



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09419/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21st April 2016

Decision and Reasons Promulgated
On 26th April 2016

Before

UPPER TRIBUNAL JUDGE COKER

Between

A A
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran, instructed by Sutovic and Hartigan Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as AA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. AA, an Afghan citizen, claims to have been born on 28th June 1995. The SSHD did not accept that date of birth; after having been assessed by Slough Social Services he has a recorded age of 28 June 1994. He has not challenged that assessed age through any other proceedings.

2. The applicant claims to have arrived in the UK on 3rd May 2011. He was encountered on 4th May 2011 and said he wished to claim asylum. He claimed asylum on 13th May 2011, that application being refused on 1st August 2011. He was granted discretionary leave to remain as an unaccompanied minor until 27th December 2011. An application for judicial review against the refusal of asylum was made on 24th January 2012. An application for further leave to remain was made on 23rd December 2011, that application being refused for reasons set out in an Annex to a decision dated 17th June 2015. The appellant appealed that decision, his appeal being dismissed by FtT Judge V Mays in a decision promulgated on 12th January 2016.
3. Permission to appeal was granted by UTJ Canavan on 2nd March 2016 on the grounds that it was arguable that the FtT judge failed to make clear findings relating to risk in the appellant's home area of Logar and it was arguably incumbent upon her that even if she did not accept the credibility of the appellant's account of past events, it was nevertheless incumbent upon her to assess whether there was a real risk of serious harm and forced recruitment in his home area. She also granted permission on the grounds that it was arguable that the judge may have conflated the test of whether it was unduly harsh or unreasonable for the appellant to internally relocate to Kabul with whether there was a real risk of indiscriminate violence.
4. Although not specifically granted permission on the other grounds pleaded, they were relied upon by Ms Loughlan although not as primary submissions. The other grounds relied upon, and expanded to a limited extent before me, were
 - (i) The FtT judge had inaccurately recorded the reason for the adjournment request. The request had been made because the appellant had sought to rely upon an expert report going to the issues of risk in Logar and internal relocation; the report had not been commissioned by the date the hearing originally scheduled for March had been brought forward to December. Notification of the amended hearing date had been sent in October. The appellant had submitted that a report commissioned in October would not have been ready for a hearing in December, one had not been commissioned because it was not permissible to commission a report that would not be ready and a report was necessary for accurate assessment of the appellant's claim.
 - (ii) The findings by the judge as to credibility were unsustainable both in terms of the lack of reasoning and because of a failure to take into account the appellant's age when statements were given. Although the judge refers to the appellant being young and states that he has had regard to that, it was evident that, particularly, in terms of the assessment of the late disclosure of the cause of death of his sister and his failure to claim asylum in the countries he had passed through before arriving in the UK, there had been no consideration of his age.
 - (iii) The finding that the appellant's account of risk to him personally in Logar lacked credibility failed to take into account the background material

that supported his claim; the reasons given by the judge amounted to minor discrepancies and were insufficient to found an adverse credibility finding.

(iv) There had been a total failure on the part of the judge to assess the issue of internal relocation.

5. Mr Tarlow submitted that at its crux, the appellant's grounds amounted to no more than a disagreement with the credibility findings of the judge. Given that there was no sustainable basis upon which to challenge those findings, the appeal could not succeed. He acknowledged that there had been no specific findings on the risk to the appellant in his home area in Logar and although it was recognised that Logar to Kabul was a "Taliban Highway" the consideration by the judge of the appellant's possible circumstances in Kabul were plainly open to him. He submitted that the consideration by the judge of Article 15(c) risk in Kabul implicitly contained an assessment of the reasonableness and/or undue harshness of internal relocation to Kabul. He submitted that when read as a whole, the decision adequately considered and reached reasoned and sustainable findings that it would not be unreasonable or unduly harsh for the appellant to relocate to Kabul, irrespective of the lack of specific finding on the risk to the appellant in Logar.
6. Mr Tarlow accepted the judge had used the word "stringent" when considering whether there was an Article 15(c) risk in Kabul (and Logar) but that this did not mean the judge had applied too high a test. He submitted it was plain when considering the determination as a whole, and in particular paragraph 87¹ of the decision that the judge had in mind the correct test.
7. Ms Loughlan referred to the preceding reasoning from [68] onwards which specifically address the risk of serious harm due to indiscriminate violence and the country guidance; although referring to the reports that had been referred to in the country guidance as showing an increase of violence against the civilian population and setting out in detail the material referred to, in [86] the judge finds that the evidence does not satisfy the "stringent" Article 15(c) test.

