



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: RP/00131/2017

THE IMMIGRATION ACTS

Heard at Field House
On 28 June 2018

Promulgated on:
On 4 July 2018

Before

Upper Tribunal Judge Kekić

Between

NS
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Mr E Fripp, of Counsel, instructed by Duncan Lewis and Co.
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Details of appellant, immigration history and background

1. The appellant is an Afghani national born on 1 June 1992. He appealed against the decision of the respondent dated 16 October 2017 to effect a cessation of his refugee status under article 1C (5) of the 1951 Refugee Convention and paragraph 339A(v) of the Immigration Rules. On the same

- date his human rights claim was refused and the decision to treat him as liable to deportation was maintained.
2. The appellant entered the UK clandestinely by lorry in August 2006 and claimed asylum on the basis that he would be at risk because of his late father's involvement with the Hizb-i-Islami. His claim was refused but being a minor, he was granted discretionary leave until 25 October 2009. Thereafter, his application for further leave was refused but following a successful appeal before First-tier Tribunal Judge Malone in September 2010, he was granted refugee status until 13 March 2016.
 3. Meanwhile, on 8 July 2011, the appellant was convicted of robbery and sentenced to two years' imprisonment in a young offenders' institution. A decision to deport him was not pursued but he was warned on 10 December 2012 that deportation would be considered in the event of further offending. This did not deter him and on 4 September 2013 he was convicted of fraud of which he received a suspended sentence.
 4. On 30 August 2014 he was convicted of drugs offences.
 5. On 3 December 2014 he was convicted of theft, shoplifting and the commission of an offence during a suspended sentence for which he received a prison sentence. He was once again warned of deportation in December 2014.
 6. On 1 January 2015, he was once again convicted of theft and fined.
 7. On 9 October 2015, he was convicted of sexual assault for which he received a nine-month prison sentence.
 8. It was considered that his deportation was conducive to the public good and on 28 October 2015, he was notified of a decision to deport him under s. 3(5)(a) and 5(1) of the Immigration Act 1971. He subsequently made asylum and human rights representations on 29 October 2015.
 9. On 8 April 2016 the respondent gave notification to the appellant of intention to cease refugee status under paragraph 339A(v). although the respondent took account of the appellant's criminality which triggered the deportation, it was clarified in the letter that no weight was apportioned to his convictions whether cessation was considered.
 10. On 12 May 2016 the respondent wrote to the UNHCR to advise of the intention to cease the appellant's refugee status.

11. On 24 May 2016, the appellant was convicted for failing to comply with notification requirements, on 15 August 2016 of burglary, on 28 November 2016 of drugs offences and a failure to surrender to custody at a particular time and on 21 December 2016 of theft for which he was imprisoned.
12. On 13 April 2017, he was convicted of two counts of burglary and theft and received a nine-month sentence and two further offences of theft and burglary for which he received eleven and twelve-month sentences.
13. On 18 May 2017, an application for indefinite leave to remain was made which was refused on 31 August 2017.
14. On 11 October 2017, the appellant's sentence came to an end and he was placed in immigration detention. He was released thereafter.
15. On 16 October 2017, the appellant was served with a cessation of refugee status and a decision to refuse a human rights claim.
16. The respondent's case was that the situation in Afghanistan had changed significantly since the grant of status to the appellant and that he would no longer be at risk on return because of his late father's political activities. First-tier Tribunal Judge Lal heard his appeal. He took the decision of Judge Malone in 2010 as his starting point and found that as the appellant feared returning to Kabul and feared the authorities, the judgment of AK (Article 15(c)) Afghanistan CG UKUT (IAC) did not undermine Judge Malone's findings. He concluded that any argument on a change in the situation was unsustainable because it was the government that the appellant feared. He, therefore, allowed the appeal on article 3/asylum/humanitarian protection grounds on 1 December 2017. The judge also considered article 8 but found that in the context of the appellant's criminal offending and the risk of re-offending, removal was proportionate on article 8 grounds.
17. On 9 February 2018, the Secretary of State was granted permission by Upper Tribunal Judge Pitt and the matter came before me on 9 April 2018. After hearing submissions from the parties, I set aside the decision in so far as it related to the cessation of refugee status on article 3, asylum and humanitarian protection grounds. The article 8 findings were preserved as they were unchallenged by either side. Full reasons are set out in my determination of 19 April 2018. In summary, I found that the judge had failed to consider whether the country evidence showed a durable change to the situation in Kabul. He had assumed that because the appellant feared the government which remained in power his fear was still valid but failed

to appreciate that there had been an apparent change in the attitude of the government towards certain political groups including the Hizb-i-Islami. For that reason, his conclusions were unsustainable.

