



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12408/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17 August 2018

Decision & Reasons Promulgated
On 10 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

FN

Applicant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms E. Mitchell, Counsel, instructed by Sutovic & Hartigan
Solicitors

For the respondent: Mr T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

Introduction and issues

1. I shall refer to FN as “the appellant” as I did in the decision I made when finding that the First-tier Tribunal Judge had made an error of law.

2. The issue is a narrow one. It was accepted by the Secretary of State that the appellant had a genuine subjective fear of return in his home area, that is, Qalaye Zaman Khan, described by Dr van Engeland as a self-contained area of Kabul that used to be a village but that has kept that village tradition of living together as a community.
3. The sole issue is whether there is the option available to the appellant of locating himself in another part of Kabul. Such a solution was potentially a reasonable one if it were not unduly harsh in the sense that it would deprive the appellant of the basic amenities of living as a human being.
4. The UNHCR guidelines on internal relocation recognise that, in an individual's particular circumstances, '*factors capable of ensuring the material and psychological well-being of the person, such as the presence of family members or other close social links in the proposed area*' may assume particular importance; and that if an individual '*would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life.*'
5. As a minor, this required it to be established that if he were returned to Kabul, his family members were able to offer a support network to him.

The significance of the appellant reaching his majority

6. The appellant was born on 12 March 2000. The remaking of the decision was fixed to take place on 26 January 2018 at which point the appellant would have remained a minor. It was adjourned until 17 August 2018 by which time the appellant had reached his majority.
7. There is a *legal* distinction between a minor and an adult because minors are subject to different and understandably more protective considerations derived from their age alone such that it would not be lawful to remove a child without suitable protection. These are to be found in statute, the Immigration Rules, in Home Office policies and case law. An adult does not have the same *legal* safeguards. Hence, a 17-year-old may be highly intelligent, independent and quite capable of forming an independent existence but he remains a child and, for that reason alone, must be afforded greater protection. In contrast, a young man aged 18 cannot rely on his age alone as affording the same legal protection as that of a minor. His protection needs are based on the case-by-case analysis which all claimants are entitled to receive.
8. There is, in this sense, a clear and distinct line between a minor and an adult but in practice no such 'bright line' exists in that the vulnerability that existed which afforded the minor *automatic* protection as a minor will continue to exist with decreasing significance as the individual becomes older and, probably but not necessarily, ceases to be vulnerable. Hence, if an actual need for protection

exists as a minor approaches adulthood, it will not cease at his 18th birthday. There is no bright line. But the legal landscape will have changed. Ms Mitchell's submissions that the appellant's needs and vulnerability remain unchanged by the fact of his 18th birthday is true but subject to the gloss that he cannot rely upon his age alone to establish vulnerability.

9. It follows that it is immaterial that he would have been treated as a minor had not the hearing been adjourned to enable the Tribunal to consider the awaited Country Guidance on Afghanistan. If an adult is found not to be in need of protection, it is irrelevant that, in the past, he would have been entitled to the greater protection as a minor. When a minor is granted discretionary leave to remain until his 18th birthday, he cannot later complain, as an adult, that he would have benefited from his asylum claim being determined earlier. International protection afforded to adults is actual, not theoretical.

The matters for consideration

10. The resolution of the issue I have identified requires three discreet areas of consideration:
 - (i) an assessment of the appellant's physical and psychological well-being in order to assess his vulnerability, notwithstanding his having reached his majority;
 - (ii) consideration of the support network required by him bearing in mind his vulnerability as so assessed in the context of return to Kabul;
 - (iii) findings as to the availability of the support that it is found he requires.
11. If the physical and psychological state of the appellant requires support that is not available to him, it will not be reasonable for him to relocate to Kabul.

The medical and psychological evidence

12. In the report of Dr Watt, the senior child and adolescent psychotherapist at the Baobab Centre for Young Survivors, she describes the speech difficulties that the appellant suffers. The fluency disorder is rooted in biological or relational issues that predate him leaving Afghanistan. It affects his self-esteem, confidence and his capacity to assert himself in new situations. She was able from *direct experience* to note that the appellant, when wanting to talk, suffers a deterioration in his speech. The appellant finds it very difficult to express himself and can only try again after his distress and levels of emotional arousal have lessened. At times the difficulties become more pronounced.
13. Dr Watt described him as suffering from PTSD which may result in a change to the individual's capacity to regulate his emotions. In the appellant's case, the frustration can result in anger, leading to head-banging or futile punching at a wall. The level of frustration renders any further education more challenging

as he is keen to do well and enjoys learning. Nevertheless, the ability to plan and organise and use his memory is affected. This is exacerbated by the situation in which the appellant finds himself in the immigration system.

