



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

Appeal Number: PA/00894/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 July 2019**

**Decision & Reasons Promulgated  
On 30 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MS (AFGHANISTAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ben Bundock, Counsel instructed by Southwark Law Centre

For the Respondent: Mr Lawrence Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Following the promulgation of my error of law decision on 22 January 2019, the decision of the Upper Tribunal in **AS (Safety of Kabul) Afghanistan CG [2008] UKUT 00118 (IAC)** was partially overturned by the Court of Appeal.

2. On 24 June 2019 the Court of Appeal made an order that the appeal be remitted to a different panel of the Upper Tribunal for a reconsideration of the Upper Tribunal's conclusions on the question of the extent of the risk to returned asylum seekers from security incidents of the kind considered at paragraphs 190-199 of the determination promulgated on 23 March 2018, to include reference to any updating evidence and/or further submissions as to security risk and the relevance of that risk to the reasonableness of Kabul as an internal relocation alternative. The Court directed that all other findings in the Upper Tribunal in the determination promulgated on 23 March 2018 should be preserved, *"save that the Upper Tribunal is entitled to reconsider any such finding if and to the extent that if it thinks it right to do so in the light of development since that date"*.
3. At a hearing on 17 May 2019, the parties to this appeal agreed to proceed with the re-making of the decision, notwithstanding the fact that the revised Country Guidance from the Upper Tribunal was unlikely to be available by the date of the proposed hearing. In addition, although not envisaged in my original directions, it was agreed that the appellant should give oral evidence on the outstanding issues with the caveat that, as a vulnerable witness, measures would need to be taken to enable him to give his evidence in an optimum environment in line with the Presidential Guidance Note No.2 of 2010.
4. Accordingly, the hearing to remake the decision proceeded before me in accordance with the recommendations made by Robert Selwood, Chartered Psychologist, in his supplementary report dated 10 June 2018.
5. The appellant gave his evidence through a Pashtu Interpreter whom he clearly understood. He adopted as his evidence in chief his witness statement of 4 July 2019 in which he re-adopted all his previous statements. He remained tired, depressed and isolated. The GP had decided to give him a new prescription of Mirtazapine to treat his stress and anxiety. He was taking double his previous dosage. Although he was still a Muslim, the last time he had gone to a Mosque was in 2018. He had had a bad experience during Ramadan last year at Norbury Mosque. He had turned up in shorts and he was not allowed to enter. Although he remained a Muslim, he did not follow any other Islamic practices. In the past, he had dated a girl during Ramadan, and this was completely forbidden in his culture, even in the UK.
6. He was particularly upset when he thought about his mother in her current situation. He had tried to contact her, but the telephone connection in Afghanistan had been down for six weeks. He had also now lost contact with his Uncle Yousaf in Italy on Facebook. He was sure that Yousaf wanted nothing more to do with him because of the money his family owed him for arranging his transport from Afghanistan.
7. It was nice to be with his *"mum"* Mary in the UK. He felt included and protected, and Mary and Dave were giving him 100% support. He was not ready to stand on his own two feet. He had previously tried to move

away from his foster family to independent living, but he could not manage this.

