Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: UI-2021-001700**
HU/50344/2020; IA/00770/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 15 August 2022	**On the 05 October 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

JAVID AHMADZAI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Swain, Counsel, instructed by Synthesis Chambers Solicitors
For the Respondent: Ms S Cunha, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of Judge of the First-tier Tribunal Parkes ('the Judge'), dated 3 May 2021, dismissing his human rights (article 8 ECHR) appeal.

Brief Facts

2. The appellant is a national of Afghanistan and aged 27. He arrived in the United Kingdom on 28 July 2008, when aged 13, and claimed asylum.

3. In summary, the appellant asserted in respect of his international protection claim that his father died some four to five years before his arrival in the United Kingdom and he resided with his mother and five siblings in a village called Chargoti, situated in Khost Province, Afghanistan. He detailed that the Taliban were visiting his village on a monthly basis seeking boys to join them in fighting. Whenever they arrived, he stated that he would hide from them. His mother then sold land to pay for him to leave the country, so as to avoid recruitment by the Taliban. He identified his fear that he would be sought by the Taliban or another militant group to fight for them. He stated that he had lost contact with his family since 2011 and was residing with a friend of his uncle in the United Kingdom.

4. The appellant's asylum application was refused by the respondent, but on 24 November 2008 he was granted leave to remain as an unaccompanied asylum-seeking minor, with such leave expiring on 23 November 2011.

5. The appellant applied for further leave to remain on 25 October 2011. The respondent refused this application by a decision dated 12 February 2014, and at the time of the decision the appellant was aged 18. The appellant appealed and by a decision dated 11 April 2014 the First-tier Tribunal dismissed his appeal. Judge of the First-tier Tribunal Birk concluded, inter alia:

> '29. I do not find that the appellant was targeted by the Taliban before he left Afghanistan as by his own admission he was never specifically approached or identified or targeted by the visiting Taliban. He has not set out his father was involved with the Taliban nor his uncle. There are no family connections to the Taliban or any another military or political groups. There was no objective evidence put forward which shows that forced recruitment of minor was the way that the Taliban operated in Khost. Since he was not targeted prior to 2008 I do not accept as credible that he therefore would be targeted or sought any time thereafter. I find that his claim that the Taliban have sought him in 2011 and that this is the reason why his family have moved to a place unknown is a fabrication on his part because I do not find that he was sought previously. I find that there is no credible reasons put forward as to why, after some many years, that his family would now be targeted in this way with regards to the Appellant.
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> 30. As for his family in Afghanistan, he was sent a Red Cross tracing form on 6.2.12 and his answers were that he knows where his family are living and he has spoken to them and they are alive and well in Afghanistan. He then stated that he was last in contact with them in December 2011 and not spoken to them since. However the reason given by him on the form for why there cannot be family reunification, is not that he does not know where

they were and that they had left the village but was because he had been living in the UK since he was age 13, he spoke English and had established a life in the UK. I find that it is significant that he now claims that they had moved because of threats and pressure from the Taliban to an unknown place but this was not the reason given as to why there cannot be any family reunification. I find that this undermines the credibility of account given by the Appellant about his loss of contact with his family in Afghanistan.

31. He states that he was in contact with his family not directly but by phoning Jama Khan, their neighbour in the village. He stated in oral evidence that he is still in contact with Jama Khan up to the present time and calls him every 2 to 3 months. Mr Haji Ahmadzai whom he has lived with since 2009 was at first not aware of who Jama Khan was but he later said in his oral evidence that the Appellant had mentioned Jama Khan but that he still did not know who he was. I do not find it credible that Mr Haji Ahmadzai would not know exactly who Jama Khan was, since he was the telephone link between the Appellant and his family. This is the telephone link which the Appellant still uses to this day and it was through this link that the Appellant became aware of his family's departure I do not therefore find that the Appellant was truthful about his communications with Afghanistan and his family.