18. **The hearing**

19. The appellant attended the hearing but did not give oral evidence. The matter proceeded on submissions only after both parties adduced further documentary evidence and Mr Fripp was given time to peruse the material.
20. Mr Fripp submitted that the appellant had succeeded in his appeal before Judge Malone in September 2010. His account was accepted and his findings represented a Deevaseelan starting point. The respondent now relied upon a proposed agreement between the Afghan government and Gulbuddin Hekmatyar's Hizb-i-Islami party to argue that the situation had changed and it was safe to relocate to Kabul. Mr Fripp submitted that the decision letter fell well short of the correct test as to significant and durable changes necessary for revocation of refugee status under paragraph 339A(v) of the Immigration Rules or article 11(2) of the Qualification Directive. He argued that the respondent had not maintained that the appellant's criminal offending itself justified cessation and he submitted that if the appellant re-offended, it would be open to the Secretary of State to reassess the situation.
21. Mr Fripp referred to SB (cessation and exclusion) Haiti [2005] UKIAT 00036 (in particular to paragraphs 37 and 44), to Abdullah and others v Bundesrepublik Deutschland [2011] QB 46 (at 70-73) and Dang (Refugee - query revocation - Article 3) [2013] UKUT 00043 (IAC). He submitted that the latter judgment did not apply to the appellant because he was granted status after the Qualification Directive came into force and that case involved a person granted Convention refugee status.
22. Mr Fripp maintained that the respondent's reliance on the ongoing reconciliation efforts between the government and the Hizb-i-Islami was not sufficient evidence to show that the appellant's fear was permanently eradicated. The situation in Afghanistan continued to deteriorate and that included the appellant's home province of Nangahar. He referred me to the UN Security Council report (at 13, 23 and 25), to 5.1.3, 5.1.4, 6.1.1 and 6.1.2 of the Country Policy Information Note (CPIN) and to the opening page of the US State Department report. When the material was considered in the context of the legal test, Mr Fripp questioned whether a fundamental change had been shown and whether the fear of someone, who was linked to a person known to have been involved with the Hizb-i-Islami and killed,

- could be said to be eradicated. He submitted that the evidence did not show a significant change of a non-temporary nature.
23. Mr Tufan responded. He submitted that Judge Malone had found that the appellant would be at risk because of his late father's connection to Dadullah (now deceased). He pointed out the appellant had been a child at that time and that he had remained in Afghanistan for some years after that. He submitted there was no reason why the authorities, which had made peace with Hekmatyar, would have any interest in the appellant who himself had not had any political involvement. There had been a durable change. The decision of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAT) confirmed there was a sufficiency of protection in Kabul and in Afghanistan. The CPIN reported on the peace agreement between the authorities and the Hekmatyar faction and the other Hizb-i-Islami factions were incorporated into the government. Hekmatyar was no longer a sanctioned individual and the higher echelons of the party were all free to move around without hindrance. In those circumstances, the appellant was no longer at risk. The country guidance also showed an improved situation. The respondent was justified in revoking refugee status which was triggered by the deportation order made following the appellant's persistent and serious criminality. Dang was relevant in that the assessment of article 3 risk must be assessed at the date of hearing and be forward looking.
24. In response, Mr Fripp repeated that the evidence had not shown a change such as to justify cessation of status. The evidence showed a process but not an eradication of all risk to the appellant. First-tier Tribunal Judge Malone had found that the appellant would be at risk at the airport. The respondent had misunderstood the case of Dang. It did not apply to status granted under the Qualification Directive.
25. That completed the submissions. I reserved my determination which I now give with reasons.

