



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03622/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 4 April 2019** **Decision & Reasons Promulgated
On 24 April 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR Z A
(ANONYMITY DIRECTION MAINTAINED)**

Respondent

Representation:

For the Appellant: Mrs H Aboni, Home Office Presenting Officer
For the Respondent: Ms K Smith, Counsel, instructed by Paragon Law

DECISION AND DIRECTIONS

1. In a decision sent on 14 June 2018 Judge Heatherington of the First-tier Tribunal (FtT) allowed the appeal of the respondent (hereafter the claimant), a national of Afghanistan born in May 1998, against the decision made by the appellant (hereafter the Secretary of State or SSHD) made on 1 March 2018 refusing his protection claim.
2. The basis of the claimant's claim was that he had left Afghanistan due to he and his family having been targeted by the Taliban because his older brother was working for the Afghan army. He (the claimant) had been

kidnapped and taken to a Taliban training camp but managed to escape. The SSHD did not find his account credible.

3. In allowing the claimant's appeal the judge had regard to a report that had been produced for the claimant by Dr Giustozzi and concluded:

"8.4 Not all is well in Afghanistan. Dr Giustozzi identifies the possible reason for the Taliban's interest in the appellant is because his brother is in the Army (page P29 in the appellant's bundle). The appellant's evidence in cross-examination is that he was aged 15 when he was taken by the Taliban. Before then the Taliban twice searched his home looking for him. The appellant's evidence later was that his father kept a large quantity of cash at home. It was suggested that the Taliban searches were unlikely as they would have removed the case. The appellant's response was that the Taliban were looking for him, not cash. The appellant said in Afghanistan cash was not uncommonly kept at home. That was not challenged and if that is the case, it is likely that prudent householders take great care to secrete cash so that it cannot readily be found. That the Taliban kidnapped the appellant and before that they twice searched his home for him is consistent with the objective evidence. The country information is that forced recruitment by the Taliban is unusual. I do not find that the appellant's claim that he was able to flee from the Taliban is not implausible. The claims are not inconsistent with the objective evidence on Afghanistan.

8.5 Dr Giustozzi report (page P51 in the appellant's bundle) states:

- (a) that the appellant would be at risk
 - (i) from the Taliban especially in Baghlan and in other areas of strong Taliban presence
 - (ii) countrywide - from the Afghan authorities
- (b) if returned to Kabul he would be without a social network or family support and would risk destitution
- (c) if returned to the area in which where most eastern Pashtuns reside this area would be accompanied by higher risks from the Taliban

8.6 I have considered the recent decision in **AS (Safety of Kabul) Afghanistan CG** [2018] UKUT 00118 (IAC). The country guidance in **AA (unattended children) Afghanistan CG** [2012] UKUT 00016 (IAC) remains unaffected by this decision. The appellant is only 19. The events of which he has provided an account were four years ago, when he was a child. The respondent claims the appellant's account is implausible. I am reminded that the tribunal must exercise caution in rejecting an

account because it is inherently incredible (**Y v. Secretary of State for the Home Department**, [2006] EWCA Civ 1223). I have considered the totality of the evidence including the expert report and objective evidence. Having considered the arguments of both parties, I reach the conclusion that the appellant should be regarded as having given a truthful account about what happened to him in Afghanistan. Taking each point of paragraph 339L of the immigration rules in turn, we are satisfied that:

- i. The appellant has made a genuine effort to substantiate his asylum claim;
- ii. The appellant has submitted all material factors to substantiate his asylum claim that are at his disposal;
- iii. The appellant has given a coherent and plausible account that does not run counter to the available general or specific information relevant to his case;
- iv. The appellant has made an asylum claim or sought to establish eligibility for humanitarian protection at the earliest possible time;
- v. The appellant is generally credible.

8.7 Thus, I find that the appellant is at risk of persecution, serious harm and or inhumane or degrading treatment, if he is returned to Afghanistan. He cannot relocate and remain safe. The evidence is well above the standard of proof the appellant must meet. He only must show a reasonable likelihood. The evidence clearly shows that the appellant has discharged that burden."

4. The SSHD's grounds were threefold, (a further ground was not pursued) it being submitted that the judge erred in (1) wrongly characterising the SSHD's reasons for rejecting the claimant's account as credible as being all about the plausibility of the account and as a result failing to give adequate reasons for his findings; (2) failing to consider whether the authorities in the claimant's home area were able and willing to protect him; and (3) failing to give any adequate reasons for his findings on internal relocation, which was a material matter. In this regard it was contended that the judge failed to consider and apply the country guidance case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**. In amplifying the grounds Mrs Aboni submitted that in applying the country guidance case of **AA (Unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)**, the judge had overlooked that by the date of hearing the claimant was 20 years old.
5. Before considering the grounds, I would observe as a discrete point that I agree with Ms Smith that just because a claimant has ceased to be under 18 does not preclude them from being considered in an analogous position to an unattended child and so, in principle, able to benefit from the

country guidance in **AA**. However, this point is not enough on its own to secure the judge's decision against the criticisms levelled by the SSHD.

6. I consider ground (1) is made out. The judge's assessment of the credibility of the claimant fails to address the shortcomings in his account identified by the SSHD in the reasons for refusal. Ms Smith sought to argue that the SSHD's reasons were all concerned with plausibility. However, that is not borne out by an analysis of these reasons. They identify (i) the lack of congruence between the claimant's account and the background country evidence as regards the likelihood of the Taliban recruiting buy force (49-52)(an issue of external inconsistency); (ii) internal inconsistency in the claimant's account as regards the manner in which the Taliban issued its threats (46); (iii) lack of consistency in the claimant's account of being in possession of his mobile phone when he was kidnapped (56); (iv) lack of consistency regarding his claim that the Taliban would remove his SIM card but return his phone (55); and (v) lack of consistency in his account of the Taliban not following him to his home village after he escaped (57). Only (iii), (iv) and (v) could really be said to be concerned with plausibility.
7. In any event, the judge's decision simply fails to engage with these reasons. Simply to assert that the Taliban searching the claimant's home was "consistent with the objective evidence", was insufficient, particularly given that the judge himself in the next sentence observed that the gist of the country information was that "forced recruitment is unusual". If the judge meant to rely in this regard on the expert report, he failed to refer to it or indicate how it caused him to take a different view from the COI sources cited by the SSHD. The judge nowhere addresses the SSHD's concerns about internal inconsistency concerning the manner of the Taliban threats. Further, in relation to the SSHD's expressed concerns about the inconsistency/implausibility of the claimant's escape account, the judge simply states, without reasons, that it "is not implausible". There is no engagement with the SSHD's concerns about the claimant having a mobile phone in his possession at the time of the kidnap or about being able to retain his phone. There is an evident failure to engage with or take into account relevant evidential considerations. These failings amounted to material errors.
8. Having found that ground (1) properly identifies a material error of law in the judge's decision, it is not strictly necessary that I address grounds (2) and (3) but I would simply record that I did not consider ground (2) was made out, as if the claimant's account had been established as credible, it was not reasonably likely he would be able to receive effective protection. Ground (3), of course, is likewise predicated on the assumption that the claimant's account had properly been found to be credible, but even on that basis, there were clearly serious shortcomings in the judge's treatment, since in respect of the treatment of the viability of internal relocation in Kabul, the judge simply asserts, without reasons, that "[h]e cannot ... remain safe".


9. For the above reasons I conclude that the FtT Judge's decision must be set aside for material error of law.
10. I see no alternative to the case being remitted to the FtT (not before Judge Heatherington).

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 their 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: 17 April 2019



Dr H H Storey
Judge of the Upper Tribunal