



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-004438

First-tier Tribunal No: PA/52196/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of January 2025

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RA
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Field House on 8 January 2025

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a citizen of Afghanistan from Jalalabad in Nangarhar province, whose date of birth is recorded as 1 January 1992. He first entered the UK on 28 January 2010 and claimed asylum after being served with illegal entry papers. A third country request case was created and a request was made to the Greek authorities for

him to be returned there, but he absconded and no further action was pursued. His asylum claim was treated as withdrawn. The appellant claims that he remained in the UK illegally until 2015 when he left and travelled to France and Italy and then back to France. From France he made a voluntary departure to Afghanistan due to his mother's ill-health, on 9 January 2017, with financial support provided by the French authorities. The appellant returned to the UK on 22 March 2022 and claimed asylum again. His claim was treated as further submissions, which were in turn accepted as a fresh claim. The claim was refused on 24 March 2023. The appellant appealed against that decision, and it is that appeal which has given rise to these proceedings.

3. The appellant's claim is that he is at risk from the Taliban on the basis of his imputed political opinion. He claims that the Taliban attempted to recruit him in 2009 when he was tending his father's livestock. He claims that the Taliban approached him and his father and tried to persuade him to join the group and participate in Jihad, but his father refused. The Taliban then accused the family of being infidels and threatened to return for him. He fled Afghanistan a few days later and heard that the Taliban had killed his father and threatened to kill him when they caught him. He came to the UK and claimed asylum but absconded and remained here illegally and returned to Afghanistan in 2017 from France when his mother was sick. He worked in Jalalabad buying and selling livestock and continued with his life with no problems, marrying in 2018 and having two children. When the Taliban started taking over parts of Afghanistan in mid-2021 he left the country again and came to the UK and claimed asylum.

4. In the decision refusing the appellant's claim, the respondent did not accept his account of being confronted by the Taliban in 2009 and did not accept that he was a person who would be perceived as westernised and as a person who did not conform to the Taliban's strict cultural and religious expectations. The respondent considered that the appellant did not hold a characteristic which would place him at risk of persecution upon return to Afghanistan and concluded that he could return to his home area and re-establish his life there.

5. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Phull on 24 May 2024. Judge Phull did not accept the appellant's account of the Taliban attempting to recruit him and of his father being killed by the Taliban and did not accept that the Taliban had any adverse interest in him in 2009. The judge noted that the appellant's evidence was that he voluntarily returned to Afghanistan and used the financial assistance given to him by the French authorities to set up his business in Afghanistan buying and selling livestock. She noted that he had no problems on his return and considered that to be an indication that the Taliban had no interest in him at that time. As for any current risk on return to Afghanistan, the judge found that there was no evidence of any threats to the appellant or his family when he was in Afghanistan up until 2021 and that there was no reason for them to have any adverse interest in him at the present time. She considered that the reason for him having left Afghanistan in 2021 was because he exhausted the funds received from the French authorities, and she concluded that he was therefore at no risk on return to Kabul or in his home village in Jalalabad, either on the basis of claimed events 15 years ago or as a person returning from the West. The judge found that the appellant's removal to Afghanistan would not breach his human rights and she accordingly dismissed the appeal on all grounds, in a decision promulgated on 3 July 2024.

6. The appellant sought permission to appeal Judge Phull's decision on two grounds: firstly, that the judge had erred by using the events of 2009 and 2017 to assess risk in

2024, when the country situation had changed and the Taliban now controlled the whole of Afghanistan; and secondly, that she had erred by relying upon the outdated country guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118.

7. Permission was granted in the First-tier Tribunal. The respondent filed and served a rule 24 response opposing the appeal.

8. The matter then came before me for a hearing.

9. No composite bundle had been produced by the appellant following the Tribunal's standard directions and there was no appearance by or on behalf of the appellant at the hearing. Enquiries were made of the appellant's solicitors who confirmed that they had tried to contact the appellant and had sent him the notice of appeal but that it had been returned and they had not heard from him. Mr Diwnycz confirmed that the respondent had not had any recent contact with the appellant and that there had been no contact from him or his solicitors after the rule 24 response was sent to them. I was satisfied that the appellant had had ample notice of the hearing. A Notice of Hearing was served on him by the Upper Tribunal on 28 November 2024 at his last known address, which was the same address held by the respondent, as confirmed by Mr Diwnycz. There was no reason to adjourn the hearing and no reason why the appeal should not proceed in the appellant's absence. I considered that the appeal could be justly and fairly decided in his absence.

10. Accordingly the appeal proceeded in the appellant's absence. Mr Diwnycz relied on the rule 24 response and asked me to find no error of law in the judge's decision.

Analysis

11. The first ground asserts that the judge had based her current risk assessment on the situation in Afghanistan in 2017 and had failed to consider the change in the country situation in Afghanistan since then, and the fact that the former western-backed government had collapsed in August 2021 and the Taliban had taken power. However that is clearly not the case.