14. The appellant attends once weekly psychotherapy sessions with Dr Watt but the effect of his feeling a sense of hopelessness is, on occasions, overwhelming. The report speaks of the effect of the prolonged uncertainty generated by the current appeal which has interfered with his psychotherapy. At paragraph 8.13, Dr Watt describes how the appellant has been left with the physical, emotional and psychological residue of his experiences which interfere with his capacity to feel safe, to learn and to socialise leaving him vulnerable to ongoing psychological distress requiring continuing specialist treatment. In her conclusion, she expresses her opinion that the appellant remains an adolescent who has suffered from overwhelming experiences that have left him traumatised and suffering from PTSD rendering him at grave risk of psychological breakdown should he be removed from the United Kingdom. In a context where psychological treatment or systematic support is not provided, it would make it extremely unlikely that he would be able to function independently and manage the necessities of daily life, securing accommodation or earning a living.
15. The appellant has also produced a report by Ms Laura Moore, a social worker from the London Borough of Hounslow. In her report, she highlights as an area of concern and vulnerability, the appellant's mental health. He had been admitted to the A and E Department of a local hospital on 15 July 2016 with suicidal ideation and was discharged in the care of the Hillingdon CAMHS Crisis Team where he was attending regular appointments until the age of 18. His well-being was monitored for some weeks thereafter and support was increased. He is no longer considered to be in crisis although professional support is still ongoing to ensure the appellant's mental health is consistently and appropriately managed.
16. Ms Moore describes the level of support that the appellant is currently receiving with regard to managing the physical, emotional and psychological residue of his past experiences. She stated [C105]

“Based upon the level of support that FN is accessing within the UK, in my opinion it would be extremely challenging for him to make a life for himself within an unfamiliar city such as Kabul without an immediate and practical support network to rely on. FN is also supported practically to assess education, housing and finances. From our work together, I have seen FN develop his independent skills, however, I have never seen him manage independently without the assistance of assorted services and professionals. Again, these services are readily available within the UK, therefore I would be very concerned about FN's ability to manage and cope on his own without additional assistance.”
17. The reports of Dr van Engeland, including her latest report of 9 January 2018, speak of the general risk of being recruited by the Taliban and other insurgent

groups and of the general level of violence, including what she considers a worsening security situation. She repeated the view expressed in her initial report of December 2016 of the risk if internally relocated to Kabul. The risks included the competition for limited resources, the resentment felt towards returnees and the financial burden that young male returnees place upon the state, more particularly when isolated from their family or community. This prompted her to explain that an Afghan individual could not successfully relocate without family or community support. Her conclusion was that relocation within the family would be difficult due to the shame that returnees inspire and the risk of forced recruitment and the risk of attacks.

AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC)

18. On 19 March 2018, the Tribunal published its latest country guidance on Afghanistan, *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC)*. The italicised words dealing with internal relocation to Kabul are:

- (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 connections 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.*

19. The report of Dr Tom Foxley post-dates the publication of *AS (Safety of Kabul)* and takes note of its contents [C 37]. He concedes that it is difficult to write confidently about family actions and resources in the context of FN's return. The mere presence of family members, he states, would not provide the appellant with the job and '*most of the difficulties FN will face will likely be beyond the capacity of his family to solve*'. He cited the appellant's inexperience, his mental health problems and vulnerability as hindering his prospects and rendering it more difficult to avoid exploitation. He considered that the greatest

challenge faced by the appellant centred upon his mental health problems. In response to the guidance in *AS (Safety of Kabul)*, he distinguishes between the appellant and an adult male returnee in good health.

20. In the course of his report he makes specific reference to the UNHCR Eligibility Guidelines [62]. These include treating an internal flight alternative as reasonable

only where the individual has access to a traditional support network of members of his or her (extended) family or members of his or her larger ethnic community in the area of prospective relocation, who have been assessed to be willing and able to provide genuine support to the applicant in practice.

