firstly, that on 13<sup>th</sup> June 2017 Upper Tribunal Judge Perkins rejected an application for the provision of oral evidence. Secondly the Appellant's instructing solicitors prior to the restored hearing initially sought an adjournment to raise a new matter namely to rely on the Appellant's family life with his fiancée but commented that they did this on the basis that they had as yet not been able to take instructions from the Appellant's fiancée.
11. The Appellant is represented by Miss Caseley who is extremely familiar with this matter having appeared in previous proceedings. The Secretary of State appears by her Home Office Presenting Officer Miss Isherwood. As a preamble to the proceedings, Miss Caseley advised that the indication that the Appellant sought an adjournment to raise the issue of family life with his fiancée was not being proceeded with.

## Country Guidance

12. Country guidance is now to be found in *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)*. The headnote of that authority gives the appropriate short form guidance.

### *"Risk on return to Kabul from the Taliban"*

- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

### *Internal relocation to Kabul*

- (ii) *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 connection or support network in Kabul.*

- (iii) *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.*
- (iv) *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.*
- (v) *Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.*

#### *Previous Country Guidance*

- (vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*
- (viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision."*

#### **Submissions/Discussion**

13. Miss Caseley acknowledges that the matter before me is to be dealt with by way of submission and that the relevant factor is whether there is cogent evidence to depart from country guidance. She submits that the Appellant's account is contained within his six witness statements and that he would be at risk of treatment contrary to Article 15(c) on return to Maydan-Wardak Province and therefore argues for a departure from AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 in view of the available expert and background evidence which demonstrates that the Taliban are in some, or effective, control of his home province.
14. She further submits that the Appellant cannot internally relocate to Kabul due to his age, lack of family assistance and poor humanitarian conditions. I have read the full skeleton and the submission made that the Taliban is in the control of Maydan-Wardak Province means that, to the lower standard, the Article 15(c) threshold is met. I am referred to paragraph 17 of the skeleton which refers to a substantial amount of objective evidence relating to conditions in Maydan-Wardak and in addition to the updated report of Mr Foxley where he addresses the current position with regard to

Taliban control of the province. He submits that the new country guidance authority does not address the Article 15(c) risk in the province and that AS only deals with the issue in Kabul. It is her contention that the threshold is met.

15. She further contends that it is not possible nor practical for the Appellant to return from Kabul to the Appellant's home area and that it has been reported in the long war journal that the main roads to Maydan-Wardak Province have been cut off by the Taliban.
16. So far as the relocation to Kabul is concerned she submits that internal relocation is unreasonable and relies on three grounds referring to the headnote of AS. Firstly, she submits that the Appellant's age is a relevant factor and that he was extremely young when he left Afghanistan being only 13 to 14 and that he would not be familiar with the culture having been in the UK for five years. She contends he would be vulnerable as a result due to his age and points out that within the context of AS, Mr Foxley in his report has addressed this issue. I have considered this.
17. Secondly, she refers to the nature and quality of connections that the Appellant has to Kabul and/or Afghanistan pointing out that there is no evidence of contact with the Appellant's family and family tracing has not been successful. She acknowledges that the previous judge had accepted that the Appellant had been in contact with his family but asked me to find that his father has died and consequently the only evidence is that he might have a mother who can help. However, she submits that country guidance implies that it would not be open to his mother to provide a support network.
18. Thirdly she refers to the language, education and vocational skills of the Appellant. Again, she relies on the report of Mr Foxley. She points out that the Appellant is now integrated into British society and submits that the skills he has acquired are not suited for the types of job he would be most likely to be offered if returned. She submits that as a young person with no family in Kabul, no adult experience of living in the city and few relevant skills that the Appellant would have a very poor prospect of finding stable work. She contends he would be discriminated against as an enforced returnee and will be likely to face chronic unemployment and that his economic vulnerability would also make him vulnerable to attempts at recruitment by anti-government elements. She asked me to allow the appeal.
19. In response Miss Isherwood submits that the evidence in the new bundle provided by the Appellant's representative seeks to go behind AS and that she will make no further submission on this particular point. She focuses on the position as set out regarding return to Kabul. She reminds me that the Appellant went to Kabul and worked in his maternal uncle's hotel and that that was his evidence before the First-tier Tribunal and that it was found that he had regular contact with family in Afghanistan. She reminds me that the Appellant is the eldest of seven, that he went to school every day and has learnt about mechanics. She submits that he has skills and that he would not be returning as a child and that he would be returning as an adult with skills who has family in Kabul based on his own evidence. She submits he falls within a person who would be perfectly returnable to Kabul as set out within the headnote to AS. In

