



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

Appeal Number: AA/08220/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3 February 2016**

**Decision and Reasons
Promulgated
On 27 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

[A D]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Counsel

For the Respondent: Senior Presenting Officer

Decision and Reasons

1. The appellant claims that he is a citizen of Afghanistan born on [] 1999. He appealed against the decision of the respondent dated 21 May 2015 to refuse to grant him asylum and on humanitarian protection in the United Kingdom. First-tier Tribunal Judge D Ross dismissed the appellant's appeal on 10 November 2015.

2. Permission to appeal granted by First-tier Tribunal Judge Pooler on 8 December 2015 who found that it is arguable that the Judge's failure to consider s55 of the Borders, Citizenship and Immigration Act 2009 was a material error of law as the appellant was a child aged 16. He also stated that the Judge gave two principal reasons for placing little weight on the report as to the appellant's nationality. The first was that the report was not been signed by either expert. This mistake of fact and his placing little weight on the report, was a significant factor in his assessment of the appellant's nationality.

The First-tier Tribunal's findings

3. The First-tier Tribunal Judge made the following findings in dismissing the appellant's appeal which I set out in summary.
4. The appellant travelled by road to the United Kingdom arriving on 17 September 2014. At his screening interview for children on 24 September 2014, the appellant indicated that he would be harmed if returned to Afghanistan. He said that he lived at home with his father and mother and two brothers, and that he had left about three or four months ago. He said that he was handed to a man, by his mother, who put him in the vehicle. He did not know what countries he has passed through. He was told he was being taken to the United Kingdom.
5. The appellant claims he is 15 years old and of Pashtun ethnicity. He was born in Jalalabad. His older brother Hammza is dead. He was taken by four or five Taliban in the car into the hills. They told him he has to fight with the Taliban. His father has also disappeared. He managed to escape from the camp at night and walk through the forest and arrived back home at about midday. His mother took him to a relative's house to hide after a couple of days. They lived in a different village. The Taliban came to his house and took his father and told him that he was responsible for his escape. After a while his mother told him that his father had probably been killed and decided that it was too dangerous for him and handed him over to an agent. About a month later, he left Afghanistan because he could not live there.
6. Rather unusually, the appellant's nationality has not been accepted by the respondent in this case. The first consideration is whether he is actually an Afghan. In analysing what he said about his home, I must bear in mind that he was only 15 years old and lived in the village all his life. He attended school for a few years and then gave up and could not read or write. So far as his languages are concerned he speaks Pashto which does not help much because that is a language which is also spoken in Pakistan.
7. Looking at his answers about his village, I considered that these are very inconsistent beginning with the name of the village. At his screening interview, he said he came from "Jalalabad Khwyghai District Village." He was asked what he remembers of his village and he said it had a hospital. In his statement he gave his address as Khugiani district in Jalalabad which

is in the Nanaghar Province. The village therefore was not mentioned. In his interview he gave the name of village as Quqhyana and later he said his village was called Khogyani and then at question hundred and 14 he said that his village was called Sherzadu and in his statement at paragraph 7 he said that he said that Sherzado is his village that he had not understood the question. He said Sherzad is the name of the district and his village is called Kodikhail.

8. There were also other gaps in the appellant knowledge and there were also inconsistencies. He indicated in his screening interview that there was a hospital in his village, but in his interview he said he could not remember much about his village only that there were fields, trees and a square. He could not remember any buildings or landmarks. He said that the hospital was not close but it was very far away. He was asked what was the name of the shop in the village and the name of the man running the shop. He claimed that as he did not go out much, he does not know. He was asked about the mosque and said that although it had a name, he could not remember what it was. Similarly, he could not remember the name of his school, and when asked whether he could remember any teachers, he remembered only one teacher.
9. The Judge, consider that bearing in mind that according to the appellant he had spent his whole life in the village, he should have had no difficulty in remembering the name of the village, whether there was a hospital in the village, and what the village looked like. In addition, he was asked where the police station was and he said he did not know. Making every allowance for cultural differences and misspellings, it is clear that the appellant has changed his evidence about the name of his village on a number of occasions, and does not seem to know in which district the village is.
10. Bearing in mind the appellant, would have only been nine years old at the time of the alleged earthquake, and it is difficult to know how much effect this had on this particular village, I do not feel I can place much weight on this particular part of the evidence.
11. The appellant relies on some expert evidence about his nationality. Two Afghan experts were instructed and the conclusion which they both reached was that the appellant was from Afghanistan and that he spoke both Dari and Pushto and that Pashtu is his mother tongue and Dari his language of habitual use. However, the report was not signed by either of the experts, but was compiled by an organisation called Ariana Expert Research and Consultancy. In addition, there were a number of inconsistencies in the report, for example the author of the report stated that the appellant was fluent in both Dari and Pushto, when asked where he had learnt Dari he replied "I learnt it here in the UK and on my way to the UK." He was asked where exactly did he learn Dari and he replied that he had heard it from some people in his village. He gave the name of his village as Kutikhel. It was later recorded that the appellant was fluent in reading the Koran in Dari. The conclusion of the experts was that he could

not have learnt the level of fluency in Afghan Pushto or Afghan Dari in Pakistan, Iran or in the United Kingdom. It was obvious that both Dari and Pushtu were both the languages of habitual use for the appellant, and they considered that his use of language was consistent with an Afghan.

12. I cannot give these opinions much weight because they are not signed by the experts, this is an important point because if the report has not been compiled by the experts, it has not signed and it is stated that he agrees with the content, I cannot be sure that the report is in accordance with his views. In addition, the experts do not explain the inconsistencies in the interview about the appellant's knowledge of Dari. They seem to have dismissed his original answers that he learnt Dari in the UK and on the way to the UK, and prefer to consider that he learned how to speak Dari in Afghanistan, and that this shows that he is an Afghani.
13. Although his age is taken into account at the time of the interview, his lack of knowledge about his village when he claims he has lived all his life indicates that he has not been truthful about where he has come from. There is a noteworthy contrast between his answers when he is interviewed, and what he said in his statement. But the timing when he made his statement, he has obviously been told or has worked out properly his address because he says that his village is called Kodikhail, in the Sherzad district, province of Jalalabad. This address does not make sense having regard to the background material, but bears little relation to the answers which he gave to the questions. Taking into consideration the other inconsistencies, I am not satisfied that the appellant comes from Afghanistan.
14. I am also not satisfied that the appellant's account of his detention by the Taliban and subsequent escape is correct and true. He does not appear to know where he was taken, but it was clearly some distance because he was taken in the car and then walked for about an hour. He claims that he simply walked out of the camp in the middle of the night, and that he was not really being guarded properly. He did not know the way back but still managed to leave the camp walking in the right direction in the dark and asked directions best to where he lives. It does not seem credible that the appellant would have managed to escape in the correct direction, so that he was able to find his way back to his village. It also seems unlikely that having escaped back to his home, the Taliban would not seek to recapture him. According to him he remained at home for two days, before being transferred to another address.
15. It is also no explanation as to how his mother was able to pay for his trip to the United Kingdom. I do not believe his account that he has had no contact with his mother. He claims that he has lost his mother's phone number, which would seem an act of extraordinary carelessness. I consider that it is highly improbable that having paid a large sum of money to get the appellant to the United Kingdom, the family would have no means of contacting him once he arrived here. I consider that the appellant and his family are aware that it is more difficult to return

somebody to his home country if there is nobody there to receive him, and so they have claimed they have lost contact. As was stated in the country guidance case of **HK and others** (miners indiscriminate violence-forced recruitment by Taliban-contact with family members) Afghanistan CG 2010 UKUT 378 where a child has close relatives in Afghanistan have assisted him in leaving the country, any assertion that such family members are not contactable and unable to meet the child in Kabul and should be supported by credible evidence of efforts to contact the family members and their inability to meet and care for the appellant in the event of return.

16. The unreliability of the appellant's evidence is such that I cannot accept any aspect of this claim including the claim that his father and brother have been killed. It is not therefore accepted that the appellant has no family remaining, and I consider he can return to live with them. Even if they live in Afghanistan, which I do not accept has been satisfactorily proved the country guidance case in **AA** (unattended children) Afghanistan CG 2012 UKUT 00016 indicates that a distinction has to be drawn between children who were living with their family and those who were not. Whilst it is recognised that there are some risks to the children who will have the protection of the family are nevertheless subject, in particular the risks of being trafficked, they are not at such a level as to lead to the conclusion that all children would qualify for international protection. In arriving at this conclusion account has been taken of the necessity to have regard to the best interests of children.
17. "For these reasons, I do not accept that the appellant has proved to the standard which I have set out above that he will be at risk on return. His asylum claim, his claim for vegetarian protection, and his human rights claim under article 2 and 3 must therefore fail".
18. In respect of article 8, the appellant cannot succeed in relation to family life because he does not have a parent or child in the United Kingdom he does not succeed under paragraph 276 ADE because he has not lived in the United Kingdom for 20 years and although he is under the age of 18 years he has not lived continuously in the United Kingdom for at least seven years. Furthermore, I do not consider that it can be sensibly argued having regard to my finding that there are significant obstacles to the appellant's integration into the country to which he would have to go if required to leave the United Kingdom. I consider that he has a family in his home country who can look after him.
19. Due regard has to be given to the need for immigration control and a balancing exercise between on the one hand the need for immigration control any other and the private life of the appellant. I have no doubt that the appellant said about his private life in the United Kingdom is that he goes to school here and he lives with his foster parents. I therefore accept he has established some private life in this country. As against this asset out the sections 117A-d of the Nationality Immigration and Asylum Act 2002 which includes the fact that the public interest consideration include the maintenance of effective immigration control. There are no compelling

or exceptional circumstances in this case in relation to the appellant's private life. He is with his foster parents but this is a temporary arrangement. He is in school but that is at the expense of the taxpayer. It is clear to me that the respondent has proved on the balance of probabilities that the decision is proportionate, and his appeal under Article 8 it is also dismissed.

20. The Judge dismissed the appellant's appeal on asylum, humanitarian protection grounds of Article 8 of the European Convention on Human Rights for the same reasons.

Grounds of appeal

21. The grounds of appeal state the following which I summarise. The first ground is that the judge made a material error of fact when he said that the expert report is not signed when there is clearly the expert signature. At its highest the expert demonstrates that the appellant is a fluent Dari speaker and, to the lower standard of proof, an Afghan National. Judge Ross mistaken belief that the report was not signed was a significant reason for attaching little weight to it. If this ground of appeal is correct, the remainder of the findings cannot safely stand. The appellant's nationality goes to the core of his claimed fear on return, and Judge Ross's erroneous approach to the issue of nationality must necessarily infect the rest of the decision regarding issues such as risk at the hands of the Taliban and the availability of family support.
22. The second ground is failure to give reasons for dismissing the appellant's claim for humanitarian protection. It is clear from paragraph 22 the Judge considers the appellant's entitlement to humanitarian protection to stand and fall with his claim for asylum. Nowhere does he appreciate that the claim for humanitarian protection and article Article 15 (c) of the qualification directive is distinct from a claim for asylum under the refugee Convention, and therefore nowhere does he provide reasons for rejecting the appellant's claim and entitlement to the former.
23. The third ground is the Judge's failure to consider s 55 of the Borders, Citizenship and Immigration Act 2009 or the appellant's best interest. The Judge did not consider at all whether the decision and the challenge breached the respondent's duty is under s55 despite the appellant being 16 years old.
24. Notwithstanding the refusal of his claim pursuant to national protection, the respondent granted appellant limited leave to remain until 8 April 2017 according to her published policy concerning unaccompanied minors. Under the pre-Immigration Act 2014, the tribunal would not have had jurisdiction to consider an individual's rights under Article 8 in the so-called "upgrade" appeal under s83 of the Nationality, Immigration and Asylum Act 2002. The relevance of the best interests of a child and s55

therefore is confined to the extent to which it illuminated a claim for international protection. **ST (child asylum seekers) Sri Lanka [2013] UKUT 292 (IAC)** applies.

25. In the post-Immigration Act 2014 world there is no such statutory bar to the appellant relying upon Article 8 in the way that used to exist under s83 of the 2002 Act. Indeed, the Judge went on to substantively consider the appellant's claim under Article 8 at paragraphs 23-27 of his decision. However, he failed to ask himself whether removal from the United Kingdom would be in the appellant's best interest, and focused instead upon factors such as the temporary nature of foster care and the cost to the taxpayer over schooling. This failure amounts of material error of law.

Findings as to whether there is an error of law

26. The first ground of appeal states that the judge made a material error of fact when he stated that the report was not signed when in fact it was. It is argued that this material error of fact has not only infected his entire decision and by placing little weight on the report is a material error of law such as the decision should be set aside.
27. I did not accept this argument. The Judge at paragraph 16 gives other reasons for placing very little weight on the expert report. He observed that the report stated that the appellant was fluent in both Dari and Pushto. However, the appellant's answer to the question as to where he learnt these languages, he said "I learnt it here in the UK and on my way to the UK". The conclusion of the experts that he would not have learned the level of fluency in Afghan Pushtu or Afghan Dari in Pakistan, Iran or in the UK. It was obvious that both Dari and Pushtu were the languages of habitual use for the appellant and the Judge stated at paragraph 17 that the experts do not explain the appellant's inconsistencies in his interview about the appellant's knowledge of Dari. They seem to have dismissed the appellant's original answer that he learned Dari in the UK and on the way to the UK, and therefore preferred to consider that he learnt how to speak Dari in Afghanistan, and that this somehow shows that he is an Afghani. Therefore, the Judge gave clear and cogent reasons for why he did not place weight on the expert report. Even if he was mistaken as to whether the expert report was signed, this is not a material error because the judge went on to rely on the inconsistencies in the report itself for not believing the appellant.
28. The Judge in a careful and detailed determination made many adverse credibility findings against the appellant and took into account all the evidence in the appeal. The Judge found the appellant's inconsistencies about the village that he comes from in Afghanistan goes to his credibility into the credibility of this claim that he comes from Afghanistan. The judge was entitled to find that even a young child should not have given so many inconsistent answers of the name of the village, if he was genuinely from Afghanistan. The appellant also had very inconsistent answers about the mosque, the school and read the police station was. He could not

remember the name of any teachers bar one. The Judge's findings on the evidence before him, is not perverse and on the contrary is entirely reasonable. If the appellant had lived in Afghanistan, he would have been able to give the name of his village and describe it, even if the appellant was a child.

29. The Judge also considered the fact that the appellant managed to escape from a Taliban camp and walk home in the middle of the night and in the dark, does not accord with the appellant's lack of knowledge as to where he lived. The Judge therefore was entitled to find that the appellant's evidence does not accord with his claim that he is from Afghanistan.
30. The Judge also found the appellant's account of his detention for the Taliban and subsequent escape is not true as it is not credible. It was open to the judge to find that given that the appellant's evidence who claims that the camp where he was taken was some distance away as he was first taken in a car and then walked for about an hour. The Judge found it was simply not credible that the appellant was able to walk out of the camp in the middle of the night and find his way home in the dark. The Judge also relied on the fact that the appellant stayed home for two days before he was transferred to another address and this demonstrated to him that if the Taliban wanted to find him they would have gone to his house and at home that the appellant would not have remained even for an hour in his home, if he thought the Taliban would find him there.
31. Given the incredible evidence given by the appellant the Judge was entitled not to accept that the appellant's father and brother have been killed. He referred to the case of **AA** which indicates that distinction has to be drawn between children who were living with their families and those who were not. The Judge found that the appellant's mother sent him to the United Kingdom and this shows that he was living with her before he was given to an agent to be brought to the United Kingdom. This demonstrated to the judge that the appellant has family in the country where he lives.
32. The Judge was aware that according to the Home Office policy, the appellant would not be removed from this country until he is an adult. The Judge was entitled to find that the appellant has family wherever he came from and that he will return to his family. The Judge did not accept the appellant's evidence that he has lost contact with his mother and found it absurd that a mother would send her son to the United Kingdom would not have any means of communicating with him when he reaches the United Kingdom. These are perfectly proper findings and there is no perversity in them whatsoever. The appeal is no more than a quarrel with the Judges findings of fact and the conclusions that he drew from them.
33. I find that there is no material error of law made by the Judge in the determination and therefore it stands.

Decision

Appeal Dismissed

I make no anonymity order

I make no fee order

Signed by

A Deputy Judge of the upper Tribunal
Mrs S Chana

Dated 26th day of April 2016