32. The Appellant also confirmed that all telephone contact was through the use of mobile telephones. Both he and Mr Haji Ahmadzai said that the reason that there was difficulty in using the telephone communications was because the telephone poles were being taken down by the conflict and the Taliban. This would have only affected landlines and not the satellite signal which mobile telephones use. I therefore do not accept this as being a rational explanation for any problems with telephone communication.

…

34. I do not accept that there is any plausible or credible reason as to why the Appellant would not have been told where and why his family were suddenly moving to. He was out of the country and so could not be forced by the Taliban to reveal that information to them. I do not accept as credible that they lost his telephone number as he presupposes in the course of their departure. He is their son and on his account the whole reason why they are all having to uproot themselves suddenly to leave the village and relocate. It is not credible that they would after all the years of being in contact with him suddenly lose his telephone number. His uncle in any event would still have the telephone number of Mr Haji Ahmadzi, whom he knows resides with the Appellant and is a great and reliable friend of his. There was no explanation offered as to why Mr Zhar Khan has not been in touch with Mr Haji Ahmadzai. I find the sudden lack of contact between the Appellant's family and Mr Zhar Khan and the Appellant and Mr Haji Ahmadzai to be lacking in all credibility and undermines the credibility and reliability of both the Appellant's and Mr Haji Ahmadzai's evidence.

> 35. I find that the whole account of losing contact with his family to be untruthful. On that basis I do not find that the Appellant has lost contact with his family and I do not accept that they have moved from their village and I do not accept therefore that he has no family members to return to.
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> …
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> 38. … I find that the Appellant is a young, able, healthy, active and resourceful male as is evidenced by him settling here. He has not established that he would be at risk from the Taliban or anyone else and so I find that relocation to Kabul is a viable option for the Appellant. I also find that he has failed to establish on the evidence that he would not, if he wished, be able to travel onto his home province. He would have the support there of his mother and uncle.'

6. The appellant submitted a further application for leave to remain with a covering letter dated 12 December 2017 confirming that he relied upon paragraph 276ADE of the Immigration Rules ('the Rules') and article 8 generally. The respondent refused the application by a decision dated 20 August 2020 observing, *inter alia*:

> '10. It is not accepted that there are very significant obstacles preventing you from returning to Afghanistan and re-establishing your private life there. You lived in Afghanistan prior to arriving in the UK therefore will be aware of the country's customs and traditions. Although it is accepted you will have established a private life in the UK, you have provided no evidence of any ties to the UK of any particular depth, complexity or that of unusual in nature. You are of working age, with no known medical conditions and you are proven to be resourceful, managing to travel to the UK and reside here. Therefore, the skills and experience you have gained whilst living in the UK can be utilised in assisting you in reintegrating back into society and gaining employment.
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> …
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> 12. It is therefore not accepted that you have shown that there are very significant obstacles to your return to your home country, it is concluded that there are no roles or relationships, that you have made in the UK that go above and beyond ties of friendship that could not continue upon your return. It is therefore considered that you have not provided any evidence to substantiate your claim that you have established a significant private life in the UK. You therefore fail to meet the requirements of 276ADE(vi).'

7. The respondent proceeded to conclude that no exceptional circumstances arose in this matter.

Decision of the First-tier Tribunal

8. The hearing before the Judge was held at Birmingham on 16 April 2021. The appellant attended and gave oral evidence. In a concise decision, the Judge reasoned when dismissing the appeal:

‘10. The Appellant’s case now is that he has lived in the UK continuously since his arrival at the age of 13, he speaks English and believes that his circumstances in Afghanistan would render him destitute as he would have no family or other support available to him, whether in Kabul or elsewhere. It is not suggested that the Appellant would be in need of international protection, the issue turns on the circumstances that the Appellant would face on return.

