



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09580/2018

THE IMMIGRATION ACTS

Heard at Field House
On 24th January 2019

Decision & Reasons Promulgated
On 12th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SKN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen of Counsel instructed by Warnapala & Company

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge James made following a hearing at Birmingham on 23rd October 2018.

Background

2. The appellant is a citizen of Afghanistan with a disputed age, but the judge accepted the respondent's contention that he was born on 1st August 1999. He comes from the Kunduz province of Afghanistan and arrived in the UK when he was 12 years old.

The judge accepted that he was to be treated as a vulnerable witness since he has had significant health issues including a period of six months in a psychiatric hospital, having been diagnosed as a paranoid schizophrenic.

3. The judge relied in the main on the credibility findings made by a previous judge at a hearing in April 2016.

4. The judge wrote:

“I have considered all of the evidence before me but with the exception of finding that the appellant is an Afghan national, I find no basis to depart from the findings of Judge Sullivan. I find that the appellant has not discharged the burden of proving his claimed date of birth, his father’s involvement with the Taliban, his father’s death or that he has no family in Afghanistan”.

5. He said that he was mindful of the decision in N v UK Application 26565/05 and the decision in KH (Afghanistan) v SSHD [2009] EWCA Civ 1354. He considered that asylum seekers with mental illness with no families could not be considered to be very exceptional. He was satisfied that there were medical facilities including mental health facilities in Kabul. His condition was not such that on a return to Afghanistan that he would reach the threshold of a breach of Article 3. He was satisfied that the appellant did not face a real risk of persecution on return to Kabul.

6. He dismissed the appeal on all grounds.

The Grounds of Application

7. The appellant sought permission to appeal on the grounds that the judge had not properly assessed the viability of the appellant’s return to Kabul. He appeared to have considered Kabul through applying a test of exceptionality rather than reasonableness. Neither had the judge made any reference to the argument made in the grounds that the appellant could succeed under the Immigration Rules by reference to very significant obstacles. His conclusions in respect of the appellant’s age were also challenged.

8. Permission to appeal was granted by Judge Smith on 6th December 2018, on the basis that the First-tier original judge had arguably erred in respect of his consideration of the viability of the appellant’s returning to Kabul and had arguably misapplied the decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118.

9. Mr Walker did not seek to defend this determination.

Consideration as to whether there is a Material Error of Law

10. Undoubtedly the judge erred in his analysis of the viability of the appellant’s return to Kabul, appearing to apply the wrong test and failing to have proper regard to a material factor, namely that this is an appellant with a diagnosis of paranoid schizophrenia who has been sectioned for a period of six months in the recent past. The decision is set aside.

Further Submissions

11. Mr Walker acknowledged that the appellant comes from one of the most troubled areas of Afghanistan where there has been a great deal of displacement. He recognised that the appellant left there many years ago when he was only 12 and that there was no proper basis upon which it could be concluded that there was a support network for him either in his home area or in Kabul. He did not take any issue with the medical evidence and did not seek to persuade me that it would be reasonable for him to return.
12. Ms Allen took me through the medical evidence and the objective evidence and the relevant passages of AS and asked me to allow the appeal.

Findings and Conclusions

13. First, the home area where the appellant comes from is Kunduz. It is an area of high Taliban activity. The Country of Information Report Afghanistan describes a number of serious incidents and accepts that the Taliban continue to pose serious threats. It names a number of different kidnappings, capturing of the bazar in Qala-e-Zal district and fighting with government forces through drone strikes and other air attacks throughout the province. From 2015 there has been a strong Taliban presence and activity there, and access to the province is limited. Taliban fighters have looted and tortured houses of ALP personnel and other pro-government people in the city as well as in outer districts.
14. The latest Country Policy and Information Note dated April 2018 describes the Taliban fully controlling 34 districts and controlling or contesting nearly all of the districts in the northern provinces of Kunduz and Baghlan. As a consequence, there has been a great deal of displacement following an escalation in the conflict with at least 100 families being displaced in April 2016.
15. The Tribunal in AS also refer to the UNOCHA Humanitarian Needs Overview 2018 which includes Kunduz as one of the four provinces in the highest category for severity of needs where multiple needs converge and an integrated response is required. In fact, there have been airstrikes on the appellant's own area of Dashti-i-Archi reported in Hoping against Hope Afghans in Kunduz trapped by conflict, a report dated 4th April 2018. There are over 13,000 internally displaced Afghans in the province and Kunduz hosts the highest number of Afghans who have left their homes due to the ongoing conflict, according to a recent report from the UN Office for Coordination of Humanitarian Affairs.
16. Mr Walker did not seek to argue that the appellant could return to his home area.
17. This is not simply because he comes from a very violent province and that he left there when he was 12 years old in 2012, but also because of his specific medical needs.

