



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

**Appeal Number: LP/00095/2020**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Decision & Reasons  
Promulgated**

**On the 7<sup>th</sup> October 2021**

**On the 11<sup>th</sup> November 2021**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**A W-M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Coyte, Seren Legal Practice

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a citizen of Afghanistan who was born on 1 January 2001. He arrived in the UK on or about 25 May 2016 and claimed asylum. On 16

June 2017, the Secretary of State refused his claim for asylum but, as an unaccompanied minor, he was granted leave until 2 July 2018. His appeal to the First-tier Tribunal was dismissed on 11 August 2017 and he became appeal rights' exhausted on 29 August 2017.

3. On 26 June 2018, the appellant again claimed asylum. On 23 October 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.
4. The appellant appealed to the First-tier Tribunal. In a decision dated 26 January 2021, Judge N J Osborne rejected the appellant's claims and dismissed his appeal on all grounds.
5. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal (Judge O'Garro) on 12 March 2021. However, on 23 June 2021 the UT (UTJ Blundell) granted the appellant permission to appeal. On the basis of the grounds, UTJ Blundell considered it was arguable that the judge had failed to consider a part of the appellant's claim, namely that he feared persecution as he would not conform to what was expected of him in Afghanistan by attending the mosque.
6. The appeal was listed for a Face-to-Face hearing at the Cardiff Civil Justice Centre on 7 October 2021. The appellant was represented by Mr A Coyte and the respondent by Mr C Howells.
7. At the outset of the hearing, Mr Howells indicated that the Secretary of State intended to withdraw the adverse asylum decision and, subject to the usual checks, to grant asylum to the appellant.
8. First, Mr Howells accepted that the judge had materially erred in law on the basis set out in the grounds and which formed the basis for the grant of permission.
9. Second, Mr Howells indicated that the respondent accepted para 8 of the appellant's statement dated 11 March 2020. It was accepted that the appellant would not conform to traditional dress or attend Mosque in Afghanistan.
10. Third, Mr Howells drew my attention to the Home Office's most recent CPIN ("*Afghanistan: Fear of the Taliban*" - October 2021) published in the light of the change of Government in Afghanistan to the Taliban. He specifically referred to paras 2.4.4, 2.4.11 and 2.4.15 as the basis for accepting that the appellant was at risk of persecution on return to Afghanistan.
11. Paragraph 2.4.4. states:

"Whilst there is some indication of a more pragmatic approach, the Taliban have a cores set of values and beliefs that is highly unlikely they would compromise on."

12. Paragraph 2.4.11. states, so far as relevant:

“... the current evidence suggests that persons likely to be at risk of persecution, because they may be considered a threat or do not conform to the Taliban’s strict interpretation of Sharia law, include but are not limited to:

.....

- Persons who have credibly resisted, or are perceived to resist, Taliban requests or control, or who do not conform to, or are perceived to not conform to, strict cultural and religious expectations/mores – in particular women.”

13. Paragraph 2.4.15 sets of the implications of HJ(Iran) v SSHD [2010] UKSC 31 in the Afghanistan context:

“Furthermore, if a person chooses to change their behaviour on return to Afghanistan by modifying their political beliefs, denying their religious faith (or lack of one) or feigning belief, decision makers must consider the reasons why. If it is in order to avoid persecution then they are likely to require protection. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.”

14. Finally, as regards disposal, on the basis of this material, Mr Howells invited me (1) to find there was a material error of law in the judge’s decision, (2) to set it aside; and (3) to re-make the decision allowing it on asylum grounds.

15. My Coyte agreed with the disposal of the appeal proposed by Mr Howells.

16. I accept Mr Howell’s concession as to the error of law issue and the disposal of the appeal on re-making the decision.

### **Decision**

17. For the above reasons, the First-tier Tribunal’s decision to dismiss the appellant’s appeal on asylum grounds involved the making of an error of law. The decision, cannot stand and is set aside.

18. I re-make the decision allowing the appellant’s appeal on asylum grounds.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
7 October 2021

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

The appellant is exempt from fees so no fee award is made.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
7 October 2021