



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02749/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 1 August 2013

Determination sent
On 05 August 2013
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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

QUDRATULLAH SADIQ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Neil Barnes, Solicitor
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant is a citizen of Afghanistan, of uncertain age.
- 2) The respondent refused the appellant's asylum claim for reasons explained in a letter dated 8 March 2013.
- 3) First-tier Tribunal Judge Mozolowski dismissed the appellant's appeal by determination promulgated on 7 May 2013.

4) These are the grounds of appeal to the Upper Tribunal.

Ground (1) effect of the judge's assessment of age:

- 2.1 Issue: Immigration Judge held that the appellant's date of birth was 21 March 1995. He had entered the UK as an unaccompanied minor. He was still under 18 years old as at the date of the decision being appealed (8 March 2013). In these circumstances an obligations arose on the part of the respondent to endeavour to trace members of the appellant's family (*Reg 6 of the Seekers (Reception Conditions) Regulations 2005*) in addition to that to take into account the best interests of the appellant (*Section 55 of the Borders Citizenship and Immigration Act 2009*). Such a duty would not arise if the appellant had not established that he had no relatives in Afghanistan (*HK Afghanistan*) *v Secretary of State for the Home Department* (2012) *Imm AR 1054* (paragraph 25)). The first question that has to be considered is whether the Immigration Judge's findings/ observations in this respect are safe. It is submitted that they are not.
 - 2.2 Paragraph 37: the Immigration Judge observes that the appellant gave answers she considered unsatisfactory in relation to question by her about the appellant attending the mosque. These questions (and answers) may be relevant in relation to the appellant's practice in attending worship, but they are not in relation to whether the appellant had relatives in Afghanistan to whom he could return and with whom he could be expected to live (*per the test set out in HK (supra) before the Upper Tribunal.*) The fact that the appellant may have relatives who attend a mosque does not justify the conclusion that he could live with them. Therefore any finding that the appellant could live with these people is not justified.
 - 2.3 Conclusion: that means that the obligation referred to in paragraph 2.1 (above) arises. There was no discussion of how or in what circumstances the duty to endeavour to trace the appellant's relatives. Any conclusion that the obligation ceases as soon as the appellant reached 18 years (21 March 2013) is not correct (*KA, supra, paragraph 25*); there is no automatic or "bright line" rule whereby an appellant, one day, (*before his/her eighteenth birthday*) is entitled to expect the respondent to observe these statutory duties, then the next (*after he attains 18 years*) not to do so. The appellant was under 18 years old at the time of the decision. He was a minor. The respondent has not discharged her statutory duty.
- 3 Ground (2) – assessment of credibility: The Immigration Judge does not believe the appellant's evidence that (i) the Taliban knew he had access to an American base (*paragraph 29*) and (ii) that he was attacked by them (*paragraph 36*). She assesses this evidence (*or at least (i)*) having regard to country information (*see paragraphs 32-35*). She has erred in holding that his evidence:
- 3.1 Visit to American army base: The Immigration Judge states that she does not accept as credible that this would have happened (or that the appellant was ever at a army base (*paragraph 31*)). The basis for this reasoning is speculation. She states that she "... *would have thought that perimeter controls would have noticed anyone ... taking pictures ...*" *paragraph 29*). There was no evidence about how an American army base would be protected. Nor was there any detailed evidence about the nature of the appellant's father's job which might entitled the Immigration Judge not to accept that someone like him "... *would have had permission to bring in extraneous persons ...*" (*paragraph 29*). Speculation is justified in some circumstances, but not these circumstances.
 - 3.2 Malign attention of the Taliban: the Immigration Judge does not accept that the appellant came to the attention of the Taliban (*paragraph 31*). This finding is inconsistent with her acceptance of and reference to objective evidence as to how the Taliban operated (*see paragraphs 32-34*). She accepts in these paragraphs that the Taliban *inter alia* want to recruit young persons as suicide bombers. There is no "... *tension ...*" between such recruitment and wanting to use the appellant to try and enter the American army base: the Taliban may have wanted to use the appellant in this way in order to gain

access to the base. In any event, the relevant findings in this connection assume a knowledge about the activities of the Taliban that was not open to the Immigration Judge to reach.

- 3.3 Attack by the Taliban: The findings at paragraph 36 were not open to the Immigration Judge to reach. The Immigration Judge appears to reach the conclusion that the Taliban would not have been deterred by the reaction by neighbours to screams from the appellant on account what is said between paragraphs 32-34 as to how the Taliban operate. Nothing in what is there said justifies the conclusion that the Taliban would not have been deterred by the activities of persons (*the appellant's neighbours*) who had been made aware of their presence.
- 5) Mr Mullen conceded that the determination erred in law, in particular by failing to deal with how KA might bear on the case (that authority having been cited to the judge) and also by having no regard to EU and others (Afghanistan) v SSHD [2013] EWCA Civ 32 (not cited, but reported well before the hearing in the First-tier Tribunal). It is unnecessary to consider the other alleged errors in detail, because it was common ground between representatives that the case could be properly resolved only by an entirely fresh hearing.
- 6) The determination of the First-tier Tribunal is set aside. No findings in the determination are to stand. Under s.12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Mozolowski.
- 7) (No order for anonymity has been requested or made.)



1 August 2013
Judge of the Upper Tribunal