18. The appellant produced a detailed psychiatric report for the hearing before the judge compiled by Dr Ranbir Singh, a consultant psychiatrist, dated 14th September 2018. The report states that he has a limited ability to live independently, possibly due to his mental health needs and related vulnerabilities. The psychiatrist said that he continues to be a very vulnerable individual and could easily be influenced and led by others which needs to be monitored very closely. He considered that it was highly likely, in the absence of mental health services input and stable accommodation, that his mental health would disintegrate, escalating risks to his own health (illicit drug use), own safety (vulnerability, suicidal risk, easy target by radical groups), and safety of others (assaultive behaviour) both in the UK and Afghanistan. In the psychiatrist's view he would continue to need similar care that he is receiving at present.
19. The Tribunal in AS considered what medical care was available in Kabul. At paragraph 141 the Tribunal wrote:
 - “141. In summary, that report recorded evidence that Afghanistan had made progress in providing healthcare, but serious obstacles persisted. A Basic Package of Healthcare Services system was introduced in 2003 with the aim of providing the minimum essential health services in all primary healthcare facilities. The Essential Package of Hospital Services followed in 2005. These have improved the situation but there is inequality of access to healthcare for women (due to a lack of female healthcare professionals) and those in rural areas; there are financial barriers to individuals and problems of corruption, insecurity and poor regulation. Separately there is a private healthcare system, but it is very expensive.
 142. In terms of mental healthcare, the same EASO Report recorded very high levels of mental health problems in Afghanistan (particularly depression, anxiety and PTSD) creating significant needs but that there was a lack of trained professionals (psychiatrists, social workers, psychologists) and an inadequate infrastructure. Although the Public Health Minister reported that psychological services were available at some 1,500 health centres around the country with 300 dedicated mental health clinics; there was only one dedicated mental health hospital in Kabul and Samuel Hall's study in 2016 referred to there being only three trained psychiatrists and ten psychologists in the whole of Afghanistan.
 143. In Kabul specifically, there is better access to healthcare than in the provinces and the most qualified staff work there with specialist clinics and hospitals; albeit there is still significant room for improvement. There remains a shortage of equipment and demand which outstrips supply. Nearly half of Kabul residents cannot afford medical treatment (as patients need to buy their own medicines and, in any event, pharmacies are poorly equipped). There are also instances of health facilities being targeted by armed groups, including in Kabul”.
20. The reasons for refusal letter refers to a single facility for inpatient treatment by a psychiatrist available at the Ali Abad Hospital, Kabul University and outpatient treatment and follow-up by psychiatrists available at a private clinic.

21. The question here of course is whether the appellant would in fact have the ability to access the very limited treatment that is available, particularly since the psychiatrist who provided the report considers him to be extremely vulnerable and not able to live independently.

22. The Tribunal in AS concluded at paragraph 230 as follows:

“230. Our findings above show that it is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. However, we emphasise that a case-by-case consideration of whether internal relocation is reasonable for a particular person is required by Article 8 of the Qualification Directive and domestic authorities including Januzi and AH (Sudan). When doing so, we consider that there are a number of specific factors which may be relevant to bear in mind. These include, individually as well as cumulatively (including consideration that the strength of one factor may counteract and balance the weakness of another factor):

- (i) Age, including the age at which a person left Afghanistan.
- (ii) Nature and quality of connections to Kabul and/or Afghanistan.
- (iii) Physical and mental health.
- (iv) Language, education and vocational and skills”.

Applying those considerations, the appellant left Afghanistan when he was 12 and is now 19 years of age. He therefore did not spend his formative years in Afghanistan.

23. He has no connections with Kabul, his own evidence is that his mother left for Iran and his contention that he has no relatives left in his home area is wholly consistent with the significant displacement in Kunduz. His mental health is extremely poor. It is quite clear that he is very dependent on significant medication and has needed significant intervention in order to function. He is currently on anti-psychotic and anti-depressant medication. He is not highly educated and has no particular skills.

24. The Tribunal in AS were quite clear that their conclusions refer throughout to a single male in good health. They said at paragraph 234:

“We were not provided with any specific evidence of the likely impact of poor physical or mental health on the safety or reasonableness of internal relocation to Kabul but consider it reasonable to infer that this could be relevant to the issue and the specific situation of the individual would need to be carefully considered”.

25. Mr Walker quite properly did not seek to argue that relocation to Kabul would be reasonable for this appellant. I agree.

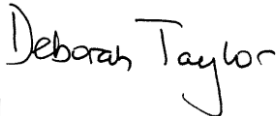
Notice of Decision

26. The original judge erred in law. His decision is set aside. It is re-made as follows. The appellant’s appeal is allowed on human rights grounds.

27. An anonymity direction is made.

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 his 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 7 February 2019

Deputy Upper Tribunal Judge Taylor