



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10944/2019 (V)**

THE IMMIGRATION ACTS

**Heard by *Skype for Business*
On 24 March 2021**

**Decision & Reasons Promulgated
On 01 April 2021**

Before

UT JUDGE MACLEMAN

Between

ABDUL [D]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

DETERMINATION AND REASONS

1. The appellant is a citizen of Afghanistan, born on 1 October 1994. In the FtT, Judge Handley dismissed his appeal by a decision promulgated on 2 April 2020. He sought permission to appeal to the UT on 3 grounds:
 - (i) applying *AS (safety of Kabul)* CG [2018] UKUIT 00118, when relevant parts of that authority had been set aside in *AS* [2019] 1 WLR 5345, [2019] EWCA Civ 873;
 - (ii) failure to consider the case put in terms of humanitarian protection and the “Qualification Directive”; and

(iii) failure to consider the case put in terms of the immigration rules, paragraph 276ADE(vi), “very significant obstacles to return”.

2. On 6 May 2020, FtT Judge Andrew granted permission on ground (iii) only.
3. On 28 July 2020, UT Judge Pitt granted permission also on grounds (i) and (ii).
4. Both parties filed written submissions. The respondent accepted that it was an error of law to apply guidance as it stood in 2018, but said that was immaterial because the UT eventually, in *AS CG [2020] UKUT 00130*, reached “substantially the same conclusions”.
5. In oral submissions, Mr Harvey expanded upon the arguments that the FtT made 3 plain legal errors, and that all were material.
6. Mr Diwyncz was in some difficulty in arguing to the contrary, in particular on ground (i).
7. The FtT failed to base its decision on the law, guidance, and background evidence as it stood. The difficulty is not overcome by reference to the guidance as later formulated. Mr Harvey specified amendments and additions to the guidance, at headnotes (iv) and (v), bearing on the appellant’s particular circumstances. It cannot safely be said that the outcome of this case must have been the same, whatever the state of the guidance from time to time.
8. The FtT also erred by failing to decide on grounds (ii) and (iii). I am not entirely persuaded that (ii), without more, would require setting aside. On (iii), Mr Harvey drew support from *MC [2016] CSOH 7*, *HAA [2017] CSOH 11*, and *SA (Afghanistan) [2019] EWCA Civ 53* for the proposition that separate treatment was required.
9. It is unnecessary to resolve grounds (ii) and (iii) any further. The appellant has shown errors in law, such that the decision cannot stand.
10. The appellant seeks to update the evidence of his state of health. Parties agreed that further procedure should be in the FtT.
11. The decision of the FtT is set aside, and the case is remitted for a fresh hearing, not before Judge Handley.
12. No anonymity direction has been requested or made.

Hugh Macleman

25 March 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.