



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

Appeal Number: PA/09353/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**Promulgated**

**On 13 August and 2 November 2018**

**On 22 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**SR (AFGHANISTAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Fripp, Counsel instructed by Lawrence & Co Solicitors

For the Respondent: Mr D Clarke (13.08.18) and Mr S. Kandola (02.11.18),  
Senior Home Office Presenting Officers

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Samimi sitting at Hatton Cross on 23 October 2017) dismissing his appeal against the decision of the respondent to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection. The Judge accepted his account of past persecution at the hands of the Taliban, and found it would be safe and reasonable for the appellant to relocate internally to the place of residence of his maternal uncle, with whom he was in contact.

## **The Reasons for the Grant of Permission to Appeal**

2. On 25 May 2018, Upper Tribunal Judge Kebede granted permission to appeal for the following reasons: *“There is arguable merit in the assertion in the grounds that the Judge made conflicting findings about the location of the appellant’s uncle and the appellant’s ability to relocate to his uncle’s village. Since the Judge’s findings in regard to the appellant’s uncle are arguably relevant to all the grounds, all grounds may be argued.”*

## **Relevant Background Facts**

3. The appellant says that he arrived in the UK on 10 March 2013 clandestinely, and he is recorded as having claimed asylum on 31 May 2013. When arrested by Immigration officers, he gave his name as being ‘Tutakhil Gullwali’ with a date of birth of 1 January 1992. He subsequently said that this was a false name and date of birth, and that he had given this false information because he had panicked. In the subsequent refusal letter, the respondent’s case was that he had attempted to deceive or mislead by providing a false name and date of birth. While it was not disputed that his true identity was that of ‘SR’, it was contended that his true date of birth was 15 October 1994, not 15 October 1997. This was because he was considered to be clearly over the age of 18 at the time of his arrival, and the evidence that he provided in support of his date of birth of 15 October 1997 carried little weight *“due to the passport photo being glued on and the fact that it was filled in in pen.”*
4. As summarised in the refusal decision of 12 September 2017, the appellant’s claim was that his father had been in the Taliban and that he had disappeared in 2011. After his father went missing, some of the Taliban members said that he should join them. He was aged thirteen and a half at the time. The Taliban knocked at his door, and after he opened it, they grabbed him and put him in a vehicle and took him to a madrasa. It was in the mountains. He spent two to three months doing menial jobs in the madrasa, such as washing dishes. The Taliban also provided him with training on the Quran, and on Jihad, and they beat him whenever he did something wrong. He managed to escape when the madrasa was raided by the police and the Americans. When he got home, his maternal uncle arranged for him to leave the country through an agent. Two days later, he fled Afghanistan. The screening interview on 31 May 2013 had taken place some 11 months after his departure.
5. The respondent refused the appellant’s asylum claim, as it was not accepted that his father had been in the Taliban, or that he had been kidnapped by the Taliban. In addition, with regard to future risk, he had failed to show that upon return the Taliban would have the means or the will to pursue him. Internal relocation was a viable option for him, as his fear of return only related to his home village of Zirani in Laghman province. Zirani village was just over 100 miles from Kabul. It would not be unreasonable to expect him to return to Kabul, having regard to the

case law of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC)** and the fact that his mother and maternal uncle were still in Afghanistan.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

6. Both parties were legally represented before Judge Samimi. The Judge had received oral evidence from the appellant and took into account a Country Expert Report prepared by Dr Guistoizzi.
7. In her subsequent decision, the Judge's findings of credibility and fact were set out at paragraph [10]-[24]. She found that, in the absence of an age-assessment interview, and given the appellant's ID document, "*which has not been verified by the Respondent*", she gave the appellant the benefit of the doubt in relation to his date of birth. She also accepted that he had been kidnapped by the Taliban.
8. One of her reasons for accepting this was that the letter from his maternal uncle confirmed that his father had been working for the Taliban before his disappearance. He also corroborated the appellant's account of having been kidnapped by the Taliban for three months. She added at the end of [16]: "*The Appellant's maternal uncle has confirmed that he has relocated to an unknown location in order to protect his family. On one occasion, the Appellant's uncle re-visited the Appellant's home in order to collect his national ID (Taskira) and found a letter from the Taliban.*"
9. The Judge continued in paragraph [17]: "*In cross-examination, the Appellant confirmed that he has been in contact with his uncle who has sent him the letter from the Taliban. The appellant said that his uncle would not be able to protect him as the Taliban would target him. However, I note that the appellant's uncle lives in another village, namely the village of Farman Khel, which is about 2.5 hours away from his own village. There is no suggestion that the Appellant's uncle has been traced and targeted by the Taliban in order to ascertain the Appellant's whereabouts, or that the Appellant's uncle himself has worked for the Taliban at any stage. I find that whilst I accept the core of the Appellant's claim relating to having been kidnapped by the Taliban, the evidence before me clearly does show that he is in contact with his maternal uncle who has been able to live with his family in relative safety. While it is reasonably likely that the Appellant may be at risk of being recruited by the Taliban on return to his home village, there is no reason why he cannot relocate to his uncle's village, with whom he is in contact with (sic).*"
10. Having considered the expert evidence about the viability of internal relocation to Kabul, the Judge reached the following conclusion at paragraph [23]: "*In considering the internal relocation, the Appellant, who would be returning from the West, would have his family support network*