11. The Appellant’s skeleton argument repeats the Appellant’s claims about the Taliban activities in his village and his being approached to join them. There is no evidence provided to justify going behind the decision of Judge Birk and it was not pursued at the hearing of this appeal. The current country guidance case is AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC). From the headnote it is clear that someone of low-level interest to the Taliban is not at real risk of persecution in Kabul which underlines the point.

12. Pertinent to this appeal is the guidance from AS relating to internal relocation to Kabul. As noted in the headnote it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even without specific connections or a support network there although connections or support would help. An individual’s circumstances must be taken into account.

13. I bear in mind that the guidance applies to international protection claim where the lower standard of proof applies. If in those circumstances the Appellant could be expected to return to Kabul, even without family support or other connections, then it is difficult to see how it could he said that there would be very significant obstacles to the Appellant’s reintegration as matters stand.

14. While the Appellant gave evidence in English it was not suggested that he would be unable to speak one of the languages of Afghanistan and being bi-lingual could be an advantage in the capital city. The fact that the Appellant has not been there for a long time is not by itself a barrier to someone moving to a new country or city. People move around nationally and globally on a daily basis establishing themselves in places where they have had no previous experience and may not even speak the language which illustrates that point.

15. Having regard to the country guidance is there anything about the Appellant’s personal circumstances in the UK or the situation he would face in Afghanistan that would suggest his removal would be disproportionate or that he would face obstacles as outlined above. There is no evidence to show that he has established a private or family life of any strength or durability and while there are letters in support they do not show that it could be said that his circumstances have any features that are compelling to justify his being permitted to remain.

16. The letter from the Red Cross does not show what information was provided to them to assist with the efforts in tracing the

Appellant's family. If it is correct that the Appellant has no family or support in Kabul the country guidance shows that it is not a determining factor. None of the Appellant's friends attended the hearing of the appeal and it was not explained why the support he receives here could not be transferred to him in Kabul.

17. From the evidence it appears that he has avenues that may be open to him through his friends and their contacts in the country. He would be returned as a single male, with no health or other issues. In establishing himself in the UK he has demonstrated an adaptability which would apply equally on return. The broad evaluative judgment to be made, Kamara [2016] EWCA Civ 813, is in reality no different from that required in assessing internal relocation in an international protection claim. Having regard to the guidance I find that the Appellant has not shown that he cannot return to Afghanistan, whether to his home area or Kabul, and it has not been show that there would be very significant obstacles to his doing so. On that basis, the Appellant does not meet the Immigration Rules and as indicated above there are no compelling circumstances that would justify a grant of leave outside the rules under article 8.'

Grounds of Appeal

9. The appellant advances three grounds of appeal:

   (i) The First-tier Tribunal materially erred by failing to lawfully consider 'very significant obstacles' separate to the earlier protection consideration.

   (ii) The First-tier Tribunal failed to consider headnotes: (ii) of the Country Guidance decision in *AS (Safety of Kabul) Afghanistan CG* [2018] UKUT 00118 (IAC).

   (iii) The First-tier Tribunal gave: 'inappropriate' consideration to Article 8 outside of the Rules.

10. Ground (i) details at paragraph [4]:

> '4. The Appellant submits, with respect, that the First Tier Tribunal Judge has materially erred in law by not considering as to why his circumstances do not amount to 'very significant obstacles' despite [the] refusal of his asylum and humanitarian and protection claim. There is inadequate consideration of '*very significant obstacles'*, which amounts to [a] material error of law as it is [a] distinct consideration [from the] protection claim [that] ought to have been made.'

11. Judge of the First-tier Tribunal Swaney granted permission to appeal by a decision dated 20 May 2021, observing:

> '3. This was a human rights appeal and not a protection appeal. The test for whether a person would face persecution or treatment contrary to article 3 of the ECHR is different to whether they would face very significant obstacles to their integration. The judge is aware of what integration means given the reference to the judgment in SSHD v Kamara [2016] EWCA Civ 813. However,

> it is arguable that the judge does not adequately turn his mind to whether the appellant could achieve a level of integration that will give substance to his private and family life within a reasonable timescale or the obstacles the appellant might face to his integration in light of the factors identified in the grounds of appeal let alone give reasons for why they would not be very significant.'

