

## **UK - Asylum and Immigration Tribunal, 15 March 2007, LQ, Afghanistan [2008] UKAIT 00005**

**Country of Decision:**

United Kingdom

**Country of Applicant:**

Afghanistan

**Date of Decision:**

15-03-2007

**Citation:**

[2008] UKAIT 00005

**Court Name:**

Asylum and Immigration Tribunal

**Keywords:**

Persecution Grounds/Reasons

Membership of a particular social group

Refugee Status

Unaccompanied minor

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**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 3](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [5] > [Art 10](#) [6]

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**Headnote:**

For the purposes of assessing whether a child is a member of a particular social group, a person's age is an immutable characteristic.

**Facts:**

The applicant was a 15 year old boy from Afghanistan. He was a Shia Hazara originally from

Nawabab in Ghazni province. His mother was presumed to have died in the armed conflict. He and his father moved to Southern Iran. His father died in 2003, and the applicant went to live with his father's cousin who mistreated him before eventually asking him to leave the house. The applicant claimed asylum in the UK and was granted leave to remain but refused asylum. He appealed upon the basis that he should have been recognised as a refugee and granted asylum.

The Immigration Judge accepted the applicant's account apart from the elements relating to his uncle. He found that there would be no adequate reception facilities in Afghanistan and that, as an orphan, the applicant would be subject to the risks of exploitation and ill treatment. The Immigration Judge held that if the applicant returned to Afghanistan now he would be at risk of an Art 3 [ECHR] breach. However, the Immigration Judge dismissed the appeal on the basis that "the 1951 Convention is not engaged" because the applicant is adequately protected by his leave to remain in the United Kingdom and that he was not a member of a particular social group on the basis that he was a child, because age was not an immutable characteristic. The applicant applied for reconsideration.

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### **Decision & Reasoning:**

The Tribunal allowed the appeal for two reasons. First, it held that section 83 of the 2002 Act entitles an applicant to assert his status as a refugee independently of any risk of removal. It was the Immigration Judge's task to assess whether, at the date of the hearing before him, the applicant had the status of a refugee. The failure to make that assessment was an error of law.

Secondly, the Tribunal found that the Immigration Judge was mistaken in his approach to assessing whether the applicant feared persecution on account of his membership of a particular social group as a child. It held "...for these purposes age is immutable. It is changing all the time, but one cannot do anything to change one's own age at any particular time. At the date when the applicant's status has to be assessed he is a child and although, assuming he survives, he will in due course cease to be a child, he is immutably a child at the time of assessment".

Consequently, on the basis of the Judge's findings, the Tribunal held that "the risk of severe harm to the applicant, as found by the Adjudicator, would be as a result of his membership of a group sharing an immutable characteristic and constituting, for the purposes of the Refugee Convention, a particular social group".

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### **Outcome:**

Appeal allowed.

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### **Observations/Comments:**

This case was considered by the Court of Appeal of England and Wales in [ZK \(Afghanistan\) v Secretary of State for the Home Department \[2010\] EWCA Civ 749](#) [7] and [DS \(Afghanistan\) v Secretary of State for the Home Department \[2011\] EWCA Civ 305](#) [8] (see separate summary).

This case was considered and distinguished by the Upper Tier Tribunal (Immigration and Asylum Chamber) in [HK & Ors \(minors, indiscriminate violence, forced recruitment by Taliban, contact with family members\) Afghanistan CG \[2010\] UKUT 378 \(IAC\)](#) [9].

### **Attachment(s):**



[LQ \(Age immutable characteristic\) Afghanistan.pdf](#)[10]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[4] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>

[7] <https://www.asylumlawdatabase.eu/en/content/zk-afghanistan-v-secretary-state-home-department-2010-ewca-civ-749>

[8] <https://www.asylumlawdatabase.eu/en/case-law/uk-court-appeal-22-march-2011-ds-afghanistan-v-secretary-state-home-department-2011-ewca>

[9] <https://www.asylumlawdatabase.eu/en/content/uk-hk-ors-v-secretary-state-home-department-afghanistan-cg-2010-ukut-378-iac>

[10]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/LQ%20%28Age%20immutable%20character>