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Heard at Field House

\_L (Risk - Kabul – Women)  
Afghanistan CG [2003] UKIAT  
00092

On 24 September 2003

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

10/10/2003

**Before:  
P R LANE  
D R BREMMER**

**Between**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

Appearances:

For the appellant: Mr C. Fain, Counsel, instructed by Gill&Co Solicitors

For the respondent: Mr G. Saunders, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Sofia Latzifada, a citizen of Afghanistan born on 3 March 1981 and now aged 22, appeals with leave against the determination of an Adjudicator, Mr R A Britton, sitting at Taylor House, in which he dismissed on asylum and human rights grounds the appellant's appeal against the decision of the respondent to refuse to grant her leave to enter the United Kingdom.
2. At paragraph 2 of his determination the Adjudicator records the following:-

'At the beginning of the hearing Mr Grover on behalf of the appellant stated that it was accepted that the appellant did not

have a well-founded fear of persecution for a Convention reason. He was relying on Article 8'.

3. The appellant arrived in the United Kingdom in December 1999, together with her uncle, brother and sister. Of these:-
  - a) her brother, Fawad, who is 26 years old, was granted exceptional leave to remain on 19 April 2001, which expires on 11 April 2005;
  - b) her sister, Fozia, who is 29 years old, was granted indefinite leave to remain on 16 May 2002, following the determination of an Adjudicator who allowed her appeal on human rights grounds; and
  - c) her uncle, Popal Rafial, was granted exceptional leave to remain on 8 November 2001, which expires on 7 November 2005.
4. The appellant's mother, other brother, other sister and aunt (it seems the wife of the uncle who is in the United Kingdom) remained in Afghanistan.
5. The appellant was raised in Kabul. She and her family left there in 1992. They appear to have lived in Daghlan for two years. The appellant left Afghanistan in 1996.
6. These facts emerge from the Adjudicator's determination, supplemented by information supplied to the tribunal by Mr Fain.
7. It is apparent that the Adjudicator got into difficulties over the question of whether the appellant knew where her family was in Afghanistan. Paragraph 16 of the determination is thoroughly confusing in this regard. The Adjudicator begins by saying that 'the appellant knows where her mother, brother and sister are, and she would be able to continue family life in Afghanistan' before immediately saying that 'it would not be right to return her until her family is located and they are aware of her return, through one of the organisations in Afghanistan unless the appellant is willing to give that information'.
8. Be that as it may the Adjudicator further found that the appellant would, in any event, 'be able to return to Afghanistan with her brother, Fawad, who will return to Afghanistan by 11 April 2005, if not before or her uncle'.
9. The grounds of appeal contend that the appellant has a family life with the brother, sister and uncle in the United Kingdom, but the reality is that the appellant does not know where her family is in Afghanistan, that it would be 'an unsafe 'crystal ball' basis for a finding' that the

appellant could return with her brother in April 2005 and, finally, that returning the appellant to Kabul would violate her Article 3 rights.

10. Given the uncertain nature of the Adjudicator's findings on the issue of the whereabouts of the Afghanistan family, the Tribunal proceeds on the basis that the appellant does not currently know their whereabouts. Even on this basis, however, it is manifest that her appeal must fail for the following reasons.
11. The basis upon which the appellant's case has been put is that she enjoys a family life in the United Kingdom with adult siblings and an uncle. Whilst she lives with these individuals, the Tribunal's attention has not been drawn to evidence to show that there is between them and the appellant such a degree of emotional dependency as to constitute a family life in the United Kingdom. However, even on the assumption that a family life does exist here with those members, the appellant's case falls within the scope of the principles set out by the Court of Appeal in *Mahmood* [2001] Imm AR 229. There has not been produced any evidence (either to the Adjudicator or the Tribunal) to show that the appellant's brother and uncle, who have exceptional leave to remain for a limited period, would face 'insurmountable obstacles' in returning with the appellant to live in Afghanistan, going beyond 'a degree of hardship for some or all members of the family' (Phillips MR, paragraph 55 (3)). The family have not been 'long established' in the United Kingdom (cf. paragraph 55 (4)).
12. There is a common misconception that merely because a person has been given exceptional leave to remain, that person cannot in any circumstances be expected to leave the United Kingdom in order to live elsewhere with a family member. In the present case the Tribunal has been given no evidence to show that the brother and uncle would face insurmountable difficulties in re-locating to Afghanistan. In the absence of any contrary evidence, the Tribunal considers that the reality of the matter is likely to be that the brother and uncle were granted exceptional leave to remain at a time when the Secretary of State had a policy of conferring such leave upon those who he accepted to be nationals of Afghanistan but who, at the time, could not be removed there by reason of the attitude of the Taliban regime.
13. The Tribunal also notes that the sister, Fozia, has not been found to be a refugee. The determination of the Adjudicator in her case was written on the very day (11 September 2001) when the events in Manhattan were unfolding. Those events led directly to the fall of the Taliban regime. The Adjudicator who allowed Fozia's human rights appeal did so on the basis that she 'is a single woman who would be travelling with no documentation to a country run by the ruthless Taliban' (paragraph 26).

