



IAC-FH-CK-V1

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

Appeal Number: PA/02382/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 23 August 2021**

**Decision sent to parties on
On 13 October 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**PARDIS [H]
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rudolph Spurling instructed by J D Spicer Zeb, solicitors
For the Respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal on 4 March 2021 dismissing his asylum, humanitarian protection and human rights appeal against the respondent's decision of 2 March 2020 rejecting his international protection and human rights claims.

2. **Vulnerable appellant.** The appellant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.
3. The appellant's account is that he comes from Laghman Province in Afghanistan, where he was a subsistence farmer. He acted as an informer for a man who worked for the Anti-Narcotic Ministry, and who was a friend of his late father. The appellant was given a mobile phone by the man and used it to inform on people in his village involved with the production and trade in opium. He was responsible for the arrest of two of the main people involved in the narcotics trade, which helped to fund the Taliban. While he was in the capital of Laghman Province collecting his fee for that, a friend in the village telephoned the appellant to say that a group of Taliban had raided his home, and that of the friend, looking for him.
4. In 2007, The appellant was kidnapped and interrogated by the Taliban, causing him both physical and mental harm. He was released by them on that occasion, but arranged to leave Afghanistan as his life was in danger. He spoke to his friend in the village in 2008, and the friend said the Taliban were still looking for him.
5. The appellant travelled via Greece, Italy and France, arriving in the United Kingdom on or about 20 January 2009. He made an asylum claim on 21 January 2009, but then withdrew the claim and absconded on 2 December 2010, surfacing on 5 September 2019 when he made further submissions claiming a well-founded fear of returning to Afghanistan.
6. **Medical evidence.** The First-tier Tribunal had the benefit of a medico-legal report by Dr Phyllis Turvill MBBS LRCP MRCS DMJ (Clinical). Her report was prepared during the Covid pandemic, with Dr Turvill interviewing the appellant by telephone and being provided with colour photographs of certain scarring on his body.
7. Details of the abuse suffered by the appellant were summarised in Dr Turvill's report:
 94. The Taliban captured him and took him to a camp.
 95. Here he was kicked, lashed with a belt, punched with fists and beaten with sticks and the butt of a gun.
 96. He passed out and had water thrown at him to revive him.
 97. He witnessed another prisoner who had been beaten die in his cell.
 98. He was released on the third day because 'they had got the wrong man'."
8. Dr Turvill noted that when the appellant arrived in the United Kingdom his arm was x-rayed and he was found to have a fractured elbow, which was treated. Dr Turvill evaluated the appellant's scarring as best she could, given that the consultation took place by telephone and with photographs, because of the Covid pandemic. There were four indented scars on the appellant's head which he attributed to blows to the head from the butt of a gun or other objects. Dr Turvill's opinion was that they were in keeping with multiple blows from a hard object. Absent the opportunity to

examine the appellant properly, Dr Turvill was not able to determine the degree of consistency with the attribution that the appellant gave beyond that observation.

9. There were also small white scars on the appellant's head, some of them patterned, which were in keeping with multiple blows from a hard object and an area of hair loss with a possible scar on the forearm attributed to a blow which might be in keeping with that. When she spoke to him for the medical report, the appellant reported persistent pain in his head, deafness and a yellow discharge in his left ear, post-traumatic stress disorder and moderate to severe depression.
10. At paragraph 83, Dr Turvill said this:
 - "82. In my opinion it is likely that the stress of a court hearing will exacerbate [the appellant's rambling and verbose evidence].
 83. [The appellant] should therefore be treated as a vulnerable witness because he would be at serious disadvantage were he required to give evidence or be questioned in court."
11. The First-tier Judge stated that he treated the appellant as a vulnerable witness, but does not appear to have taken the indication that the appellant 'would be at serious disadvantaged' if he gave evidence into account in reaching an overall negative credibility finding.

First-tier Tribunal decision

12. At [91], the appellant's account of detention and torture by the Taliban in 2007 was accepted. The judge placed only limited weight on her opinion about the appellant's ability to testify reliably, his difficulties as a historian (see [92]) and his mental health difficulties, although that was Dr Turvill's area of expertise, not that of the First-tier Judge. He accepted that Dr Turvill was qualified to comment on the state of the appellant's mental health, even though in the circumstances she could not do so to the Istanbul Protocol standard, but disagreed with most of her professional opinion.
13. The First-tier Judge was generally unimpressed with the appellant as a witness and found his evidence to lack credibility, and to be 'vague in the extreme'. The appellant has physical scars as set out above and also post-traumatic stress disorder, depression and anxiety, which the judge accepted arose from his ill-treatment by the Taliban in 2007 as a perceived collaborator with the Afghan authorities.
14. The First-tier Judge dismissed the appeal, making a number of speculative findings, including that the appellant's mental health issues had been embellished to bolster his claim. The First-tier Judge criticised the appellant for failing to register with a general medical practitioner and thus not receiving any treatment for his mental health issues.
15. The First-tier Judge considered that the appellant was not telling the truth about his activity as an informer. He did not accept that the appellant would be regarded as westernised on return, commenting that the appellant could simply change his style

of dress and adapt to his surroundings. He considered that the appellant could undertake manual work in Afghanistan: he was uneducated and unskilled so that would be his best option and might even improve his mental health.