addition, turning to the main body of AS, she reminds me that at paragraphs 212 to 213 the decision states that young adult males can form their own support networks and that it has been previously found, so far as a claim pursuant to Article 15(c) is concerned, generally speaking the threshold of succeeding is not reached on returning an Appellant to Kabul unless certain criteria are met which she submits that this Appellant does not have.

20. She points out a substantial number of paragraphs from AS particularly paragraph 20 which sets out details of the population of Kabul and the findings and reasons section set out at paragraph 172 onwards. She submits that when all these paragraphs are looked at and by considering the headnote against the factual matrix of this case, this is an Appellant who cannot succeed as a matter of law. She asked me to dismiss the appeal. In brief response Miss Caseley indicates and reminds me that she is relying on Mr Foxley's two reports and that he has considered AS and that support networks are not appropriate due to the Appellant's unfamiliarity with the city and the age upon which he left.

## Findings

21. I start by reminding myself that the basis upon which this matter has been reheard solely relates to whether or not the Appellant can or cannot relocate to Kabul. However, Miss Caseley has initially set off to address the issue as to whether he can return to his home province. For the sake of clarity and continuity I am satisfied that there is sufficient evidence to show that due to the presence of the Taliban in the Appellant's home province and the risk that he would face in having to return there by road, that the threshold for return to that province and Article 15(c) is met.
22. However, the main thrust related to whether or not the Appellant could return to Kabul. AS is authority for saying that save in certain circumstances as set out therein 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.
23. I accept that it is necessary to look at the particular circumstances of every individual applicant and this I have done. I am not satisfied for reasons given herein that the Appellant falls within a category that would not make it practical or possible for him to return to Kabul. I accept that whilst an adult the Appellant is not of a substantial age and that merely by passing his 18<sup>th</sup> birthday he does not cross a threshold which would make return appropriate. However, this is an Appellant who on his own evidence has spent time in his youth in Kabul and has worked there.
24. Further whilst he has been in the UK for some five years, that does not mean that he is westernised to an extent that he cannot return or he does not have family for the means of creating a network in Kabul. It is accepted in AS that single males can create such networks. In addition, this is an Appellant who has family in Kabul even if he is at present unable to know his mother's whereabouts and even if I accept that his father is deceased. In addition to this, this is an Appellant who has education and vocational

skills which would, despite the submissions of Miss Caseley, enable him to seek out employment.

25. It seems to me that guidance given in *AS* sets out very clearly the sort of person who would be capable of return and re-establishing themselves in Kabul and that there is no basis whatsoever for the arguments put forward by Miss Caseley that will negate such conclusions. Indeed, taking it to a higher level if this Appellant were to be able to succeed then it seems to me highly probable that the vast majority of Appellants would succeed and that the scope of people who could return to Kabul would be limited in the extreme. That is clearly neither the intention nor rationale of the judgment.
26. In such circumstances wholly on the basis that the Appellant can be returned to Kabul, the Appellant's appeal fails and the appeal is dismissed.

### **Notice of Decision**

The Appellant's appeal is dismissed on the basis that the Appellant does not meet the threshold requirement of Article 15(c) to the extent that he would not be able to relocate on return to Kabul.

No anonymity direction is made.

No application is made for a few award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris