



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

Appeal Number: AA/07370/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 19th February 2015**

**Decision & Reasons Promulgated
On 25th February 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Anderson of the Immigration Legal Advice Centre
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Shimmin made following a hearing at Bradford on 12th November 2014.

Background

2. The Appellant is a citizen of Afghanistan born on 9th May 1994. He came to the UK on 23rd February 2009 and applied for asylum. He was refused on 1st October 2009 but granted discretionary leave until 9th November 2011 as he was an unaccompanied minor. He did not appeal against that decision.

3. He made an in time application for further leave to remain on the basis of asylum, humanitarian protection and human rights and, after a three year delay, was refused on 2nd September 2014.
4. The judge recorded the Appellant's claim. The Appellant's father, a doctor, had been put under pressure by the Taliban in 2008 to join them. Three or four months later the Taliban came and dragged his father out of the house. His maternal uncle followed him out and he was beaten and shot in the leg. The Appellant's father tried to help and the Taliban killed him.
5. A few days later they sent two threatening letters to the house saying that they were going to kill the Appellant's maternal uncle together with the Appellant and the rest of the family. A month later they all moved to Pakistan for safety and lived in the Hajizai Refugee Camp in Peshawar, but had to travel onwards because the Taliban had found out that they were there. They sent two letters to the Appellant's house in the camp which threatened that the Appellant and his family would be killed. There was insufficient money for all of the family to travel and so only the Appellant was able to leave for the UK.
6. The judge did not accept that the Appellant's story was credible. Whilst he had given clear and largely consistent evidence it was not credible that the Taliban would come to the Appellant's house to take his father but then kill him and leaving the Appellant's uncle free and alive. Neither was it credible that the Taliban would send two letters saying that they wanted to kill the family and the uncle because, had they wanted to do so, they could have done killed him on the night of the father's murder. Furthermore the Appellant had remained in the house for a month before leaving Afghanistan and the Taliban had the opportunity of attacking him then. He rejected the Appellant's explanation that the Taliban could not approach the house because of mourners, which was inconsistent with his other evidence that the Taliban had not come for him because the family was not at home much of the time. Finally the judge did not find it credible that the Taliban would expend resources and effort in tracing the Appellant, his uncle and family in Pakistan because they were of no continued interest or threat to them. Moreover he had travelled through several safe countries in Europe and had failed to claim asylum.
7. The judge recorded that the Secretary of State has a duty to help unaccompanied minors find their families and the Secretary of State had not done so in this case. The judge said that he accepted the Respondent's submission that the Appellant had failed to give the fullest details about his family and had hampered them in their efforts; he rejected the argument that he had been disadvantaged because he had been deprived of the opportunity to bring forward the best evidence to support his claim.
8. The Appellant's evidence was that he had a general fear arising from the security situation in Kabul. The judge relied on AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 and held that he would not be at real risk of indiscriminate violence there. He is a healthy and educated man of 20 years, speaking good English and teaching English to Pushtu speakers in

the UK, currently studying civil engineering at Leeds University and could not properly be described as being particularly vulnerable. On the contrary, the judge said that he was intelligent and very resourceful. It would not be unduly harsh for him to internally relocate to Kabul.

9. The judge considered the Appellant's Article 8 rights and accepted that he had lived in the UK for five years during an important and formative period of his life, namely his late teenage years. He was impressed by his educational qualifications. He accepted that the Appellant had no experience of living independently in Afghanistan.
10. The judge had regard to the considerations listed in Section 17(b) of the Nationality, Immigration and Asylum Act 2002 noting that the maintenance of effective immigration controls was in the public interest. The Appellant had a good command of English and this consideration did not weigh against him but, on the other hand, he was in the middle of a four year civil engineering degree course and it would be some time before he is financially independent. Little weight should be given to the Appellant's private life because his immigration status has always been precarious. On that basis he dismissed the appeal.

The grounds of application

11. The Appellant sought permission to appeal on the following grounds.
12. First, the fact that he did not appeal against the initial decision should not have any bearing on the case because he was following the advice of his then legal representative.
13. Secondly, the judge had failed to take into account that the Appellant was very young when the incidents at his home took place and there was nothing inherently implausible in his account. So far as the Section 8 point was concerned he could not be expected, as a child of 14 years old, to break away from the agent who had been paid to take him to a place of safety.
14. The judge referred to the Secretary of State's duty to help unaccompanied minors find their family but failed to recognise the consequences of the Secretary of State's failure to trace and gave no reasons for concluding that the Appellant had failed to give the fullest details about his family which had hampered the Red Cross. Had a tracing enquiry taken place it would have established whether he had family members in Afghanistan to return to. If he had not, he would have been entitled to refugee status on the basis of his age (LQ (age: immutable characteristic) Afghanistan [2008] UKAIT 00005).
15. Finally the judge did not consider whether the Appellant's vulnerability as a young person would give rise to undue hardship if returned to Afghanistan. The Court of Appeal in KA (Afghanistan) [2012] EWCA Civ 1014 recognised that there was no bright line and that apparent or assumed age was more important than chronological age in assessing what risks a young person might face. The mere fact that he had reached majority did not mean that he would not face some of the hardships

recognised by the Tribunal in AA (unattended children) [2012] UKUT 00016.

16. The Appellant argued that removal was disproportionate. The judge had not taken relevant factors into account, namely the Appellant's length of residence during an important developmental period, his level of integration into UK society, the Respondent's failure to endeavour to trace, the fact that his private life had been established while he had valid leave to remain in the UK and the delay in the Secretary of State's decision on his extension application.
17. The fact that the Appellant is studying means that in the future he will be less of a burden on the taxpayer and will make a larger contribution via income tax than if he choose not to study and to take a minimum wage job. The Appellant has always been in the UK lawfully. His status has not been precarious and four out of the five public interest considerations in Section 117B of the 2002 Act weigh in his favour.
18. Permission to appeal was granted by Judge White on 11th December 2014 for the reasons stated in the grounds.
19. On 18th December 2014 the Respondent served a reply defending the determination.

Submissions

20. Miss Anderson relied on her grounds. She accepted that there was insufficient evidence to establish that the Appellant was in need of protection in the UK on asylum grounds and said that she was not pursuing that aspect of the grounds. However she did argue that the judge's proportionality assessment was flawed. In particular there was no justification for the Immigration Judge's view that the Appellant had not properly co-operated with the Red Cross, which was relevant to the proportionality decision.
21. Mr McVeety accepted that it was difficult to understand the foundation for the original Presenting Officer's submission that the Appellant had not properly co-operated, but said that it was immaterial in any event. He relied on the Court of Appeal decision in EU & Others [2013] EWCA Civ 32 and said that the failure to trace added nothing to the Appellant's case. The judge had given proper reasons for finding him not to be vulnerable as a well-educated resourceful young man. His status in the UK was precarious because he had only ever had temporary leave here. He did not enjoy family life in the UK and overall the judge's conclusions in respect of private life were balanced and well-reasoned.

Findings and Conclusions

22. Miss Anderson was right not to pursue the asylum challenge in her submissions. The Appellant's story was, as the judge acknowledged, basically consistent, but it is a simple one and not difficult to memorise. The Appellant was of course very young when the events were said to have taken place but the judge did not disbelieve him because, for example, there were internal discrepancies or because the account was

vague. There is nothing in the judge's considerations which demonstrates that he was not aware of the fact that the Appellant was a child when the events were said to have taken place.

23. The judge did not believe him because the story was nonsensical. He was fully entitled to conclude that there was no point in the Taliban putting pressure on the Appellant's father to join them, because he was a doctor, and then killing him and then pursuing the uncle and the Appellant. On the Appellant's own account neither were of any continued interest to or threat to the Taliban and there was absolutely no reason for them to try to find them in Pakistan. The Section 8 point was not relied upon by the judge save as an aside after considering the credibility of the account.
24. Miss Anderson made it clear that she was only relying on the failure to trace point in the context of Article 8. I accept that it is difficult to see where the Respondent's submission that the Appellant had failed to co-operate with the Red Cross is founded. However it does not really assist him. In EU the Court of Appeal said that the rationale of the inhumanity of returning an unaccompanied young child to Afghanistan where there would be no family to take care of him applies with less and less force with increasing age. Moreover, given that they had spent considerable resources in sending the children to the UK they would be unlikely to co-operate with an agent of the Secretary of State for the return of their child to Afghanistan.
25. I do not consider that in reality there has been any disbenefit to the Appellant as a consequence of the Secretary of State's breach of duty and accordingly, even if the judge had considered that the Appellant had not been actively complicit in the failure to trace, it would have made no difference to his decision. In this case the Appellant had the opportunity to challenge the original asylum refusal when he was still a minor and, on legal advice, chose not to do so. He cannot now argue that he has been deprived of any opportunity to establish his claim.
26. The assessment of proportionality was a matter for the judge and will not be interfered with by an appellate Tribunal absent an error of law. There is no error here.
27. The judge was clearly impressed with the Appellant, who has worked hard and made the best of his time in the UK. He is clearly a talented young man. He has achieved well and worked hard. However, he has no basis of stay in the UK.
28. The fact that the Appellant has not remained in the UK unlawfully is irrelevant since he does not enjoy family life here.
29. The judge was unarguably correct to say that Section 117B(3) weighs in the Respondent's favour because the Appellant is financially supported by social services in his education, maintenance and accommodation. He could have looked at the Appellant's studies through another prism but was not obliged to do so.
30. So far as his leave is concerned, the Appellant has never had anything other than discretionary leave in the UK. Whether or not the Respondent

is right to argue that all forms of temporary leave are precarious is beside the point. Some forms of temporary leave may well be more precarious than others. But on any view a period of discretionary leave which is time limited following the refusal of an asylum claim is precarious.

31. Finally, although the judge did not make any reference to the delay it is immaterial because the 2014 Act, which postdates the case law on delay states that private life developed when immigration status is precarious is to be given little weight.
32. Miss Anderson's argument that it was unreasonable for a young vulnerable adult with no support to return to Afghanistan is simply a repetition of the submission made to the judge and rejected by him for the reasons which he gave. The judge was entitled to reach the view that the Appellant was not to be considered as such and there was therefore no obligation on him to consider the risks such as trafficking which appertain to those who are.

Notice of Decision

33. The original judge did not err in law and his decision stands. The Appellant's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Upper Tribunal Judge Taylor

Date **19th February 2015**