8. He had been in the UK since he was 13 years old, and he had adopted the culture of the UK. He had sleepless nights worrying about going back to a place that was now completely alien to him. He no longer felt like an Afghan.
9. In cross-examination, the appellant confirmed that his home province of Baghlan was very religious, as were his family in Baghlan. He was asked whether he felt it was wrong to attend a Mosque in shorts. He answered 'no'. He added that he was not a religious person now.
10. In answer to questions for clarification purposes from me, the appellant initially said that his mother was living in the home village with his maternal uncle's father-in-law, and there was no one else with her. But there might be other relatives living in the same village. He did not know this one way or the other. He then said that his father-in-law had his own family, and they were in the village. He had a wife and kids. They lived in the same house as his mother and father-in-law. Mr Bundock asked the appellant why he had not said this at the outset. The appellant responded that his mum was on her own. There was no one with her. He then added that they all lived in the same house. When he had said that they were living in the same village, he had meant that they were living in the same house.
11. He had made friends at school, but not recently. He was no longer seeing other Afghans. This was because he got so depressed and sad that he did not want to interact with others. He only occasionally spoke Pashtu now, as he had lost interest in friends.
12. Ms Maya Pritchard was called as a witness, and she adopted her most recent statement dated 3 July 2019 in which she re-adopted her earlier witness statements. She had been working as a Youth Caseworker at SLRA (South London Refugee Association) since November 2013, and she had been promoted to a Casework Manager in September 2018. She had a wide range of vocational training in areas such as safeguarding children and vulnerable adults, mental health, drug dependency, youth work, sexual exploitation and gang awareness. The level of support she provided varied according to a young person's needs and the issues they were experiencing. Most of the young people she worked with were unaccompanied asylum-seeking children and a large percentage of them were from Afghanistan. Until recently, she had been providing 1:1 casework support to around 50 young people a year, but as a manager her case load had been reduced to about 15 young people, involving the most complex cases.
13. In her opinion, Muhammad presented as one of the most complex cases she had known, perhaps due to the twin factors of his poor mental health and learning difficulties. It was those vulnerabilities and his character

which would put him more at risk than most of the young Afghan men she had provided casework support to over the years - between 60 and 80 - if returned. In addition, Muhammed was by far the most Westernised Afghan that she had worked with. This might not seem significant in itself, but she believed that the way in which this trait intersected with, and was compounded by, his mental health and learning disability was what made him so vulnerable. As mentioned in her last statement, Muhammad seemed to possess no ability to censor himself, and appeared incapable of self-moderation when it came to expressing his views or managing his behaviour. This therefore put into doubt that he would be able to employ those kinds of skills if his safety depended on it. She thought that it was this factor which separated him from other Afghan young men with whom she had been involved.

14. During the time in 2016 that she was advocating Croydon Social Services to continue to support him, Muhammad was completely incapable of saying and doing what he needed in order for them to maintain support. Despite repeated advice, Muhammad did not understand what was needed from him, and was unable to grasp what the consequences would be. This ultimately led to Social Services closing his case in early 2017 and him becoming destitute.
15. Muhammad's mental health remained extremely poor. He got overwhelmed very easily and then seemed to become frozen with anxiety. This had meant that his daily function had been reduced to bare minimum, and his routine seemed to consist of just eating and sleeping, with occasional visits to their office. Tragically, he seemed to have lost contact with most of his friends. He used to be quite sociable, but the only time he left the house was to visit her at the office or if he had the occasional appointment.
16. Muhammad was now back on the waiting list for counselling at Compass, a specialist Mental Health Service where he had received counselling in 2015. Her view was that Muhammad was extraordinarily vulnerable and very much dependent upon agency support to meet his complex needs. This view was based on the 100s of hours she had been spent supporting him, multiple needs assessments, risk assessments and support planning. SLRA had gone to great lengths to assist Muhammad because they had assessed him as being acutely vulnerable and he was therefore a priority case for them. She had grave concerns for his safety if removed from the UK to Afghanistan.
17. Mr Tarlow declined to cross-examine Ms Pritchard, but she answered some questions for clarification purposes from me. She was seeing the appellant once or twice a week. He was living with a host family. The original plan was that he should live with his host family for six months, but he had now been with them for two years and the placement had been extended indefinitely. His relationship with Mary and Dave had deepened. He now called them 'mum and dad'.