Decision and Reasons

12. I commence my consideration by expressing my gratitude to both Mr Swain and Ms Cunha for their concise and helpful submissions.

13. Ms Cunha accepted that the Judge erred at paragraph [17] of his decision by conflating the undue harshness test applied when considering internal relocation in Refugee Convention appeals and the very significant obstacles test established by paragraph 276ADE(1)(vi) of the Rules. She accepted that the Judge erred in considering that when undertaking the broad evaluative judgment in respect of the relevant rule there was 'in reality' no difference between the two tests. Whilst they may be founded on an assessment of reasonableness, they comprise two separate tests whose respective nuances are to be appreciated when an assessment is undertaken.

14. As confirmed by the House of Lords in *Januzi v. Secretary of State for the Home Department* [2006] UKHL 5, [2006] 2 A.C. 426 the question whether it would be unduly harsh for an asylum seeker to be expected to live in a place of relocation within the country of his nationality requires a decision-maker to consider all relevant circumstances pertaining to the applicant and their country of origin, and to decide whether it was reasonable to expect the applicant to relocate or whether it was unduly harsh to expect them to do so. That requires a holistic approach involving specific reference to an individual's personal circumstances (including past persecution or fear thereof), their psychological and physical health, their family and social situation, and their capacity for survival.

15. However, as was confirmed by Lord Justice Sales (as he then was) in *Kamara*, the idea of 'integration' which is to be considered in paragraph 276ADE(1)(vi) calls for a broad evaluative judgment to be made as to whether an individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and have a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to his private life.

16. Ms. Cunha accepted on behalf of the respondent that there was insufficient clarity that integration upon return was adequately assessed. She confirmed the respondent's position to be that the error was not material.

17. In considering materiality, I observe that the appellant submitted at the hearing before the Judge that he had lost contact with his family in Afghanistan and therefore would have no-one to support him. As I observed to Mr Swain, this submission fails to engage with the findings of fact made by Judge Birk.

18. However, in respect of materiality I accept that a subsidiary argument was raised both in the skeleton argument and orally before the Judge, identifiable at paragraph [13] of the appellant's skeleton argument:

> 'It is respectfully submitted that the Appellant has resided in the United Kingdom from his minor age and has had schooling here. These are the factors, due to which, he has accustomed to the UK society. In particular, due to his length of stay for over 12 years and his strength of connections in the United Kingdom society would amount to a *'very significant obstacles'* to his integration back in Afghanistan as a contributory factor.'

19. Being mindful that the Judge erred in law at [17] in respect of his approach in assessing whether very significant obstacles exist, I am satisfied that whilst many judges may find that the appellant's simple residence in this country, with some periods of lawful leave, may not establish very significant obstacles to integration on return, it may be possible for a judge properly directing themself to reasonably find in his favour. In those circumstances, the conflation of the test by the Judge was a material error with the assessment as to his integration not being undertaken solely through the lens of *Kamara* and the test established by the Rules. In those circumstances, I accept that the decision of the Judge is materially erroneous on an issue of law and should be properly set aside, with no findings of fact preserved.

20. In the circumstances, I am not required to consider grounds 2 and 3.

Resumed Hearing

21. I consider that the fact-finding exercise that is to be undertaken in this matter is such that it should be properly undertaken by the First-tier Tribunal.

Notice of Decision

22. The decision of the First-tier Tribunal dated 3 May 2021 is set aside for material error of law.

23. The resumed hearing of this appeal is remitted to the First-tier Tribunal sitting in Birmingham, to be heard by any Judge of the First-tier Tribunal except Judge of the First-tier Tribunal Parkes.

Signed: *D O'Callaghan*

Upper Tribunal Judge O’Callaghan

Date: 30 August 2022