Consideration

26. I have considered all the evidence with care. I acknowledge that it is for the respondent to establish that there has been a durable and significant change such that cessation of status is justified. The relevant test is set out in the rules and in the Qualification Directive.
27. The rules on revocation or refusal to renew a grant of asylum provide:

339A. *A person's grant of asylum under paragraph 334 will be revoked or not renewed if the Secretary of State is satisfied that:*

...

(v) *he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality;*

...

(ix) *there are reasonable grounds for regarding him as a danger to the security of the United Kingdom; or*

...

(x) *having been convicted by a final judgment of a particularly serious crime he constitutes a danger to the community of the United Kingdom.*

In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Where an application for asylum was made on or after 21 October 2004, the Secretary of State will revoke or refuse to renew a person's grant of asylum where he is satisfied that at least one of the provisions in sub-paragraph (i)-(vi) apply.

28. The Qualification Directive (on cessation) states:

Article 11

1. A third country national or a stateless person shall cease to be a refugee, if he or she:

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a

significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

29. The appellant's appeal before Judge Malone was heard and determined in August and September 2010 respectively. At that time, as the judge found, the evidence pointed to great hostility between the Hizb-i-Islami and the Afghan government with former commanders frequently being targeted as insurgency began to penetrate Kabul and because they were suspected of supporting the terrorist activities of Mullah Dadullah (examples for 2005 and 2007 are cited). The mullah died in 2007. The Taliban were also suspected of insurgency at that time. The judge took account of the prevailing country guidance which found that relocation outside Kabul (where the appellant was said to have lived) was not possible. He found that as the appellant feared the authorities, relocation was not an option and that he would be at risk at the airport.
30. The respondent's claim is that the situation in Afghanistan has significantly altered since the grant of status to the appellant and that due to those changes he would no longer be at risk. Whilst Mr Fripp made lengthy submissions criticizing the test applied by the respondent, it is not correct to say that the respondent did not have regard to the requirement that changes had to be significant and non-temporary. Both these caveats are repeatedly considered and assessed in the April 2016 letter where cessation was considered (at F2-3) and in the more recent October 2017 decision letter (J1 and J4). Then, as now, the respondent considered that the security landscape in Afghanistan had much improved and that the circumstances leading to the grant of refugee status had fundamentally and durably changed. Although Mr Fripp submitted that the appellant's home area was Nangarhar, it appears from the appellant's own evidence that he was from Kabul where he lived. The respondent considered the situation in Kabul at length (F3-4 and J2-4).
31. As required, I now assess the evidence with a view to determining whether it is sufficient to meet the legal test.
32. The UN Security Council report of March 2017 records the implementation of the peace agreement with Hizb-i-Islami in September 2016 and the lifting of sanctions against Hekmatyar in February 2017 (at paragraphs 3, 9 and 60). It is reported that negotiations took place on issues such as the release of prisoners and accommodation arrangements for affiliates expected to return from Pakistan (at 9). I was referred to the deterioration in the overall security situation in 2016 and the beginning of 2017 but the areas seeing most of the conflict excludes Kabul where the appellant would be returning.

Reference to Nangarhar (at 13) is not relevant as I can see nothing to support Mr Fripp's submission that that is the appellant's home area. Indeed, none of the paragraphs on security refer to Kabul (13-18). The attacks recorded in paragraphs 23-31 appear to be largely against women, Shia'a Muslims, government officials, health and educational workers. Children have suffered disproportionately from violence. There appears to be a largescale return of Afghans from other countries and a substantial decrease in Afghans leaving the country.

33. The Security Council June 2017 monthly forecast also reports on the reconciliation agreement between the government and Hekmatyar who came out of hiding and in April 2017 made his first public appearance in twenty years when addressing a rally of his supporters. He called upon other opposition groups to join in the peace and repeated the message in May 2017 at the presidential palace. He also met with the UN Secretary General's Special Representative who expressed his appreciation for Hekmatyar's commitment to peace.
34. The CPIN of April 2018 cites the extracts from the UN document to which I have already referred above (at 32). It also reports on the volatile security situation and rivalry within political leadership leading to internal conflicts. Most civilian casualties are attributable to the Taliban and IEDs.
35. I was only referred to the first page of the US State Department report of 2017 which provides information on general problems of violence including attacks by insurgent groups and the Taliban. There is no reference in that report to the Hizb-i-Islami.
36. I have also considered the judgments that I was given. AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) discusses the security situation in Kabul. The following headnotes are relevant:

Risk on return to Kabul from the Taliban

1. *A person who is of lower-level interest for 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.*

Internal relocation to Kabul

2. *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor 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.

