

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: pa/07799/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 9 May 2018** | **On 12 June 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**M S**

(anonymity direction made)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Panagiotopoulou of Counsel instructed by Solomon Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Burns promulgated on 20 September 2017 dismissing the Appellant’s appeal on protection grounds against a decision of the Respondent dated 4 August 2017 to refuse asylum.

2. The Appellant is a citizen of Afghanistan whose personal details are a matter of record on file. I do not reproduce them here in keeping with the anonymity direction that has been previously made by the Tribunal and is hereby continued.

3. The Appellant claims to have arrived clandestinely in the UK on 28 January 2016; he applied for asylum on 29 January 2016. The application was refused for reasons set out in a ‘reasons for refusal’ letter (‘RFRL’) dated 4 August 2017.

4. The Appellant appealed to the IAC.

5. The appeal was dismissed for reasons set out in the Decision of Judge Burns.

6. The Appellant sought permission to appeal to the Upper Tribunal which in the first instance was refused on 20 November 2017 by Designated First-tier Tribunal Judge Macdonald, but was subsequently granted by Upper Tribunal Judge Canavan on 18 January 2018.

7. Given the parameters of the issue that is before me I do not propose to rehearse in fine detail the basis of the Appellant’s asylum claim; suffice it to say that the First-tier Tribunal Judge rejected the Appellant’s narrative account in nearly all material aspects.

8. Nonetheless, the Judge found that there was a situation of instability and insecurity in the Appellant’s home area: “*Samangan in May 2017 was an unstable area insofar as it was subject to Taliban insurgency. Afghan security forces attacked a Taliban commander in February 2017*” (paragraph 39). It was on this basis that the First-tier Tribunal Judge determined that the remaining issue in the appeal was one of internal relocation to Kabul (paragraph 67). In this context I note that the Appellant’s representative “*conceded… that a grant of humanitarian protection under Article 15(c) of the [Qualification] Directive should not be made*”, and the Judge observed that this was consistent with the then county guidance case of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**, and also concluded that humanitarian protection should not be granted (paragraph 69). The Judge set out her conclusions and findings in respect of internal relocation at paragraphs 71-75:

“*71. It is of course the Appellant’s account that his father is dead and that his mother and siblings have left Afghanistan. I have not found him to be generally credible and I did not accept that his father had been martyred on behalf of the Taliban. The Appellant says he has 2 maternal aunts in Afghanistan. I find that he has some family in Afghanistan but I do not know the extent of his family connections and contact because he has not given a truthful account and I do not accept the evidence about the circumstances of his father’s death.*

*72. It is the Appellant’s case that it would be unduly harsh to expect him to relocate to Kabul and in paragraph 243 of* ***AK (Article 15(c)) Afghanistan CG [2012]*** *it was held that:*

*‘In every case there needs to be an enquiry into the applicant’s individual circumstances and what those circumstances are will very often depend on the nature of specific findings made about the credibility of the Appellant in respect of such matters is whether they have family ties in Kabul’.*

*73. Accordingly, I find that the Appellant has no family ties in Kabul and has never lived there. He says that he cannot live there because he is not familiar with any part of Afghanistan other than where he had lived previously. The Appellant’s case is that he did move from his home province approximately six months before coming to the United Kingdom. Thus, his own case is that he has moved within Afghanistan. In any event the Appellant has moved to the United Kingdom and the Respondent submits that it demonstrates considerable personal fortitude which he could utilise to establish himself in Kabul (paragraph 86 refusal letter) which is not an unreasonable submission.*

*74. The Appellant speaks both Pashto and Farsi. He has received six years of education and has some literacy skills. Although there was no medical evidence before me, I accept the Appellant’s claim that he has had some medication for stress. Other than this issue he is fit and well. The Appellant should be in a position to look for work on return to Kabul despite his stress.*

*75. The Appellant can thus be returned to Kabul. The Respondent has a voluntary departure service which can assist both with practical details and with costs (page 18 and 19). Once returned it would not be unduly harsh for the Appellant to settle in Kabul given that he is in reasonable health can speak two languages and may be in a position to contact his family. Although the economic conditions are difficult and there is a risk of some violence, the Appellant has shown a degree of resilience in coping with life in the United Kingdom and could utilise this experience to settle in Kabul.*”

9. Permission to appeal to the Upper Tribunal was granted with the following observation:

“*The judge gave careful consideration to the appellant’s individual characteristics as part of her assessment of whether internal relocation to Kabul would be ‘unduly harsh’. She clearly also had in mind the relevant country guidance decision in AK (Afghanistan). However, given that the most recent country guidance was five years old, it is arguable that the judge may have erred in failing to engage with the up to date background evidence available at the date of the hearing*.”

10. Having had careful consideration to the grounds of challenge, the up-to-date evidence that was before the First-tier Tribunal. and the First-tier Tribunal Judge’s decision, I am not persuaded that the Judge fell into any such material error.