16. The First-tier Judge did not accept that in the appellant's home area of Laghman Province, there was an Article 15(c) level of violence against civilians. He found that the appellant had an internal relocation option to Kabul, where he would not be at real risk of harm, given the lower level of violence and the better security situation there.
17. The First-tier Tribunal relied on the Upper Tribunal's country guidance in *AS (Safety of Kabul) Afghanistan (CG)* [2020] UKUT 130 (IAC) (1 May 2020). The judge accepted that there had been 'an escalation in violence' in Afghanistan as a whole, both in the appellant's home area and elsewhere but considered that he had an internal relocation option to Kabul. On the question of past persecution, the judge said this:

"122. It is trite law that past persecution or harm may be an indication of future persecution or harm. As I have found the appellant to be untruthful, I find that there has not been past persecution. To the extent that the appellant's account of being kidnapped and tortured in 2007 could be said to amount to persecution, it was the appellant's account that this was a case of mistaken identity and so this event itself would not be indicative of a future risk of harm."

18. The First-tier Tribunal dismissed the appeal. The appellant appealed to the Upper Tribunal.

Permission to appeal

19. Grounds of appeal were settled by Mr Alex Burrett of Counsel, who appeared below. He contended that the First-tier Tribunal had erred in assessment of the risk to the appellant as a westernised person, as a perceived informant or collaborator in his home area, on the available support from his sister in his home area, given the appellant's mental health issues and the Covid pandemic, in failing properly to apply paragraph 339K of the Immigration Rules HC 395 (as amended) to the facts of this appeal, and in considering that the appellant could seek internal relocation to Kabul if there was any risk in the home area. In addition, the appellant characterised as flawed the First-tier Judge's findings on credibility.
20. Permission to appeal was granted by Upper Tribunal Judge Kamara on 20 May 2021, on all grounds, but in particular because she considered it arguable that the First-tier Judge had failed to make adequate findings as to the risk to the appellant as a perceived collaborator, and had failed to consider the principle (set out in paragraph 339K of the Rules) that past persecution is an indicator of future persecution.

Analysis

21. The First-tier Judge did not err in applying *AS* in March 2021. However, the country guidance in *AS* is now out of date, since it relates to the previous Afghan government. This case was heard on 23 August 2021, four days after the Taliban

retook the whole of Afghanistan, with only Panjshir Valley in the north holding out. It was not suggested that the appellant either had any links to Panjshir Valley or that he could get there if returned. I treat this as a case where the risk from the Taliban exists, if it exists, in the whole of Afghanistan.

22. The First-tier Judge's credibility findings, his treatment of the appellant as a vulnerable witness and his consideration of Dr Turvill's evidence are irrational, given Dr Turvill's evidence that while speaking to her the appellant found it 'difficult to keep to the point, and was very rambling, verbose...and lacking in fluency'. Dr Turvill's professional opinion was that:

"82. In my opinion it is likely that the stress of a court hearing will exacerbate [the appellant's rambling and verbose evidence].

83. [The appellant] should therefore be treated as a vulnerable witness because he would be at serious disadvantage were he required to give evidence or be questioned in court."

23. The appellant did give evidence and the judge found him unreliable for precisely that reason. The decision does not identify any adjustments which were made and in addition the judge's approach to the veracity of the appellant's evidence does not appear to give weight to the possibility that the coherence of the appellant's evidence might be affected by the mental health difficulties which the doctor found him to have.
24. The First-tier Judge repeatedly substituted his own speculation for the expert evidence of the medical witness, particularly in relation to the ability of the appellant to testify reliably and his mental health issues. I am satisfied that the judge's reasoning amounts to a material error of law and that the decision must be remade.
25. The judge having accepted that the appellant was kidnapped and tortured in 2007, even if in error, having been perceived as a collaborator, means that this appellant has proved past persecution. The First-tier Tribunal's positive findings about his ill-treatment as a suspected collaborator in 2007, at the hands of the Taliban, are undisputed by the respondent.
26. Paragraph 339K of the Immigration Rules HC 395 (as amended) is applicable:

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

I asked Ms Everett whether the respondent was in a position to show good reasons to consider that the serious harm suffered by the appellant in 2007 would not be repeated. Ms Everett said that she could not show that there were any such good reasons.

27. I have had regard to the information in the public domain on 23 August 2021 concerning the parlous state of affairs in Kabul and in Afghanistan as a whole, and the risks to perceived collaborators. On the basis of those circumstances and the accepted evidence in this appeal, I allowed the appeal at the hearing.
28. The Upper Tribunal's decision was given extempore but was not promulgated for almost 6 weeks, due to a combination of annual leave and administrative delays. During that time, the situation in Afghanistan has not improved, indeed it has deteriorated, particularly in relation to perceived collaborators. I continue to have no hesitation in finding that this appellant is entitled to international protection under the Refugee Convention.
29. I therefore set aside the decision of the First-tier Judge and allow the appellant's appeal.

DECISION

30. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the decision.

I re-make the decision in this appeal by allowing it.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 29 September 2021