*as he continued to maintain contact with his maternal uncle, and would by virtue of his maternal uncle's support have access to a home and family life. I find in the circumstances of this case, whilst the appellant's internal relocation to the wider Kabul would be unduly harsh, nevertheless, the Appellant would have the support of his family who could provide him with protection."*

### **The Error of Law Hearing in the Upper Tribunal**

11. At the hearing before me to determine whether an error of law was made out, Mr Clarke conceded at the outset that the Judge had made a factual error with regard to the location of the appellant's uncle. The village of Farman Khel was where the appellant's uncle had lived in the past. In his witness statement of 23 October 2017, to which the Judge made reference at paragraph [16], the uncle said that he had left his house and his village to protect his nephew's family and that he lived at a different address, which he could not disclose.

### **Reasons for finding an Error of Law**

12. The Judge has made inconsistent findings about the location of the appellant's uncle. On the one hand, at paragraph [16], she appears to accept the uncle's evidence that he has relocated to an unknown location; but, on the other hand, at paragraph [17], she confidently asserts that the uncle is living in the village of Farman Khel, which is about 2.5 hours away from the appellant's home village.
13. It is reasonable to question whether the Judge's error is material, given that, wherever the uncle is, it is reasonable for the Judge to infer that the uncle is living in relative safety. However, even if the uncle and his family are living in relative safety, it does not necessarily follow that it is reasonable to expect the appellant to join them. The Judge does not engage with the question of whether there is an Article 15(c) risk as defined in the Qualification Directive - "*a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international and armed conflict*" - in the area where the appellant's uncle is located and so she does not make a positive finding that there is no such Article 15(c) risk.
14. Dr Guistozi's expert evidence is that there is a high level of violence in Laghman province. So arguably relocation within Laghman province is unreasonable because there is - at least arguably - an Article 15(c) risk throughout Laghman province. The same cannot of course be said of Kabul province. However, the Judge failed to make a clear finding as to whether internal relocation to Kabul was a viable option for the appellant. It is not clear what she meant by the finding that the appellant's internal relocation "*to the wider Kabul*" would be unduly harsh. This finding sits uneasily with the parallel finding that the appellant could reasonably be expected to join his uncle in a village, as opposed to in Kabul city. It is also unclear how the Judge arrived at the conclusion that relocation "*to the*

*wider Kabul*” would be unduly harsh, as the background evidence which the Judge cites at paragraph [21] concerning growing insecurity does not appear to relate to Kabul province.

15. The upshot is that the Judge’s assessment of the viability of internal relocation is unsatisfactory and flawed, and her findings on this topic are unsafe. Accordingly, the decision must be set aside and re-made.

### **Ruling on the Forum for Remaking**

16. After hearing from Mr Fripp and Mr Clarke, I ruled that this was an appropriate case for retention by the Upper Tribunal. This was because there was no challenge to the findings of fact made by the First-tier Tribunal on the issue of past persecution; and also because the issue of future risk, including Article 15 (c) risk, was going to turn primarily on the application of the latest Country Guidance authority of **AS** and on the expert evidence of Dr Guistoizzi.

### **The Resumed Hearing to Remake the Decision**

17. For the purposes of the resumed hearing to remake the decision, the appellant’s solicitors filed a supplementary bundle containing an update witness statement from the appellant dated 20 September 2018; a supplementary Country Expert Report from Dr Guistoizzi dated 23 September 2018; UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan dated 30 August 2018; and an article from the Independent about an Afghan father who had been shot dead by the Taliban after being deported by the Home Office.
18. At the outset of the hearing, Mr Fripp also served the following documents: a note which he had prepared on the topic of sufficiency of protection/internal relocation; an extract from the EASO COIR on the security situation in Afghanistan dated January 2016; a Home Office Country Policy and Information Note dated January 2018 on the topic of Afghans perceived as westernised; a Home Office Country Policy Information Note on the security and humanitarian situation in Afghanistan dated April 2018; and **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**.
19. The appellant was called as a witness, and he spoke through a Pashtu interpreter whom he clearly understood. He adopted his witness statement of 20 September 2018 as his evidence in chief. In this statement he said that he still had telephone contact with his uncle. His uncle had told him not to return. He made it clear that if he returned, he would be putting his life in danger and also he would be endangering the lives of his uncle’s family members and the life of his mother.
20. He said that his uncle would not assist him or allow him to live with him if he went back. Also, he did not believe that financially his uncle would be

able to support him. He had no doubt that he would not be safe from the Taliban anywhere in Laghman province.

