



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

**Appeal Number: PA/10829/2018
PA/10870/2018**

THE IMMIGRATION ACTS

**Heard at Field House (MS Teams)
On 27 September 2021**

**Decision & Reasons
Promulgated
On 28 September 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**H O and KO (AFGHANISTAN)
[ANONYMITY ORDER MADE]**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Mr Abu Sadat Islam, solicitor with Fountain Solicitors

For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of H O or K O who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of either of them or of any member of their family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellants are two brothers, born in 2000 and 2001. They appeal with permission from the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision on 28 August 2018 to refuse them refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellants are citizens of Afghanistan.
2. **Vulnerable appellants.** At the date of decision in August 2018, the second appellant was still a child and therefore a vulnerable person. The first appellant has mental health problems, for which he takes fluoxetine.
3. Vulnerable appellants are entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellants Guidance. The appellants make no complaint of their treatment in this respect in the First-tier Tribunal.
4. **Mode of hearing.** The hearing today took place remotely by Microsoft Teams. There were no technical difficulties. Neither appellant attended the hearing, which was heard on submissions alone.
5. I am satisfied that both representatives were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.

Background

6. These appellants grew up in Laghman Province. They have two brothers, one of whom was already in the United Kingdom when they arrived, as a naturalised British citizen. Their other brother was involved with the Taliban and the authorities were aware of his involvement: he has disappeared.
7. The reason for the appellants' departure from Afghanistan in 2016 was twofold: first, that the Taliban had been suspicious of visits to the appellant's home by the former Afghan authorities, and had pressured the appellants to work for them, as suicide bombers, and second, that the Afghan authorities were also a risk to them as they suspected the family of being involved with the Taliban. The appellants' British citizen brother says that he also left Afghanistan because the Taliban were trying to recruit him.
8. The appellants' family relocated to Kabul, but were only there for a month before the appellants' father was shot dead in an isolated attack. The appellants believe it was the Taliban who shot him: nobody else was targeted during the incident. Their mother returned to Laghman Province, to live with family members, and has since died.

9. Their maternal uncle helped the appellants to leave Afghanistan, travelling clandestinely through a number of countries until they reached the United Kingdom in August 2016. The first appellant claimed asylum on 17 October 2016; the second appellant claimed earlier, on 30 August 2016. Both appellants were then minors and they were assisted by social services to make their applications.
10. In the United Kingdom, both appellants renewed a close and loving relationship with their British citizen brother, as well as attending college, making friends, and learning to speak English.
11. The first appellant still has mental health problems of depression, low mood, anxiety and stress, for which he takes Fluoxetine 20 mg. The second appellant has kidney problems, for which he had an operation and is now the subject of regular check-ups. He also gets headaches and has depression symptoms.

First-tier Tribunal decision

12. The First-tier Judge found the appellants to be credible witnesses giving broadly consistent accounts, which were also consistent with country information before the Tribunal. They were children when they travelled and he did not hold against them that they had not claimed asylum en route.
13. At [39]-[40], the First-tier Judge said this:

“39. Having found that the appellants would be at risk in Laghman Province, I need to consider whether they could seek protection there. The appellants’ account of events is that the Afghan authorities were visiting their home in Laghman Province in an attempt to obtain information from [their brother] about the Taliban. [Their brother’s] disappearance makes it likely that efforts by the Afghan authorities may resume, and I cannot realistically find that the appellants could be sufficiently protected by the authorities, were the Taliban to resume their efforts to recruit the appellants. ...I also find that the authorities may be less willing to provide protection to the appellants from the Taliban.

40. I consider whether the appellants could internally relocate to Kabul and live safely there. The appellants are unlikely to be at risk from the Taliban in Kabul, due to their low profile, however, in accordance with AS, I must consider whether there are other risk factors specific to the appellants. Ms Sepulveda states the appellants are at greater risk in Kabul, due to their associations with the Afghan authorities. I do not find this to be the case: it was their brother ...that was being asked questions about the Taliban. *There is no suggestion in the appellants’ evidence that the Afghan authorities had any interest in the appellants.*”

[Emphasis added]

14. The First-tier Judge dismissed the appeal. The appellants appealed to the Upper Tribunal.

Permission to appeal

15. On 16 February 2021, Upper Tribunal Judge Gill granted permission to appeal on the following basis:

“It is arguable that, in reaching her finding (at paragraph 40) that ‘the appellants themselves were not targeted by the Afghan authorities, it was their brother ...that was being asked questions about the Taliban...’, Judge of the First-tier Tribunal Howorth may have overlooked the appellants’ evidence in their witness statements, i.e. paragraph 25 of the first appellant’s witness statement and paragraph 21 of the second appellant’s witness statement, as contended at paragraph 1.4 of the grounds.

2. Although some of the remaining grounds are less persuasive, for example, paragraph 1.1 of the renewed grounds, all the grounds may be argued.”

Rule 24 Reply

16. On 19 March 2021, the respondent filed a Rule 24 Reply in which she opposed the appeal. Mr Tufan argued that the judge’s decision was sustainable:

“4. It is apparent that the judge considered the evidence relied upon and was not convinced that the appellants would be at risk from the authorities. Considering the appellants’ age when they left Afghanistan and their previous involvement of being harassed by the Taliban in Laghman, there is clearly no rationale for the authorities to have any interest in them. There is no logical reason to conclude that the authorities would conclude that they were in any way part of the Taliban apparatus. The judge clearly concedes at [40] by giving sufficient reasons that the appellants were not targeted by the authorities.”

17. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

18. Ms Everett applied to adjourn the appeal. She was instructed to do so because the Secretary of State is considering all Afghan appeals with a view to avoiding fresh claims under paragraph 353 of the Immigration Rules HC 395 (as amended). I am not minded to adjourn these appeals: the appellants have now waited 5 years since arriving in the United Kingdom as children, and this appeal falls to be decided on an ex nunc basis.
19. Ms Everett acknowledged that at in several places in the appellants’ witness statements, they did explain that the then Afghan authorities were interested in them. The First-tier Tribunal failed to deal with that evidence and accordingly, there is in the First-tier Tribunal decision a material error of law.

20. Given my decision that it was not appropriate to adjourn the appeal, Ms Everett did not seek to suggest that it was inappropriate to allow the appeals.

Analysis

21. The appellants' accepted evidence was that the Taliban had tried hard to recruit them and had threatened to kill their family members if they did not do so. The Taliban also suspected the family of collaborating with the then Afghan authorities. The acceptance of a risk from the Taliban in the appellants' home area, but an assertion that they could be safe in Kabul, relies on a factual matrix in Afghanistan which ceased to exist on 22 August 2021.
22. Following the departure of American and British forces from Afghanistan in early July 2021, on Sunday 22 August 2021, the Taliban retook Kabul and is now in effective control of all of Afghanistan. The 'Afghan authorities' in the refusal letter and in the First-tier Tribunal decision are no longer in power: the outgoing President Ashraf Ghani abandoned the Presidential palace to Taliban fighters and fled Afghanistan on 22 August 2021.
23. The appellants' fear of the former Afghan authorities is no longer a risk factor, but on the accepted evidence, there is no doubt in my mind that they have a well-founded fear of persecution or serious harm from the Taliban.
24. The appellants' appeals were allowed at the hearing.

DECISION

25. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appellants' appeals.

Signed [Judith AJC Gleeson](#)
2021

Upper Tribunal Judge Gleeson

Date: 27 September