11. The Judge identified the evidential materials that were before her: paragraph 30 *et seq.*. She noted “*There were a number of attacks in Kabul in June 2017*” citing the relevant page numbers in the bundles for the source material. It is also apparent from the quotation from paragraph 39 set out at paragraph 8 above that the Judge was considering evidence that significantly post-dated the country guidance case of **AK**. It seems to me that when the Judge refers to there being “*a risk of some violence”* (paragraph 75), it must be taken that the Judge has had regard to the up-to-date evidence referenced in the body of her Decision. I do not consider it has been shown that there is any scope or foundation for criticising the Judge as having disregarded evidence that post-dated **AK**.

12. Further and in any event I have noted with care the details of the evidence that is relied upon by the Appellant in support of the challenge to the decision of the First-tier Tribunal. This is set out at paragraphs 7, 8 and 9 of the grounds of challenge. Extensive quotation is made from the supporting materials, identifying in particular a significant number of incidents in Kabul involving attacks and explosions. It seems to me that it is adequately clear from the evidence that those violent actions are specifically targeted. For the main part they are targeted against so-called foreign institutions or agencies, the government, and Shia targets. The list of incidents at paragraph 7 of the grounds, drawn from the Respondent’s country information note of August 2017, comprises: a suicide bomb detonated among a crowd of Shia protestors in July 2016; a bomb detonated outside the American University of Afghanistan on 24 August 2016; coordinated explosions outside the Afghan Ministry of Defence on 5 September 2016; a building used by an international NGO being the subject of a siege between 5 and 6 September 2016; a Shia shrine being attacked in Kabul on 11 October 2016; a suicide bomb against the National Defence Secretariat on 16 November 2016; a Shia mosque being attacked on 27 November 2016; an MP’s residence being attacked on 21 December 2015; another MP’s vehicle being targeted on 28 December 2016; two explosions near the Parliament building in Kabul on 10 January 2017; a suicide bombing at the Afghan Supreme Court on 7 February 2017; an attack on a military hospital in March 2017; and an explosion in an area of the city close to many foreign embassies on 31 May 2017.

13. The targeted nature of such violence is underscored in a report of the Australian Department of Foreign Affairs and Trade cited in the Respondent’s Country Information Note and quoted in the Appellant’s grounds:

“*Militant attacks were concentrated in the western, central and eastern sections of the city where the international presence is most visible and where key highways link the city to the international airport and outlying provinces. The attacks targeted journalists, judicial workers, government employees and Afghan and international security personnel and also caused extensive civilian casualties*.”

14. The supporting evidence therefore demonstrates that the attacks in Kabul are specifically directed against targets that do not in any way relate to the circumstances of the Appellant.

15. Although there is ‘extensive civilian casualties’, some of those civilians are included within the categories of target, for example civil servants. More particularly, however, the risk to any individual in Kabul of being caught up as a bystander in such matters has essentially been acknowledged by the Appellant not to be sufficient to engage the criteria for humanitarian protection. Given the overall size of the population in Kabul the number of civilians who are indeed unfortunately caught up in such incidents is relatively low.

16. In such circumstances in my judgement there was nothing in the materials that were before the First-tier Tribunal that would have justified adopting a different approach to the issue of internal relocation to Kabul to that which was indicated in **AK**.

17. Further, I note that my conclusion in this regard is reinforced by the most recent country guidance case, which post-dates both the hearing before the First-tier Tribunal and the grant of permission to appeal. The headnote in **AS (safety of Kabul) Afghanistan CG [2018] UKUT 00018 (IAC)** is in part in the following terms:

“*Internal relocation to Kabul*

*(ii)* *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily* the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

(iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

(iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

(v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny.  The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.”

18. The First-tier Tribunal Judge conducted exactly the sort of evaluation as identified at paragraph (iii), taking into account her sustainable findings in respect of the circumstances and characteristics of the Appellant, and found that in all of the particular circumstances of the case the Appellant could reasonably relocate. Not only did the Judge adopt the correct approach but her conclusion is consistent with the Upper Tribunal’s evaluation of the up-to-date evidence that was before it in **AS**.

19. Indeed it seems to me that the effect of **AS** is such that even if I were minded to the view that there was an error of approach by the First-tier Tribunal I would not likely set aside the decision in circumstances where, on the Judge’s sustainable findings as to the Appellant’s history, circumstances and characteristics, the Appellant could not succeed in his appeal anyway.

20. Be that as it may, for the reasons already given, I am satisfied that there was no error of law.

**Notice of Decision**

21. The decision of the First-tier Tribunal contained no error of law and stands.

22. The Appellant’s appeal remains dismissed.

**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 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.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed: Date: **10 June 2018**

**Deputy Upper Tribunal Judge I A Lewis**