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Heard at Field House

GM (Risk on Return - Internal  
Flight - Test) Afghanistan  
[2004] UKIAT 00035

Date: 20 February 2004

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

02 March 2004

**Before**

:

**Mr A R Mackey (Chairman)**  
**Mr N Kumar JP**  
**Dr T Okitikpi**

**Between**

**Secretary of State for the Home Department**

**APPELLANT**

**And**

**RESPONDENT  
(CLAIMANT)**

Representation:

For the appellant: Mr J Gulvin, Home Office Presenting Officer.  
For the respondent: Ms R Akther of Counsel representing Malik &  
Malik, solicitors.

### **DETERMINATION AND REASONS**

1. The Secretary of State appeals with permission against the determination of an Adjudicator, Mrs V Woolf, promulgated 4 July 2003 wherein she allowed an appeal against the decision of the respondent who had refused entry and asylum and human rights claims.

### The Adjudicator's Decision

2. The Adjudicator found that the applicant had arrived in this country on 19 September 2001 (that is a few months before the removal of the Taliban regime from the administration of Afghanistan) and had claimed asylum on the basis of his fear of the Taliban because he had been a victim of torture and detention at the hands of the Taliban in July 2001, along with several of his brothers. He came from the area of Paktia and was of Pashtun ethnicity. He claimed he had been arrested, tortured and beaten for refusing to fight for the Taliban. In the appeal before the Adjudicator the claimant expressed his case on the basis of residual fears of those members of the Taliban that remain in Afghanistan and also the Northern Alliance who were targeting ethnic Pashtuns.
3. The Adjudicator found the claimant to be credible and went on to consider the objective background set out in the CIPU Report that was before her (April 2003). She considered on the basis of that information, and UNHCR reports referred to, that continuing risks to security at the hands of the Taliban were indicated in the provinces of Paktia, Zabul and Khost. She then stated that having accepted the core of the claimant's case that "I find his subjective fear of the Taliban in Paktia to be supported by the background materials."
4. She went on to consider the possibility of internal relocation to Kabul and closely considered the provisions set out in paragraph 6.106 of the CIPU Report in relation to Kabul and particularly the situation for a young single man, estranged from his family who did not come from Kabul. She concluded that it was unlikely that he would be given any priority by the aid agencies or other organisations providing services to those flocking to Kabul, "In these circumstances, I do not find it reasonable to expect the appellant to relocate to Kabul."
5. She went on to consider the human rights claim and also considered there would be a breach of Article 3 of the ECHR were he to be sent to either Paktia or Kabul "where conditions are such that he may be forced to live in inhuman and degrading circumstances with no access to proper housing or means of supporting himself. He has no family connections there upon which he could rely."
6. The appeal was therefore allowed under both grounds.

### The Appellant's Submissions

7. Mr Gulvin submitted to us that the grounds fell into two areas; firstly the risk on return to his home district of Paktia, and secondly the internal flight or relocation alternative. He

submitted to us, in support of the internal relocation alternative to Kabul, the Court of Appeal determination in AE and FE [2003] EWCA Civ 1032 and the decision of this Tribunal [2003] UKIAT 00075 AL (Afghanistan), a decision of Vice President Mr Batiste.

8. In relation to the first ground he submitted that the Adjudicator had made an error of law in her assessment of the objective information, that was before her, to the extent that the determination was perverse and thus there was an error of law. He submitted that a consideration of the CIPU Report, both that of April 2003, which was before the Adjudicator, and the more recent October 2003 Report( 6.208), indicated that UNHCR Kabul reported, while the Taliban did not exist as a powerful movement, but there are groups closely associated with the movement who constitute a security problem engaging in activities in the provinces of Paktia Zabul and Khost. He submitted that this did not indicate the real risk of this appellant suffering persecution or serious ill-treatment at the hands of such remnants of the Taliban and the Adjudicator had failed to correctly assess the reality of risk to this claimant. On the issue of internal flight he agreed that problems would be encountered by all returnees to Kabul. However, contrary to the conclusion of the Adjudicator, as a single man of Pashtun ethnicity, it would not be unreasonable or unduly harsh for him to relocate. He asked us to adopt the findings in AE and FE( paragraph 59), and in particular the approval of the unduly harsh test set out in Karanakaran [2003] 3 All ER 449 by Brooke LJ where he stated:

"Although this is not the language of 'inability', with its connotation of impossibility, it is still a very vigorous test. It is not sufficient for the applicant to show that it would be unpleasant for him to live there, or indeed harsh to expect him to live there. He must show that it would be unduly harsh."

