



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

Appeal Number: PA/02835/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 17<sup>th</sup> May 2019**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HMA  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Williams (Senior HOPO)

For the Respondent: Mr D Gardner (Counsel)

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge P. J. M. Hollingworth, promulgated on 6<sup>th</sup> September 2018, following a hearing at Nottingham Justice Centre on 7<sup>th</sup> August 2018. In the decision, the judge allowed the appeal of the Appellant, wherefrom the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of Afghanistan, and was born on 1<sup>st</sup> January 1981. He appeals against the decision of the Respondent refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he has been targeted by the Taliban specifically on the basis that they wanted him to join them because of his medical skills and that this has put him at risk. A suicide bomber tried to assassinate him on his way to work. The Appellant was in a military vehicle with 40 or 50 people. He received subsequent telephone calls making him aware of the threat to his life from the Taliban. The Appellant was a soldier in the Afghan Army and this too was a feature of the claim.

### **The Judge's Findings**

4. The judge held that the Appellant was compelled to leave Afghanistan, and although he "would still be regarded as a member of the Afghan armed forces", this was because "having failed to comply with the requests of the Taliban and having been specifically targeted by the Taliban that the Appellant falls within the Refugee Convention on the basis of actual or imputed political opinion ..." (paragraph 65).
5. The appeal is allowed.

### **Grounds of Application**

6. The Grounds of Application state that the judge failed to abide by the strictures set out in **ZQ (serving soldier) Iraq CG [2009] UKAIT 00048**. This case makes it clear that "There is no reason to seek to develop special principles of refugee law to deal with cases of soldiers" and that "As a general rule fears a soldier may have about having to perform military service cannot give rise to a refugee claim".
7. On 27<sup>th</sup> September 2018, permission to appeal was granted.
8. On 31<sup>st</sup> October 2018, a Rule 24 response was entered by the Appellant's Counsel.

### **Submissions**

9. At the hearing before me on 17<sup>th</sup> May 2019, Mr Williams, appearing as Senior Home Office Presenting Officer before me, relied upon the Grounds of Application and the grant of permission. He submitted that **ZQ (Iraq)** had not been properly applied. This was because the judge had stated (at paragraph 65) that, "I find that the Appellant would still be regarded as a member of the Afghan armed forces", and this being so, what the judge appears to have done is to have allowed the appeal on the basis that the Appellant was at risk of persecution simply because he was a member of

the Afghan armed forces. It was true, submitted Mr Williams, that the Appellant was specifically targeted, but this was only because he was a member of the armed forces, and that brought him under the requirements of **ZQ (Iraq)** which meant that a serving soldier, having to perform military service, cannot lay claim to refugee status by that fact alone.

10. For his part, Mr Gardner drew attention to the two submissions set out in his skeleton argument. First, whereas it was the case that **ZQ (Iraq)** had stated that a soldier who faces return to serve in his country's armed forces cannot succeed in a claim for international protection based solely on his fear that his commanders will fail to protect him, this was not the central aspect of the Appellant's claim at all. He feared return because of serious harm from the Taliban as a result of his refusal to join them, and the status that he held as a military man was not relevant to that. He did not fear violence from the Taliban simply as a result of military campaigning or having been a soldier. He joined the Afghan Army in 2004. He was well-aware of the risks of military campaigning. His fear, on the contrary, arose from the Taliban because they had approached him to join them because of his medical expertise, and he had refused. He had then been specifically targeted (see paragraphs 62 to 64 of the judge's decision). Second, with respect to his second submission, Mr Gardner submitted that the judge had made it clear (at paragraph 68) that, "If the Appellant were to leave the Afghan armed forces I find that the history of his failure to co-operate with the Taliban would still create the same level of risk to which I have referred".
11. In reply, Mr Williams submitted that the judge had failed to deal with internal relocation in an appropriate manner. This meant that even if Mr Gardner was right, internal relocation was a possibility that the judge should have properly looked into, and on that basis the Appellant would not succeed.

### **No Error of Law**

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that it falls to be set aside. My reasons are as follows. First, the judge was quite clear that the Appellant was specifically targeted for failing to join the Taliban for the specific needs that they had with respect to him. There had been "the number of calls which demonstrated the attempt to secure the services of the Appellant" (paragraph 62). A suicide bomber had attempted to assassinate the Appellant on his way to work (paragraph 64). The judge was clear that "having failed to comply with the requests of the Taliban and having been specifically targeted by the Taliban that the Appellant falls within the Refugee Convention on the basis of actual or imputed political opinion" (paragraph 65).
13. The judge accepted the expert report which had been provided on the Appellant's behalf (paragraph 65). His conclusion was clear that "the

background material demonstrates that the Taliban still pose a significant threat to members of the Afghan Army” (paragraph 66).

14. Second, this being so, the judge did address the issue of internal relocation properly because he concluded that:-

“I do not find that internal relocation would be an option for the Appellant given his membership of the Afghan Army. I do not find sufficiency of protection is available to the Appellant given the circumstances which have arisen and taking into account that which the Appellant has described in relation to the extent of protection available to the Brigadier-General and the absence of protection which was available to him in the circumstances which arose” (paragraph 66).

15. These findings were open to the judge. Most importantly, the judge ended with the observation that:-

“I find that a real risk or serious possibility plainly arises of the Taliban being able to identify the Appellant on the basis of information available to them which enables them to still pose a significant threat to members of the Afghan Army. If the Appellant were to leave the Afghan armed forces I find that the history of his failure to co-operate with the Taliban would still create the same level of risk to which I have referred” (paragraph 68).

16. All-in-all, this final concluding paragraph makes it quite clear that the judge had made findings expressly on the basis that the Appellant did not fall within the class of potential refugees serving in the armed forces that were described in **ZQ (Iraq)**. The Appellant’s case was different. It was found to be different by the judge. It was undecided. The conclusions reached by the judge were entirely open to him.

### **Notice of Decision**

17. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand. An anonymity direction is made.

18. This appeal is allowed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

24<sup>th</sup> May 2019