21. The appellant was cross-examined by Mr Kandola, and he also answered questions for clarification purposes from me. As well as his mother, his uncle was looking after his two brothers and two sisters. He agreed that his brother Abdul was now 18. He had last spoken to his uncle about a month ago. Sometimes his mobile was switched off when he attempted to telephone his uncle. He spoke to his family on his uncle's mobile telephone. He knew that they had moved away from his uncle's home village, but he did not know their current whereabouts. He had asked his uncle, but his uncle would not tell him. He was asked why his uncle would not tell him. He said it was in order to avoid him being deported. Also, there would be difficulties. His uncle could not help him because this would put his own family at risk.
22. He did not know what his sisters or brothers were doing. He had not asked what his brothers were doing. He assumed that his sisters were not working, as generally women in Afghanistan did not work.
23. In his closing submissions on behalf of the respondent, Mr Kandola acknowledged that the appellant had been found credible in other aspects of his claim, but he submitted that it was not credible that he did not know the whereabouts of his uncle and other family members. There was no good reason why his uncle should not inform the appellant of their whereabouts. The appellant's siblings were not at risk. He also noted that the primary reason for the uncle's alleged reticence was that the appellant might be deported if he told the appellant where they were.
24. In any event, there was no reason to suppose that his uncle would not assist the appellant on his return. He had coordinated the appellant's exit from Afghanistan, and there was no reason why the uncle would not have the resources to assist the appellant, even if he was in a different province.
25. The expert evidence of Dr Guistoizzi was at variance with the guidance given in **AS**, in that he asserted that there was a real risk of the appellant being interrogated and tortured by the authorities in Kabul. Dr Guistoizzi's assumption that the appellant's father was a Commander in the Taliban was not borne out by the evidence. Mr Kandola also did not accept that there had been a major deterioration in the security situation in Kabul since October 2017.
26. In reply, Mr Fripp invited me to make a positive credibility finding in respect of the appellant's evidence about his uncle. He submitted that it was reasonably likely to be true. The uncle had understandable reasons for concealment. He was the dominant male in the family unit, and he would wish to protect himself and his own family.

27. With regard to the security situation in Kabul, the latest UNHCR Guidelines showed that there were negative trends in the security situation such that international relocation to Kabul had generally ceased to be a reasonable option. The guidance given in **AS** was “coloured” by the latest guidance from the UNHCR.
28. In addition, **AS** acknowledged that individual risk factors needed to be taken into account. The appellant could not be expected to conceal his background, and he faced the problem of disclosure. It was extremely likely, given Dr Guistozi’s updated report, that on his return the appellant would be asked about his past history at the airport or at a checkpoint. There were also other respects in which he would be particularly vulnerable. These were his long absence from the country since the age of 12 or 13, and his westernisation.

### **Discussion and Findings on Remaking**

29. The agreed starting point is that it is not safe for the appellant to return to Laghman province. The issue is whether the appellant has a well-founded fear of persecution in Kabul, and, if not, whether he can nonetheless reasonably be expected to stay in Kabul: see Paragraph 3390 of the Rules.

#### *Whether Risk of Persecution or Serious Harm in Kabul*

30. The first issue which arises on the evidence is whether there is a real risk of the appellant suffering persecutory harm in Kabul either at the hands at the Taliban or at the hands of the authorities. With regard to the former, the guidance of the Tribunal in **AS** is that a person who is of lower level interest to the Taliban (i.e. not a senior government or security services official, or a spy), is not at real risk of persecution from the Taliban in Kabul.
31. I note in passing that, in reaching this conclusion, the Tribunal rejected the expert evidence of Dr Guistozi that the Taliban keep a black list of all those who are wanted by the Taliban (paragraph 174).
32. With regard to the appellant’s particular profile, I note that at the hearing in the First-tier Tribunal, Counsel for the appellant said that Dr Guistozi was wrong to refer to the appellant’s father as a Taliban Commander.
33. Moreover, in his updated report, Dr Guistozi says that Taliban efforts to forcefully recruit the appellant would not extend far from his home area. From the context, it is apparent that he is opining that the risk of forcible recruitment is confined to the appellant’s home district and surrounding districts of Laghman province, and that the risk does not extend throughout Laghman province. *A fortiori*, the risk to the appellant of adverse interest from the Taliban in Kabul must be minimal.
34. At paragraph 38 of the report, Dr Guistozi says that in all likelihood the appellant would have to seek support, employment and accommodation in Eastern Kabul, where ethnic Pashtuns usually live. He says that this is the