18. Ms Celia Sands of the SLRA was called as a witness, and she adopted as her evidence in chief her witness statement signed by her on 25 February 2019. She had been appointed a Director of the SLRA in November 2014. Ms Pritchard was Muhammad's main point of contact in the organisation, but when she was away, Muhammad would come to her. She herself was a mother of teenage boys growing up in South London, and she saw in Muhammad traits that she recognised in her own boys and their friends - a young man cockiness. There was a kind of swagger and bravado amongst these young men where people with whom they associated had to prove who they were. She saw this in the way Muhammad greeted others and held himself. Most of their young Afghan clients appeared much less sure of themselves, and Muhammad was much more like one of her sons.
19. He differed from other Afghans in other ways. One of these was in the openness of his conversation on subjects which others had never talked about in public. For example, on a number of occasions Muhammad would talk very openly in her presence about sex and relationships. He did not self-censor in relation to topics that other Afghans would find shocking or shameful.
20. With this in mind, she was very surprised at what happened when she had accompanied Muhammad to an appointment with a potential new host. They were a young couple from just down the road, in Brixton/Stockwell. Everything had been explained to Muhammad. When they got there and met the couple, Muhammad seemed to fall apart. The swaggering confidence completely evaporated and he did not know how to interact with them. The whole experience of meeting the couple and the shattering of external shells had completely unsettled him and very quickly during the placement he decided to leave and sleep on the sofas of friends until they could sort out another arrangement for him, which was his current arrangement with Mary and David.
21. It was very revelatory to see Muhammad change from the swaggering young South London man on the way to the appointment, to someone who was monosyllabic and unable to make eye contact - totally unable to cope with the situation he had been placed in. The current placement was successful. He called Mary and Dave 'mum and dad' and this showed her that he was much more child-like than his outside persona suggested.
22. She understood that he had been fairly recently diagnosed as having cognitive and learning difficulties, and this did not surprise her. From her experience, Muhammed struggled to understand even fairly basic concepts and he required frequent repeated explanations before they became clear. He was also not very guarded and did not think of the consequences of what he said or did. She was very concerned about Muhammad going back to Afghanistan. He would not be able to care for himself, or keep himself safe. He had picked up the mannerisms of a cocky South London teenager, but this combined with an immature attitude would lead to danger. He had neither the ability to think through the consequences of his actions nor the ability to process information

quickly. In an environment which would require self-reliance and strong self-preservation skills, she did not think that he would be able to cope.

23. In his closing submissions on behalf of the respondent, Mr Tarlow submitted that the appellant would be able to re-adapt to his home environment in Baghlan province so as not to come to harm. The appellant would re-assimilate into the culture and society in which he had been immersed up to the age of 13, and with which he had remained familiar through contact with fellow Afghans in the UK. Alternatively, internal relocation to Kabul remained a reasonable and not unduly harsh option for him. The Court of Appeal had not disturbed the finding of the Upper Tribunal in AS that westernisation would not be a significant risk factor in Kabul, and the appellant would be able to access a financial package from the Home Office to help fund his survival in Kabul.
24. In reply, Mr Bundock developed the case advanced in his very comprehensive skeleton argument.

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

25. The first outstanding issue is whether the appellant's return to his home area in Baghlan province is precluded by his westernisation. To support this proposition, Mr Bundock draws upon a number of sources of evidence. UNHCR's 2018 Guidelines identify individuals perceived as westernised as being a category of person at risk. There are reports of such people being threatened, tortured or killed by AGEs on the grounds that they were perceived to have adopted values associated with western countries. Another risk category identified is that of individuals perceived as contravening AGEs' interpretation of Islamic principles, norms and values. There are documented instances of the Taliban killing, attacking and threatening individuals who are perceived to contravene the Taliban's interpretation of Islamic principles, norms and values. A third relevant risk category are men who are "*perceived as contravening social mores*".
26. The EASO Country Guidance is to similar effect. It says that Afghans identifying with Western values may "*be targeted by insurgent groups, since they can be perceived as un-Islamic, or pro-Government, or can be considered spies.*" Risk factors include the behaviours adopted, rural areas, a conservative environment, and whether it would be difficult for particular applicants to readjust to Afghanistan's social restrictions. Mr Tarlow did not challenge the evidence that the appellant comes from a very religious and conservative environment in Baglan province.
27. Of particular pertinence is a passage in the EASO Report where the following is stated: "*Individuals who hold views that can be perceived as having fallen away from Islam*" cannot "*express their views or relationship to Islam openly, at the risk of sanctions or violence, including by their family. Such an individual must also appear outwardly Muslim and fulfil the behavioural religious and cultural expectations of their local environment.*"