21. In addition, Mr Melvin produced the Country Policy and Information Note on the security and humanitarian situation in Afghanistan of April 2018. This reflects the Tribunal's country guidance in *AS (Safety of Kabul)* and reproduces its guidance. It does not seek to go beyond it. He also produced the earlier Note of January 2018 dealing with Afghans perceived as "westernised". This should now be read in light of *AS (Safety of Kabul)* in which in paragraph, it is said in paragraph 248:

The Appellant also claims in the alternative that he would be at risk on return to Kabul as a member of a particular social group, a person who has been 'Westernised', however for the reasons set out above in the general findings, there is no real risk to the Appellant as such.

The appellant's evidence

22. In answer to questions from Ms Mitchell, the appellant stated that all his family lived together including Rahima, except for Nazi who lives in Russia. He speaks to his family once every three or four weeks. They are not in touch via the Internet. He has two younger siblings, both sisters, aged 14 and 16 respectively.
23. He told me that he did not know where the money came from for him to travel to the United Kingdom but he had never asked them. He said that he did not feel the need to ask nor did convention permit him to do so as young people do not question adults about money.
24. He described in his statement of 5 January 2018 how his paternal aunt, Razeema, and her family live in Kart-e-Now in Kabul. He stated that he had never been to his aunt's home although it was quite close to the family home as his parents often visited. He described it as being 20 minutes away by car. He said to me that they were not wealthy and he thought they occupied rented property. In paragraph 4 of his statement he describes his maternal grandmother living with his maternal aunt, Rahima and two uncles and their families in Bib Mahro in Kabul some 30 minutes walk from his own home and about 10 minutes by car. One of his uncles is a taxi driver and the other works but the appellant did not know in what capacity. He visited their homes with his family once or twice a month. He described them as not being wealthy. In

paragraph 5 of his statement he speaks of another maternal aunt, Pari, who lives with her children somewhere near where her maternal family live. It is some 15 minutes walk from her uncle's home. She is a widow and does not work. He assumes she is supported by her husband's family as his own does not support her.

25. Mr Melvin's cross-examination elicited that his father is either 53 or 54 years old. He described the arrangements in his family home. An uncle lives with them. He is older than his father and does not work. He has a wife and children living with him in the family home. They have four daughters and a son younger than the appellant.
26. It was put to the appellant that his parents could move to a safer part of Kabul in order to avoid the threat from the Taliban. The appellant resisted that suggestion saying that his uncle would not want to sell the property and, were it to be sold, it would not provide sufficient capital to buy a second home in Kabul, where housing is more expensive. Although he could not speak specifically about the relative costs of housing in Kabul, he described his home as being somewhat rundown in a poor area of Kabul where prices are generally lower than in other parts of the city.

Findings

27. For the reasons I have given, I am satisfied that the finding of the First-tier Tribunal Judge that the appellant would not be safe in his home area is a legally sustainable one and forms a central plank of the appellant's protection claim. Although I am not entirely satisfied about the level of information that the appellant was able to provide about the financial circumstances of his family and the extended family, it is apparent that there was sufficient money is available to purchase his journey from Afghanistan. I do not accept his explanation that he never asked his parents and they never provided the information. It seems to me that it was inevitable when plans were being made for his journey that the costs of doing so would feature largely in everyone's minds. Even if no such discussion took place, the fact remains that there was a source of finance which is not entirely consistent with their being a poor family. Nevertheless, this is a far cry from establishing that they are rich. Taking the evidence as a whole, the description of the family, the shared accommodation with an uncle and his five children, another uncle as a taxi driver and the background material about the place in which they live, I cannot properly find that the family have sources of income that have not been disclosed such that I can infer any wealth, far less any significant wealth. This finding inevitably hampers their ability to offer support.
28. On this evidence, I approach my findings upon the three issues identified by me in paragraph 12 above.