14. In her case also, therefore, there is no evidence to show an insurmountable obstacle today to her relocation with her sister, the present appellant, to Afghanistan.
15. Given the close connection between persecution and Article 3 ill treatment, the Tribunal considers it significant that the appellant's representative conceded that the appellant would not be at real risk of persecution within the meaning of the Refugee Convention, were she to be returned to Kabul. Notwithstanding that Article 3 of the ECHR is mentioned at the end of the skeleton argument of Counsel who appeared before the Adjudicator, that point does not appear to have been pursued before him. It does, however, feature in the grounds of appeal.
16. The Tribunal finds that the contention that the appellant would, in the current circumstances prevailing in Afghanistan, face real risk of treatment of such severity as to cross the high threshold of Article 3, is without merit.
17. In paragraph 13 of the determination, the Adjudicator notes country documentation that shows significant improvements in the infrastructure and general assistance available in Kabul for people living there. The Adjudicator also had regard to paragraphs 6.75-6.95 of the October 2002 Country Assessment on Afghanistan. These provisions concern the position of women. In the latest (April 2003) Assessment, the corresponding provisions are to be found at 6.86-6.120. At 6.88 we note that Human Rights Watch record (as at May 2002) that women and girls in Afghanistan have gained greater freedom to participate in public life and access to education, healthcare and employment. 'This is the case particularly in Kabul where ISAF has helped to bring much needed security. However even in Kabul women face constant threats to their personal security from other civilians as well as from armed men belonging to various political factions. Whilst there were no reports of physical attacks in Kabul there were reports of instances of harassment. The HRW report indicated that outside Kabul (where the ISAF does not operate) women and girls continue to face serious threats to their personal security as a result of general lawlessness and insecurity'.
18. At 6.90 we observe that in May 2002 a Danish fact-finding mission reported that women can now move around without fear of the Taliban's religious beliefs. However generally women continue to wear the burka for their own safety. In June 2002, journalists commenting on the changes in Kabul since the fall of the Taliban reported some women on the streets of Kabul in dresses either with head-scarves or with their heads uncovered.
19. Paragraph 6.92 records that in Kabul there have been instances of women being harassed for 'un-Islamic behaviour' such as wearing make-up. Nevertheless in paragraph 6.93 a March 2003 report to the

UN Security Council reported that 'Afghan women, particularly in urban areas, are slowly re-entering public life. Over 30 per cent of the students who returned to school in 2002 were girls and a third of the teachers were women'.

20. Mr Fain sought to place particular reliance upon paragraph 6.94 of the assessment. This records UNHCR as having issued a paper in April 2003 which stated that 'the following categories of women should be considered to be at risk and exposed to possible persecution, if they return to Afghanistan:

- i. Single women without effective and/or community support.
- ii. Women perceived to be actively or actually transgressing prevailing social mores'.

21. At 6.95, the Danish fact-finding mission records 'several sources' as emphasising 'the need for women to have networks including male relatives in order to obtain protection. Women without these networks and male relatives to whom they could turn for protection may face serious problems'.

22. In the present case, as the Tribunal has already found, there is no reason to suppose that this appellant would, in the event, be without male relatives, were she to be returned to Kabul. However, read overall the passages in the Country Assessment fall far short in the Tribunal's view, of showing that single women in Kabul at the present time risk, as such, inhuman or degrading treatment or punishment. They may, indeed, face instances of harassment and discrimination. That, however, does not cross the Article 3 threshold.

23. Mr Fain submitted that, having regard to the appellant's statement, her family were not sympathetic to strict Islam, and that, accordingly, she would be likely to encounter problems. There is, however, no evidence to suggest that the appellant has herself a history in Afghanistan of behaviour which would excite the attention of those of a strictly Islamic persuasion. Nor is there any reason to assume that, if returned, she would choose to behave in such a manner as to arouse such adverse attention.

24. The Adjudicator was, in the Tribunal's view, correct to observe that the appellant had grown up in Kabul. Indeed, her association with Baghlan, as disclosed in her statement, is, by contrast, insubstantial.

25. In conclusion, there is no evidence to show that the appellant's rights under Articles 3 or 8 of the ECHR would be violated, were she to be returned to Kabul.

26. The appeal is accordingly dismissed.

Vice President