



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

Appeal Number: PA/03264/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23<sup>rd</sup> August 2017**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MR A K  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms V Lovejoy, Counsel instructed by Leonard Cannings LLP  
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Afghanistan whose appeal was heard by First-tier Tribunal Judge Iqbal and dismissed by her in a decision promulgated on 28<sup>th</sup> February 2017. Essentially the judge found that the Appellant would not be safe in his home area but could relocate to Kabul with the assistance of his family. The appeal was dismissed on asylum and human rights grounds.
2. Grounds of application were lodged. The first ground was that as a matter of law the question of relocation cannot depend on the relocation of a third party. It was noted that Judge Iqbal accepted the Appellant would be at

risk if returned to his home area because his father who had worked for the Taliban was killed. The judge had gone on to dismiss the claim finding that the Appellant could relocate to Kabul as he was still in contact with his mother or maternal uncle, the judge finding that there was no reason why the mother could not resettle elsewhere such as in Kabul. This therefore required the mother to at least relocate which was contrary to the Qualification Directive (2004) 83/EC) which referred to the *applicant* relocating.

3. It was submitted therefore that the question of relocation was concerned with the ability of the Appellant to relocate and could not require third parties to relocate. As a matter of law the question of relocation concerned an applicant's ability to relocate in the context of the situation at the time of decision which must be premised upon where the actually families live, not where they may move to. There might be very good reasons why a family may not be able or willing to relocate, such as this would trigger the Taliban search for the Appellant, commitments to other members of their livelihood or their own vulnerability. This is reinforced by the fact that the family did not relocate with the Appellant when he left Afghanistan. Judge Iqbal did not find that the Appellant could relocate without his family and thus if the point was found in favour of the Appellant it would lead to a grant of asylum.
4. In terms of Ground 2 it is pointed out that there was no presumption that a family can or will relocate – this must be supported by clear evidence, of which there was none. It was also said that the judge erred in her assessment of the Appellant's evidence in respect of attempts to contact his family through the Red Cross.
5. Permission to appeal was granted and the Secretary of State lodged a Rule 24 notice saying that the judge had directed herself appropriately. The judge had heard the witness and was entitled to conclude that the account of contact by the Appellant was not credible. The judge was best placed to assess the evidence.
6. Thus the appeal came before me on the above date.
7. Before me Ms Lovejoy relied on her grounds. There had been no evidence from the mother as to whether she might relocate. As at the date of the hearing before me the Appellant remained a minor, being under 18 years. Because of what was said in the grounds I was asked to set aside the decision and allow the appeal. In terms of **AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)** the Appellant fell into the category of an unattached child who was entitled to protection.
8. For the Respondent Ms Ahmad relied on the Rule 24 notice. The judge was entitled to note that the Appellant was not a credible witness when it came to contact with his mother. It was noted that the maternal uncle had been resourceful in helping the Appellant leave the country and there was no reason why he could not continue to help the Appellant and his mother

resettle elsewhere and away from the Taliban. As such there was no material error in the judge's approach and the decision should stand.

9. I reserved my decision.

### **Conclusions**

10. It seems to me there is considerable merit in the Grounds of Appeal. It is one thing for a judge to say that an Appellant is not credible in terms of his inability to contact his mother, but quite another thing to conclude that the mother could "resettle" away from the Taliban and their threats by moving to Kabul. In short there simply was no evidence from the mother that she would intend to relocate or would follow the Appellant to Kabul once he was returned there. Absent evidence from the mother or a reasonable inference that could be drawn from all the evidence that she would follow the Appellant to Kabul, it was not open to the judge to find that this was a significant reason why it would not be unduly harsh for the Appellant to return namely because of the presence of his mother. Essentially, the Appellant would be returned as an unaccompanied minor who, from the country guidance case, may well be at risk of serious harm if returned there and therefore it would be unduly harsh if he was returned. In these circumstances it is a straightforward finding that the judge fell into a material error in concluding that the mother would resettle elsewhere away from the Taliban. As stated in the grounds there may be a number of good reasons why the mother would not relocate to Kabul.
11. It remains the case that the Appellant is a minor (just) as at the date of the hearing before me. As such he does require protection and it would clearly be unduly harsh for him to relocate to Kabul according to the country guidance case referred to above which I follow.
12. It follows that the decision of Judge Iqbal must be set aside and the Appellant's appeal allowed under the 1951 Convention (imputed political opinion) and Article 3 ECHR.

### **Notice of Decision**

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
14. I set aside the decision.
15. I allow the appeal.

### **Order 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 order applies both to the Appellant and

to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *J Macdonald*

Date 11<sup>th</sup> September 2017

Deputy Upper Tribunal Judge J G Macdonald