29. My first consideration is an assessment of the appellant's physical and psychological well-being in order to decide whether he should properly be treated, in accordance with (ii) of the italicised head note in *AS (Safety of Kabul)*, as the generality of single adult males in good health who can reasonably be expected to relocate.
30. In reaching my conclusion I am bound to take into account the manner in which the appellant gave his evidence. I am not an expert either in mental health or of those suffering difficulties in speech. However, it was plain to any casual observer just how difficult the process of answering questions and conducting normal speech was for this appellant. The frustration that he experienced in his failure to provide a response (evident even to me who speaks no Dari) was obvious. In his attempt to respond to almost every question he buried his face in his hands and clenched his fists and dropped shoulders and rocked his shoulders. Of course, I cannot say whether this was an elaborate attempt to embellish his difficulties but such a stratagem is certainly not suggested in the medical evidence.
31. Taken overall, I have concluded that the appellant cannot properly be treated as one of the generality. I consider that his speech defect, its associated effect upon his confidence and his ability to cope has a significant effect upon my assessment of his vulnerability. I also accept that he suffers from PTSD. Although Mr Melvin submitted that this is a widespread problem with those living in Afghanistan, it is the combined effect of this and other factors that persuade me that the appellant would face particular difficulties on return. I have, of course, considered the fact that he is now an adult. However, for the reasons that I have given, the fact that he has now reached his majority has had no significant impact, if impact at all, upon his vulnerability. This vulnerability is to be assessed by reference to the difficult conditions in Kabul and contrasted with the significantly better conditions he faces in the United Kingdom.
32. I now turn to a consideration of the support network that he requires, bearing in mind this vulnerability. I consider that the appellant requires the support of family members as no other networks available to him have been identified.
33. I now turn to the availability of the support that I have found he requires. I readily confess that, when finding that there was an error of law, I found it difficult to understand how the appellant could not avail himself of the presence of his family, admittedly in a different part of Kabul. He would not, in essence, be returning as an unaccompanied minor, given the family there to receive him. Having heard the evidence including the material that was not before the First-tier Tribunal, I consider that there are obstacles in the appellant's parents displacing themselves from their existing home and relocating to another part of couple Kabul. First, I accept that the appellant's immediate family share their home with an uncle and his large family. Consequently, if his parents were to move, this would require the family home

being made available to the uncle and his family and a second home purchased in Kabul for the appellant and his family. I am, of course, without detailed information about the family's finances, the finances of the uncle, the relative cost of accommodation in the appellant's home area and in another area of Kabul. This might normally be sufficient to find that the appellant has failed to establish that it is not possible. However, it is common sense that two families living together in one household do so, at least partially, for economic reasons. I also find that the area in which the appellant and his family live is not in central Kabul and is in an area where the judge has found the appellant is at risk. No one is able to suggest which specific areas of the city are at lesser risk. I cannot assume that such an area would be cheaper and, if it is in central Kabul, it is likely to be more expensive. Economically, I find that there is no sufficient protection provided to the appellant by his parents finding other accommodation in Kabul.

34. I do not consider that the appellant can reasonably look to his other maternal or paternal relatives for a safe haven. I have considered the evidence of how long it takes to travel to and from the homes of the various relatives. They are not a great distance and I am unable to find that it is reasonable for the appellant to relocate with them and, by doing so, avoid the risk that it has been found exists in his home area. The extent of the influence of the agents of harm and the evidence that news of an individual's presence may be transmitted by word-of-mouth inevitably lead to uncertainty in the assessment of risk. However, the evidence is such that I cannot reasonably exclude from my mind that risk.
35. It follows from these findings that the appellant cannot look to his family to support him in another part of Kabul and there is no other source of support that has been identified which might act as a substitute.
36. In reaching this conclusion I have considered the various factors identified in the Country Guidance as material to the assessment. This has included a consideration of the appellant's age and the nature and quality of the support network and connections available to him in Kabul. It has, as I have shown, included a consideration of his physical and psychological health. The appellant has limited educational and vocational skills. In other words, the assessment that I have conducted has been done in accordance with the guidance offered.
37. I allow the appellant's appeal under the Refugee Convention. It follows that his return would be a violation of his Article 3 rights under the ECHR. It is unnecessary to go further but, from what I have read, his medical condition does not meet the high threshold set out in the Articles 3 and 8 health cases.

DECISION

Having found that the First-tier Tribunal Judge made an error of law, I re-make the appeal of FN allowing his appeal both under the Refugee Convention and under the ECHR.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE