



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

Appeal Number: PA/11918/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 14 September 2018**

**Decision and reasons Promulgated
On 03 October 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**NAJOB [R]
(no anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Tarlow, Senior Presenting Officer

For the respondent: M J Gajjar of Counsel

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a national of Afghanistan born on before April 1993. However, for the sake of convenience, I shall continue to refer to the parties as they were referred to before the proceedings in the First-tier Tribunal.

2. The respondent appeals to the Upper Tribunal against the decision of First-tier Judge Dineen promulgated on 22 June 2018 allowing the appellant's appeal against the decision of the respondent November 2017 refusing his claim for asylum and humanitarian protection and to remove him from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999.
3. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 16 July 2018 stating it is arguable that the Judge who heard the case on December 2017 decision was not promulgated until June 2018. In that time, the country guidance case of Afghanistan had been reported, namely, **AS (safety of Kabul) Afghanistan CG [2018] UKUT 118**. The permission Judge noted that there is nothing to indicate in the decision that this country guidance case had been considered. The First-tier Tribunal Judge found the appellant credible but failed to consider internal relocation to Kabul.
4. At the hearing, Mr Tarlow said that the decision needs to be remade in light of the case of **AS**. Mr Gujjar submitted that there is no material error of law as the decision of **AS** has been considered in substance even if it was not cited in the decision.
5. The Judge found the appellant was at risk his return to Afghanistan as recognised by the Refugee Convention. He stated that the key issue in the appeal is whether the appellant is credible about his treatment from the Taliban. He stated that he appellant worked as a lorry driver and this is not disputed by the respondent. The Judge relied on the expert report which stated that the appellant's account is consistent in the context of Afghanistan. Noted that at paragraph 18, the expert states that the haulage firms concerned are regularly mentioned the media, and that nearly all major construction firms work for the government. The Judge accepted that the appellant was apprehended by the Taliban as it accords with the expert evidence as to the Taliban practice of kidnapping and targeting of civilians and the attacking of convoys and haulage firms. The Judge accepted that because of the nature of his job, the appellant would have been useful to the Taliban if he could be caused by threats to himself and his family to comply with their demands.
6. The Judge failed entirely to consider whether relocation to Kabul was an option available to the appellant. The Judge made a material error by not considering the country guidance case in respect of possible relocation to Kabul even if he found the appellant credible.

7. I therefore set aside the decision, in part, of the First-tier Tribunal Judge and preserve his findings as to the credibility of the appellant. The only issue to be determined at the renewed hearing at the First-tier Tribunal before any First-tier Tribunal Judge other than Judge Dineen is whether taking into account the recent country guidance case of **AS**, relocation to Kabul is a viable option for this appellant.

Decision

The appeal to be remitted to the First-tier Tribunal

Signed by,

A Deputy Judge of the Upper Tribunal

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Ms S Chana

Dated this 26th day of September 2018