12. In order to assess the current risk to the appellant, it was necessary for the judge to consider whether he was a person who would be of adverse interest to the Taliban on the basis of an imputed political opinion, as he claimed to be, or on the basis of any other profile. In undertaking that exercise it was necessary for the judge to assess and make findings on the appellant's profile, which involved an assessment of the credibility of his account of his previous experiences in Afghanistan. That was exactly what the judge did.

13. From [17] to [22] the judge considered whether the appellant had given a credible and reliable account of his experiences in Afghanistan previously and concluded that he had not. She gave various, cogent reasons for reaching that conclusion. At [17], the judge found that there was evidence which the appellant could reasonably have been expected to produce if his account of the events in 2009 were true, such as evidence of his father's death and evidence from his family about the claimed events, but no such evidence had been produced. At [18] the judge drew adverse conclusions from the appellant's adverse immigration history in the UK, from his failure to claim asylum when he was in France and from his voluntary return to Afghanistan in 2017 despite his claimed fear of the Taliban at that time, all of which undermined his claim to have been of adverse interest to the Taliban. At [20] the judge noted the country background information which reported on the fact that, at the time the appellant

returned to Afghanistan, whilst the Taliban were no longer in government, they were still operating in and around the country and had a military presence in almost all provinces and an ability to obtain information on a person's background through information and communication sharing. At [21] the judge noted that the Taliban continued to operate in Nangarhar province, to where the appellant had returned, at the time he was there, but yet he did not claim to have any fear at that time and he was able to start a family and run a business without problems from 2017 until he left the country again in 2021. At [22] the judge found that, if the appellant's account of events in 2009 had been true, and if the Taliban had any adverse interest in him, they would have heard of his return to Nangarhar and they would have found him in Jalalabad. She found that the appellant returned to his home village and that the fact that he was living and working in Jalalabad for almost four years without any problems, either on the basis of any perceived political opinion or because he had returned from the West, showed that he was of no interest to the Taliban and that his account of events was not true. That was reinforced by her findings at [23] where she noted that the appellant had not suggested that he had ever received any threats, visits or telephone calls from the Taliban whilst living in Jalalabad and that his family were never approached or threatened either whilst he was there or after he had left.

14. As the rule 24 response stated, the appellant did not challenge any of those findings in his grounds. It is accordingly the case that the judge's conclusion, that the appellant had not given a true account of events prior to his departure from Afghanistan and that he was, in fact, of no adverse interest to the Taliban on the basis of any perceived political opinion or other profile, stood unchallenged. It is also the case that the judge's finding at [26], that the appellant left Afghanistan in 2021 not through any fear of persecution but because he had depleted the funds received from the French authorities, was not challenged and accordingly that finding also stands.

15. Having come to a conclusion about the appellant's profile, namely that he was a person who had never come to the adverse interest of the Taliban and remained of no interest to them, either on the basis of a perceived political opinion or as a person returning from the West, and that he had left Afghanistan in 2021 for reasons other than a fear of the Taliban, the judge then went on, from [23] to [29], to consider whether he would currently be at risk on return to Afghanistan. It was clear that, in doing so, the judge was fully aware of the changed situation in Afghanistan from 2021, having specifically referred to it at [20], and was considering the risk on return in that context. The judge gave full and cogent reasons for concluding that, as a person who had never been of any adverse interest to the Taliban, and whose family had had no problems with the Taliban either before or after they had taken control of the country, there was no basis for concluding that the appellant would now face any risk from them. As already stated, the judge considered the matter not only on the basis of any perception that the Taliban would have held of the appellant as a result of past activities, but also on the basis of him being westernised and having returned from the West.

16. It was therefore not the case, as asserted in the grounds, that the judge assessed the current risk on an incorrect basis. The judge assessed the current risk on the basis of her findings on the appellant's profile, namely as a person who had never been of any interest to the Taliban, either when they were previously in power, or when they were no longer in power but still remained operative and in a position to threaten him if they had any adverse interest in him. There is, notably, nothing in the grounds to suggest that there were any particular reasons for the appellant to be at risk on return to Afghanistan as a person of no previous or current profile and there is no reference

to any evidence which the judge overlooked which may have suggested that all Afghans returning from the West were currently at risk.

17. As for the second ground of appeal, I do not consider that anything arises from the judge's reference to the guidance in AS. It is not the case that she relied upon the guidance in that case to reach her decision on current risk on return. Rather, she was simply referring to that case when considering the reasonableness of relocation to Kabul 'in general terms' for a person who was not otherwise at risk.

18. For all these reasons I consider that the grounds have not been made out. There was nothing unlawful in the judge's approach to the question of risk on return at the current time and there was no failure by the judge to assess risk on the basis of the current country situation. On the evidence available to her, and for the reasons cogently given, the judge was entitled to conclude that the appellant would not be at risk on return to Afghanistan. The decision that she reached was one which was fully and properly open to her.

Notice of Decision

19. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 January 2025