



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03566/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26 July 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

AJMAL MAJEED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms G Capel, counsel instructed by Duncan Lewis & Co Solicitors  
(Harrow Office)

For the Respondent: Mr D Clarke, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant a national of Afghanistan, date of birth 1 January 1999, appealed against the Respondent's decision, dated 2 November 2016, to refuse his asylum claim of 4 May 2016. The appeal against that decision came before First-tier Tribunal Judge P S Aujla (the Judge) who on 30 May 2017 dismissed his appeals on asylum, human rights

and Humanitarian Protection grounds. Permission to appeal was given by the Upper Tribunal and on 2 January 2018, for reasons given, I concluded that the Original Tribunal's decision could not stand on the issue of Article 15(c) but in all other respects the Original Tribunal's decision stood. The issue was therefore delayed whilst awaiting for the decision which subsequently became known as AS (Afghanistan) with the Tribunal reference [2018] AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118. The issue that had been expected to be dealt with related to the question of the risk of indiscriminate violence likely to be encountered in Kabul.

2. Under the provisions of the Qualification Directive the Appellant's case was mounted on the basis that he required protection because there was the real risk of serious harm to a civilian's life or person by reason of the indiscriminate violence in situations of international or internal armed conflict.
3. The issue of the correct approach was helpfully addressed in the case of Naziri and Others [2015] UKUT 0437. In that case the Upper Tribunal pointed to the case law of Elgafaji with the EU citation C-465/07 reported [2009] 1 WLR 2100.
4. The court also recognised the extent to which civilians qualify for protection under Article 15(c) and the need to demonstrate indiscriminate violence was at a high level. The matter was further discussed in QD (Iraq) [2011] and HM and Others Iraq CG [2012] UKUT 409. In particular the risks do not have to come directly from an armed conflict but may be the result of such conflict includes the breakdown of law and order creating the necessary level of risk.
5. Those risks may generally arise from general targets being exposed to more indiscriminate attacks for example different religious faiths upon each other. The connection, as said in HM, is whether or not there is a nexus between the generalised armed conflict and the indiscriminate violence posing a real risk to life or person which is met when the intensity of the conflict involves means of combat within the

permissible under the laws of war or not that seriously endanger non-competence as well as result in a general breakdown of law and order.

6. In this case the Appellant had made a claim that he faced particular risks associated with his involvement in particular sporting circumstances but those claims were rejected. The claim widened on the basis that the Appellant was emphasising now the extent to which he and his family perceived there to be risks to them associated with his being a Shia Muslim also the religion of his family, brothers, sister, parents in Kabul let alone any other relatives.
7. The additional statement of the Appellant which was before the Judge contained with reference to the Reasons for Refusal Letter the Appellant's response. Paragraph 11 of that statement in which he said

“...since I left Afghanistan there have been many attacks targeting Shia Muslims. My family have had to change their lifestyle completely and they have had to be discrete about their religion. Due to the recent attacks in Kabul my family can only go to the Takia Khana on Fridays. The authorities have prohibited Shia Muslims from attending the Takia Khana on other days as they believe our mosques are high risk areas and likely to be attacked. My family said they were thinking about moving to another area, but they are in a dilemma and are trapped. They cannot move outside Kabul because all of the other provinces are also dangerous due to being controlled by the Taliban. Further to this in Kabul they are still at risk because Taliban and Daesh are now targeting Shia Muslims. My brother tells me from time to time about the recurring kidnappings and attacks which have taken place in Kabul. I am terrified for my family because they are living each day as it comes as they have no certainty about their future. There is no safe place to live in Afghanistan.”

Having noted that, the fact of the matter was that there is no direct evidence of any attack upon his family because of their religious faith and no suggestion that they have

been at risk of indiscriminate attacks other than by reference to the authorities being concerned about Shia Muslims gathering at particular mosques.

8. The Appellant's first statement really related to the risks associated from his sporting activities and the extent to which he had been attacked. They do not take the general issue of indiscriminate violence any further. In support of the Appellant's claim was a report by Mr Tim Foxley MBE whose experience is set out as an appendix to his expert report. He was, it seems to me, qualified to comment and his report sets out a variety of views based upon what he took to be the factual circumstances and the claim as being made by the Appellant of risks he faced.
9. In answer to the question whether there would be a risk of indiscriminate violence if returned to Afghanistan he concluded that there was a real risk and that the risk was "... perhaps slightly increased by virtue of being a Shia Muslim." (AB(A39)).
10. The risks of indirect and indiscriminate violence were said to come from improvised explosive devices, bomb, rocket and suicide attacks, criminality and illegal checkpoints, tribal disputes and military activities involving ISIS or Afghan forces.
11. There was no dispute that Shias have been targeted by the Taliban and ISIL or Daesh.
12. The Appellant said he was in regular contact with his family in Kabul. They still live in the family home and so far as I am aware there was no evidence of any direct attack upon his family because of their Shia faith. At the hearing of the appeal the Appellant produced a medical certificate from a hospital in Kabul which recorded a knife attack or knife injuries sustained by the Appellant's father in March? for which he received sutures and medical treatment. So far as I can tell he was not detained in hospital.
13. No one has apparently claimed responsibility for the attack, nor does anybody within his family know what was the cause of the attack or any particulars as to show that it

had any identifiable cause relevant to the claimed fear of being at risk because of his Shia faith.