9. In this situation, based on the objective situation in the CIPU Reports that were before the Adjudicator there was, in his submission, nothing to indicate that the situation for the applicant in Kabul would be *unduly* harsh. This situation of a required test was not met and the determination of the Adjudicator was flawed. He also submitted that on the comparative test between Paktia and Kabul, as outlined on AE and FE, that indeed the situation in Kabul would be better than that the claimant would face in his home district.
10. On the issue of Article 3 risks he submitted that firstly, on the same basis as the asylum assessment, there were not substantial grounds for concluding there would be a real risk of a breach of Article 3 if he was returned to his home district. In relation to his possible relocation to Kabul, he submitted

that, we should follow the determination of AL UKIAT 00076 (Afghanistan) which concluded that the issue which had to be decided on such relocation was whether there was a real risk of Article 3 in the form of torture, inhuman or degrading treatment in the place of suggested relocation.

11. He submitted that this was clearly not indicated by the objective information and that the conclusions of the Adjudicator were again flawed in this regard.

#### The Claimant's Submissions

12. Ms Akther submitted to us that the determination of the Adjudicator was a well reasoned and detailed examination of all the issues involved. The Adjudicator had correctly relied on the CIPU Reports as to the security problems still existing in the province of Paktia from Taliban supporters and that the conclusions reached by the Adjudicator were thus validly open to her.
13. She submitted that the later CIPU Reports indicated that the Taliban were continuing to regroup, particularly in the south where the claimant came from, and that the volatile situation should be recognised as putting this claimant more at risk.
14. In relation to the internal flight issues she submitted that the transitional government in Kabul was well known only to exercise any form of jurisdiction in that city and little beyond. She submitted that following the determination in AE and FE it could be concluded that the relocation of this claimant to Kabul would be unduly harsh when cumulatively assessed against the ability of this claimant to find housing and basic survival support. In addition she asked us to note that the claimant did not have family connections in Kabul and that this would make his ability to reintegrate more difficult. She noted that this had been highlighted in the CIPU Report (paragraphs 6.61, 6.62 and 6.201-203).
15. She submitted also that the ability of this claimant to have the basic needs for survival had been recognised by the Adjudicator correctly and that accordingly her assessment that there would be a breach of Article 3 was also correct and sustainable. We should therefore dismiss the appeal.

#### The Issues

16. We found the issues before us to be whether the conclusions of the Adjudicator were validly open to her, or were there errors in the assessment to the extent that the determination is an unsafe one; either on the issue of return to the claimant's home district, or on the internal relocation alternative. Secondly, if there is substantive error in the

determination, on the objective evidence what conclusions would we ourselves reach?

### Decision

17. We are satisfied that all grounds submitted by the Secretary of State have merit. We consider that the Adjudicator has been in error in her assessment of the risks to this claimant on return to Paktia. She has given a good analysis of the objective information that was before her but has failed to carry out the essential assessment of the real, as opposed to remote or speculative, risks that this claimant would face on return to his home district. The Adjudicator has heavily relied on the CIPU Report which states that there are security concerns from remnants of the Taliban in the province of Paktia. This, however, does not indicate specific risks to a person of this claimant's profile. Assessment of the objective information, as applied to the facts, has not been carried out and accordingly the determination is in error at that point.
18. In addition the assessment of the internal flight/relocation alternative is flawed both in respect of the Refugee Convention and ECHR grounds. The asylum claim has not been correctly assessed in this regard as the Adjudicator has failed to give weight to the "unduly harsh test" relying solely on whether or not it would be reasonable to expect the claimant to relocate (see paragraph 56). As noted above the determination in AE and FE stresses the unduly harsh test and the need to consider not only that the conditions could be harsh but "unduly harsh".
19. In this situation we find error in the assessment of the Adjudicator on all issues. We have then considered the objective information ourselves. We are fully satisfied that considering the CIPU Reports and other objective evidence this claimant's case does not indicate a real, as opposed to a remote or speculative, risk to him on return to his home district. His profile and that of his family in the past has not been a significant one. Their problems with the Taliban had arisen through a failure to serve with the Taliban. There is certainly no indication in the objective evidence that the Taliban are actively recruiting people to serve with them in the manner they did when they were in power. The security issues set out in the CIPU Report, at most, refers to random security riskd rather than widespread substantive control and enforcement by the Taliban.
20. Even if we are incorrect on that matter we consider that the internal relocation alternative is available to this claimant and it would not be unreasonable or unduly harsh for him to undertake it. We agree that the situation may be unpleasant and , because he does not have a family network, he may

have to live in a camp and encounter poor conditions. There is no indication, however, from the objective evidence that those conditions would be unduly harsh. He is a single man, clearly with the ability to assist in the rebuilding of his own country. He would be in Kabul as a person without any previous profile in that city, where the majority ethnic group is Pashtun.

21. Finally, on the Article 3 issue we agree and adopt the decision of Batiste VP in **L -UKIAT 00076 (Afghanistan)**. The objective evidence simply does not indicate that this claimant would suffer torture, inhuman or degrading treatment if he were returned to Kabul. The threshold for Article 3 is a high one, as recently indicated in the determination of Laws LJ in **"N"**.
22. In the circumstances we are satisfied that the determination of the Adjudicator is a substantially flawed one and for the reasons set out above this appeal is allowed.

**A R Mackey**  
**Vice President**