28. As submitted by Mr Bundock, it is unlikely that the appellant would be able to modify his behaviour such as to fulfil the behavioural religious and cultural expectations of his local environment, given his apparent inability to think through the consequences of his actions and his impulsivity.
29. In his expert opinion, Dr Giustozzi says that the appellant would simply not be able to display westernised attitudes in his home area, in view of its conservatism and the Taliban presence. In her expert report, Dr Schuster states that the appellant's views and likely behaviour "*would put him at serious risk of alienating those around him, leading to exclusion at best and a risk of serious violence at worst*" such as "*a severe, potentially fatal, beating.*" She opines that his failure to comply with the myriad of subtle ways in which people are expected to demonstrate and affirm an Islamic faith "*will give rise to comments and expose him to accusations that he is no longer a believer.*"
30. Mr Tarlow did not challenge the appellant on his answer that he did not think that he was doing anything wrong or inappropriate when he sought to enter a Mosque in shorts. Accordingly, the incident provides a powerful illustration of the appellant's likely inability to re-assimilate himself into a conservative and highly religious environment so as to avoid a risk of serious violence or worse. As submitted by Mr Bundock, the appellant cannot in any event be expected to modify or conceal his acquired opinions regarding gender and cultural norms, and nor can he be expected to feign or perform religious adherence in order to avoid persecution, following **RT (Zimbabwe) -v- SSHD [2012] UKSC 38** and **HJ (Iran) -v- SSHD [2010] UKSC 31**. In any event, in view of the independent evidence regarding the appellant's innately impulsive character, and the very long and significant period that he has spent outside Afghanistan, there is a real risk that he would not be able to modify or conceal the opinions that he has acquired in the West so as to avoid the risk of serious harm. Accordingly, I find that the appellant has discharged the burden of proving that he has a well-founded fear of persecution in Baghlan province, and/or of serious harm contrary to Article 3 ECHR, on account of his westernisation.
31. Nonetheless, the appellant will not qualify for recognition as a refugee if paragraph 3990 of the Rules applies. So I turn to consider whether the appellant can be reasonably expected to stay in Kabul. The answer to this question is in the negative, having regard to, among other things, the unchallenged evidence of Ms Pritchard. Her evidence underpins the submission that the appellant is extremely vulnerable and struggles to manage his life, even with the deep and sustained support he receives from multiple individuals and agencies in the UK; that he lacks very basic coping skills; that he presents as one of the most complex cases Ms Pritchard has ever known, perhaps due to the twin factors of his poor mental health and learning difficulties; that he has a learning disability which would seriously inhibit his ability to find work to support himself in Kabul; and that there is a real risk that his mental state would seriously deteriorate on removal to Kabul.

32. Although he is formally assessed as having only a moderate learning disability, his perceptual reasoning index is found in only 1% of adults, placing him in the extremely low range. His working memory is at the 0.4% level, found only in 4 in 1,000 adults of his age.
33. In addition, the appellant has no educational qualifications or vocational experience that would be of assistance in Kabul, and there is a real risk that he would have no meaningful or effective support in Kabul from his family. Judge Burns found to the contrary, on the premise that the appellant's family would provide funding for him in Kabul. However, for the reasons given above, the appellant's ability to survive in Kabul does not only hinge on whether he can access a financial package from the Home Office or from family members who are willing and able to support him from a distance.
34. Having regard to the appellant's personal circumstances, I find that the requirements of paragraph 3990(i)(a) are not made out. I find to the lower standard of proof that he cannot reasonably be expected to stay in Kabul, and therefore he qualifies for recognition as a refugee.

### **Notice of Decision**

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

The appellant's appeal is allowed on the ground that his removal from the United Kingdom would breach the Refugee Convention and/or Article 3 ECHR of the Human Rights Convention.

### **Direction Regarding Anonymity**

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 28 July 2019

Deputy Upper Tribunal Judge Monson

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed this appeal on remaking, I have given consideration as to whether to make a fee award in respect of any fee which has been paid or is



payable, and I have decided to make no fee award as the First-tier Tribunal reached the sustainable conclusion that his principal ground for claiming asylum (the existence of a blood feud) should be dismissed, and the appellant needed to bring forward further evidence in the Upper Tribunal in order to succeed in his appeal on his subsidiary ground for claiming asylum (risk of harm in home area due to westernisation) and on the ground of the non-viability of his relocation to Kabul due to his personal circumstances.

Signed

Date 28 July 2019

Deputy Upper Tribunal Judge Monson