Error of law

8. The judge has not made a finding as to the risk to the appellant in his home area of Logar. She has made findings as to claims of past risk but not, taking account of the information before her, as to potential future risk.
9. The lack of findings in this regard will not be material if the judge has made sustainable, reasoned findings with regard to internal relocation and/or Article 15(c) risk.
10. It is notable that in [86] the judge refers to the evidence, taking account of the low standard of proof applicable not showing that the situation in

¹ "For the reasons stated above I do not find that the Appellant would be at risk of serious harm as a result of indiscriminate violence arising from armed conflict if he returned to Kabul and I do not find that it would be unduly harsh for him to relocate there. The appeal is dismissed on asylum and humanitarian grounds."

Afghanistan and in particular Kabul has deteriorated to such an extent that she would be justified in departing from the country guidance of *AK (Article 15(c)) (Afghanistan) CG [2012] UKUT 00163 (IAC)*. It is difficult to understand the reasoning behind this finding given the judge finds it is clear from the background evidence that there are rising levels of violence ([84]), increasing civilian casualties ([84]), that it cannot be said that Kabul is a safe place ([84]), the level of civilian casualties is deplorable ([86]), that the use of IEDs against civilians had risen and remained a major threat to civilians ([73]), that civilian deaths and injuries from ground engagements increased by 54% ([72]), that virtually every indicator showed that violence is on the rise ([71]). It may be that there was other evidence before her that enabled that finding to be made but the explanation given in [[84] does not adequately reason her findings. Although in [86] the judge appears to consider the level of violence, the problem is that she appears confused as to the standard to be applied. It seems the use of the word "stringent" has meant that although referring to the low standard, she has in any event imported a greater level of proof in reaching her decision.

11. [57] to [63] were not specifically drawn to my attention in the consideration of internal relocation but I have considered these paragraphs and the extent to which they overcome the ground relied upon by Ms Loughlan that the judge failed to make a finding as regards risk in Logar. Judge Mays states in [87] that it would not be unduly harsh for the appellant to relocate to Kabul; it seems that her finding on that is based on findings made by her in [57] to [63]. In that consideration she looks at *AK* which of course is concerned with Article 15(c) and not whether it is unduly harsh or unreasonable for a refugee in his home area to relocate. The judge makes findings that the appellant has family in Afghanistan and that there was nothing to suggest that he would not have their support should he return to Kabul. The difficulty is that the judge, although considering the matter of family support and IDPs, assesses this through the lens of *AK* and without appearing to take note of his youth, albeit he is an adult now. The combination of the level of indiscriminate violence together with the existence of family support are matters that are required to be taken into account in considering the reasonableness or otherwise of internal relocation but the judge has not undertaken this consideration. She appears to have determined whether it is possible to depart from *AK* (as to which see above) but because there was no such departure then the internal relocation objections failed despite the evidence of increased violence. If the findings of the judge regarding departure from *AK* were to be upheld, the background factors that are taken into account would still need to be assessed in the context of relocation. This has not been done.
12. The other grounds relied upon by Ms Loughlan are not in themselves substantial but the lack of a finding as to risk in his home area, the confusion as to the standard of proof in an Article 15(c) claim and the lack of proper reasoned findings as to internal relocation to Kabul all amount to material errors of law such that the decision of the FtT is set aside to be remade.

13. The combination of the errors, when the seeming lack of consideration of the appellant's youth, the reliance on discrepancies in evidence despite the evidence of the area from which he comes are included, mean that none of the findings can stand. The Upper Tribunal is not the forum for primary fact finding. This appeal is therefore remitted to the FtT for redetermination, no findings preserved.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the hearing to the FtT for fresh hearing.



Upper Tribunal Judge Coker
Date 22nd April 2016