area of Kabul which is most infiltrated by the Taliban, and there would be a likelihood that the Taliban would approach the appellant for recruitment. But earlier in his report, at paragraph 4, Dr Guistozi says that, with a few exceptions, there is no evidence of the Taliban actually practising forced recruitment. He goes on to describe the few exceptions, and none of these would be applicable in Eastern Kabul.

35. Dr Guistozi opines that the greater threat that the appellant would face in Kabul is the adverse attention of the authorities on account of his family background and profile. However, risk of ill-treatment by the authorities is not a factor identified by the Tribunal in **AS** as militating against the viability of internal relocation to Kabul.
36. The guidance in **AS** is that in general it would not 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.
37. However, the particular circumstances of the individual applicant must be taken into account in the context of the conditions of the place of relocation, including the person's age; the nature and quality of his support network/connections with Kabul/Afghanistan; his physical and mental health; and his language, education and vocational skills.
38. In any event, even if the appellant was questioned about his background by the authorities in Kabul, there are not substantial grounds for believing that the following disclosure to the authorities would engender a real risk of him being tortured by the authorities in Kabul on suspicion of being an insurgent, namely: (a) that his deceased father fought for the Taliban many years ago, and (b) that he fled to the West to escape forced recruitment by the Taliban with the assistance of his uncle who is not affiliated to the Taliban.

*Whether Article 15(c) Risk in Kabul*

39. Even taking into account the latest UNHCR Guidelines, I am not persuaded that the situation in Kabul has deteriorated to a point where there is now an Article 15(c) risk in Kabul or that the general situation in Kabul is such that the guidance given in **AS** set out at [36] above no longer holds good.

*Whether Relocation to Kabul is unreasonable having regard to the general circumstances prevailing there and the Appellant's personal circumstances*

40. There are not substantial grounds for believing that the appellant will be completely bereft of any support from his maternal uncle on return to Kabul.
41. Since the agreed starting point is that there is an Article 15(c) risk throughout Laghman province, there are strong grounds for believing that the uncle must have relocated with his own family and the appellant's family to Kabul, which, as the Tribunal noted in **AS**, is a magnet for



relocation from neighbouring provinces. The probability of this being the case is strengthened by the fact that the primary reason apparently given by the uncle for not telling the appellant his whereabouts is to prevent him from being deported.

42. But even if the uncle has not relocated to Kabul, there are not substantial grounds for believing that he would not be willing or able to assist the appellant from a distance. He must have had access to considerable financial resources to fund the appellant's trip to the West, and also to move his family and the appellant's family from his home village in Laghman province to a safer location.
43. I do not consider that the personal circumstances of the appellant relied upon by Mr Fripp are such as to render his relocation to Kabul unreasonable, given his age, his state of health, his level of education, his ability to speak Pashtu and his family connections in Afghanistan.
44. In conclusion, I find that the appellant has not discharged the burden of proving that he qualifies for recognition as a refugee, or that on return to Afghanistan he would face a real risk of serious harm of such severity as to cross the threshold of Article 3 ECHR. It is also not shown that he qualifies for humanitarian protection in accordance with paragraph 339C or for subsidiary protection under Article 15(c) of the Qualification Directive.
45. With regard to a private life claim under Rule 276ADE, in the light of my findings of fact under Paragraph 339O of the rules, I do not consider that there would be very significant obstacles to the appellant's integration into life and society in Afghanistan.
46. With regard to an Article 8 claim outside the Rules, I accept that questions 1 and 2 of the **Razgar** test should be answered in favour of the appellant with regard to the establishment of private life in the UK. Questions 3 and 4 of the **Razgar** test must be answered in favour of the respondent. On the issue of proportionality, I must take into account the relevant public interest considerations arising under section 117B of the 2002 Act. None of these militate against the proportionality of the appellant's removal in circumstances where his protection claim has failed. The decision appealed against strikes a fair balance between the appellant's rights and interests and those of wider society. It is proportionate to the legitimate public end sought to be achieved, namely the maintenance of firm and effective immigration controls.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted:

This appeal is dismissed.

**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 15 November 2018

Judge Monson  
Deputy Upper Tribunal Judge