3. However, the particular circumstances of an individual applicant 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.

4. 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.

5. 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.

Previous Country Guidance

6. The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.

7. The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.

37. The relevant headnotes in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC) are:

(ii) Despite a rise in the number of civilian deaths and casualties and (particularly in the 2010-2011 period) an expansion of the geographical scope of the armed conflict in Afghanistan, the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.

(iii) Nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may now be taken to include Ghazni but not to include Kabul), at such a level.

- (iv) Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing "safety" and reasonableness") not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.*
38. I have also been referred to SB (cessation and exclusion) Haiti [2005] UKIAT 00036 where the Tribunal considered "*whether the Adjudicator erred in concluding that there had been such a change in circumstances, particularly in the light of the present situation in Haiti, as to enable the Secretary of State to discharge the burden which he conceded he bore to show that Article 1C(5) applied*"; i.e. whether "*the circumstances in connection with which he has been recognized as a refugee have ceased to exist*" (at 18). The Tribunal explained that this meant that the changes needed to "*show that the previously persecutory conditions will not foreseeably return to displace the refugee again. They do not require a particular level of good and democratic governance to be achieved. It is the avoidance of a predictable return to the conditions of persecution which must be shown as a result of the changes relied on*" (at 28).
39. Abdullah is relied on to confirm the article 11(2) test which provides that the change of circumstances must be of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regraded as well founded.
40. Dang does not assist as the second head note which Mr Tufan referred to applies to those individuals who were granted asylum before the QD came into force and, in any event, was not concerned with cessation provisions (at 12 and 31).
41. Applying all this information to the decision and the appellant's case, I find that the respondent has shown that the risk of persecution to the appellant from the authorities as a result of his father's previous involvement with the Hizb-i-Islami has been eradicated. I have seen no reports of any troubles or problems emanating from involvement with the group; indeed the evidence shows that part of the groups has been incorporated into the government and the Hekmatyar faction has reached an agreement with the government which has meant Hekmatyar coming out of hiding, making public appearances and speeches and being free to move around without risk. It has been almost two years since the agreement and there have been no reports of failure, no return to hostilities and indeed the Hizb-i-Islami no longer features negatively in any of the country material before me. In the

- circumstances I see no reason why the appellant would be at risk on account of his deceased father's involvement (prior to 1996).
42. The appellant lived in Kabul and the country guidance is that Kabul is safe for relocation which makes it easier still for someone who used to live there. The appellant still has close family there and so would not be returning without any support network. Indeed, the country guidance confirms that even those who fear the Taliban, which is still active there, could safely return there. Additionally, the appellant is fit and healthy. There is no suggestion that in any of the communication the appellant has had with his relatives that there has been any difficulty or that there have been enquiries about his whereabouts.
43. The change in the government's attitude to Hizb-i-Islami members and supporters has fundamentally changed and therefore it is fair to say that the basis of the fear which led to the appellant's grant of asylum has been eradicated. The situation at present is entirely different in that respect to what it was in 2010. The appellant would no longer be at risk because of his father's activities. There has been a change in the country situation which means that the reasons that led to the grant of asylum no longer apply. The change is significant and non-temporary.
44. I confirm that I have not placed weight on the appellant's criminality when reaching my conclusions although his convictions were what triggered the cessation provisions of the rules. The findings made with respect to article 8 are preserved as there have been no challenges made to those.
45. **Decision**
46. The appeal is dismissed.
47. **Anonymity Order**
48. I continue the order for anonymity made by the First-tier Tribunal.

Signed:



Dr R Kekić
Judge of the Upper Tribunal
2 July 2018