14. Bearing in mind the low standard of proof that is to be applied it could be somewhat concerning that such late evidence should be produced on the day of the hearing when the Respondent has had no opportunity to check the authenticity of the document. In the end Mr Clarke did not object to its introduction but essentially argued its lateness in circumstances rendered it unreliable as to the risks of indiscriminate violence which essentially was the weight Ms Capel put upon it.
15. In assessing the issue of indiscriminate violence, I take into account that evidence was obtained from the Appellant at a time when he was either a child or just an adult and therefore a measure of circumspection needs to be taken about being dismissive of his claims and fears. On the other hand there was the reality of his family still living in the family home with no evidence other than this generalised fear from him that they had had to change their lifestyle. There is no explanation as to why there is no evidence from the family bearing in mind the full extent of contact that is maintained in support of the claim that being a Shia is now posing some greater risk than it did before the Appellant left Kabul.
16. Ms Capel argued that the background evidence showed the extent to which there was now a far greater level of risk than was previously faced and perhaps even was faced when the case of AK was decided or the case of AS in terms of a continuing descent and deterioration in the levels of indiscriminate violence existing in Kabul. Ms Capel highlighted in her skeleton argument with a significant number of references to examples of various responsible bodies reporting that Kabul remained a significant area for attacks either of an indiscriminate basis against the civilian population but also of a measure of attacks against Shia groups.
17. A peripheral issue was raised by reference to the opinions of a social worker Ms Smith who has been involved with the Appellant as his care worker since May 2016. She

expressed concerns relating to his cognitive abilities and questioned whether he has some learning/speech or language difficulty. The Appellant does not accept that he has such any problem but it is not on the evidence put forward on the basis that that in its own right presents a greater risk to him on a return to Kabul being able to cope with difficulties and situations that might arise. The evidence does not get close to that, bearing in mind the low standard of proof expected in such claims, to show that there was some enhanced risk to him.

18. A photograph was produced of the Appellant's father which appears to show the bandage on his neck. I can make no decision as to whether it is or not but the evidence was advanced, for what it would be worth, that this was because he was a victim of a knife attack by two men: who did not identify the basis for their attack at least to him.
19. I have been particularly concerned that much of this case was put on the basis, before today, that there was the real prospects of some change significantly in the country guidance likely to arise from the case as it was then known as AA (AS now). The headnote to AS is of some help. In terms of internal relocation to Kabul the Tribunal said

“(ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban parts but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan; it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

(iii) However, the particular circumstances of an individual must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language,

education and vocational skills when determining whether a person falls within the general position set out above.

- (iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.
- (v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh."

20. It is clear that the previous country guidance of AK [2012] UKUT 163 remained unaffected and the Tribunal considered this issue at paragraph 228 where identifying that the economic conditions in Kabul are poor. The Tribunal identified on the issues of the reasonableness of life in Kabul not least to refer to age, nature and quality of connections physical and mental health language, education, vocational and skills. Ultimately the Tribunal (paragraph 236) considered the position in terms of submissions made in relation to AK and whether or not the Article 15(c) threshold was met. The Tribunal did not accept that the country guidance in AK was no longer applicable but noted that the Appellant had chosen not to rely on 15(c) as a reason why he could not return to Kabul: Despite it apparently having been the main thrust of his application for permission to appeal and the error of law decision which followed. The consequence was that the Tribunal was not directly further addressed on that issue but it is clear that they looked at what material they had and did not find good reason to depart from the country guidance in AK nor that the length of time since AK was decided militated against its reliability.

21. Ms Capel argued by reference to a complex and multipointed attack in her skeleton argument, the assessment that she made of the figures of the increased number of

civilian casualties and for various reasons and causes. She simply extrapolates from that that the view should be reached that that represents the level of violence which falls within the sliding Rule approach in Elgafaji to indicate that the risks are such now that there is in Kabul the risk of Article 15(c) indiscriminate violence.

22. It seemed to me that the exercise, she has carried out, superficially could be taken to draw the conclusion that there is the real risk of Article 15(c) violence in Kabul. It seemed to me that the references and calculations that she produced for understandable purposes show the heightened level of violence and its changing nature to a degree but it does not seem to me to be at a level where one can describe it in the senses contemplated as indiscriminate violence either on a direct or indirect basis nor does the level of violence against Shias indicate that there is such a deterioration that they either through being numerically of the order that they are within Kabul, in any event at greater risk of indiscriminate attacks as other ordinary civilians in Kabul.
23. There was no reason to doubt the genuine concerns about the increased level of civilian casualties occasioned by suicide and complex attacks in Kabul but whilst the levels of casualties is of concern it did not seem to me that the level of risk of such violence is at a level which engages Article 15(c).
24. Trends need to be established over a period of time and I do not take the position to show on the evidence before me there is currently a trend which shows the Shia community is disproportionately represented amongst the civilian casualties in Kabul although I note the ESO comments.
25. Accordingly I conclude on what has become the sole issue in the case that the Appellant does not face the real risk of Article 15(c) violence on a return to Kabul where his family reside and have remained. I do not accept the bare assertions that the Appellant makes about the extent to which that is impacted upon them that matter was entirely susceptible to evidence and there is none directly from them forthcoming.



**NOTICE OF DECISION**

The appeal on Article 15(c) grounds is dismissed.

**ANONYMITY ORDER**

No anonymity order was made nor is one required.

Signed

Date 20 August 2018

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

The appeal has been dismissed therefore no fee award is appropriate.

Signed

Date 20 August 2018

Deputy Upper Tribunal Judge Davey