



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

PA/07221/2019

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

Decision & Reasons
Promulgated

On 17 November 2021

On 23 November 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RAHMAN SHAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Byrne, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant gives his date of birth as 1 January 1986 and identifies himself as a national of Afghanistan, although born and brought up in Pakistan. He sought asylum in the UK on 21 February 2017. His claim was refused and his appeal was dismissed in previous proceedings, PA/08501/17. In a decision dated 5 July 2019, rejecting further submissions, the respondent considered that the appellant could establish citizenship of Pakistan and return there.
2. In a decision promulgated on 28 January 2020, FtT Judge Agnew at [32] found nothing to change previous adverse findings; at [33], found a new claim, based on risk of forced recruitment to the Taliban or other armed groups in Kunduz, to be a “weak argument”, but without giving reasons; and went on to find the Refugee Convention claim defeated in any event

by the availability of internal relocation to Kabul, which would not be unduly harsh. At [72] she found very significant obstacles to the appellant's integration in Afghanistan and at [80] that his removal there would be disproportionate. The appeal was dismissed on asylum and humanitarian protection grounds and allowed on human rights grounds.

3. After various procedure, the case now comes before the UT on grounds of appeal from both sides.
4. The appellant's grounds of appeal, in summary, are:
 - (1) absence or inadequacy of reasons on the claim under the Refugee Convention;
 - (2) absence or inadequacy of reasons on the claim under article 15(c) based on indiscriminate violence in Kunduz;
 - (3) no finding on risk through travel from Kabul to Kunduz; and
 - (4) error in finding it not unduly harsh for the appellant to relocate to Kabul, being inconsistent with the finding on very significant obstacles.
5. The SSHD's grounds of appeal, in summary, are:
 - (1) inadequate or inconsistent reasons on very significant obstacles;
 - (2) misdirection of law on the test for very significant obstacles;
 - (3) misdirection of law or inadequacy of reasons for proportionality outcome.
6. Mr Diwyncz noted that circumstances have changed drastically in Afghanistan since the date of the FtT's decision. The Taliban has returned to power. While it is of course the circumstances at the date of the FtT's decision which are relevant to whether any error of law was made, he indicated that the respondent would no longer propose to remove the appellant to Afghanistan, whatever the outcome of these proceedings.
7. Mr Diwyncz accepted that the respondent's decision was based on the appellant being able to establish citizenship of Pakistan, and that the respondent's grounds did not challenge the findings of the FtT at [28] that he would not be able to do so, and would not be returned there.
8. In course of submissions, I indicated that I was satisfied that there was inconsistency amounting to error of law in reaching different conclusions, based on the same circumstances, on undue harshness in relocation to Kabul and on very significant difficulties in integration in Afghanistan. In that light, absence of reasons on the new claim in terms of the Refugee Convention was also material.
9. The decision of the FtT is set aside.

10. Mr Byrne moved for a fresh decision, as appears below, based on matters as they now stand. The respondent did not oppose that motion.
11. I am obliged to both representatives for their assistance in resolving the appeal.
12. The decision of the First-tier Tribunal is set aside, and the following decision is substituted: the appeal, as brought to the FtT, is allowed on Refugee Convention and on human rights grounds.
13. No anonymity direction has been requested or made.



17 November 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.