



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01462/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 2 May 2017

Decision & Reasons Promulgated  
On 16 May 2017

Before

UPPER TRIBUNAL JUDGE WARR

Between

AA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood, Counsel instructed by Paragon Law  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan who appeals the determination of a First-tier judge promulgated on 19 December 2016. The appellant claims to have been born on 25 May 2000. Following an age assessment by Peterborough Social Services he was assessed to have been born on 25 May 1998.
2. The appellant arrived in the UK in May or June 2015 and applied for asylum on 1 August 2015 when he was taken into care by Peterborough City Council.

3. The respondent considered the appellant's application and refused it for reasons given in a decision dated 28 January 2016. The respondent summarised the appellant's claim in paragraph 3 of the refusal decision. The appellant came from Nangarhar province. His father was a farmer and had problems with the Taliban who wanted him to store weapons for them. The appellant's father had been to the police who had told him not to do what the Taliban demanded and when he eventually stood up to the Taliban the appellant's father was killed by them.
4. The Taliban threatened to kill the appellant's whole family if they did not return weapons which the Taliban claimed were stored at the family home. Arrangements were made for the appellant to leave Afghanistan because he was the oldest son and the appellant's maternal uncle believed that the appellant faced the highest risk from the Taliban. The appellant's mother and siblings went to live in Jalalabad where some of the appellant's other relatives lived. After a short time in Jalalabad the appellant's uncle paid an agent to take the appellant out of the country. The appellant went via Turkey through various countries including Bulgaria where he was arrested, detained and beaten, arriving in the UK by lorry. The appellant feared returning to Afghanistan because the Taliban had threatened the appellant and his family and because there was fighting and violence across the country. The police had not protected his father and the appellant did not believe that they would be able to provide him with protection either.
5. In considering the appellant's claim the Secretary of State noted that the appellant had provided a detailed account of his history and while some discrepancies had been identified in the interview the respondent concluded:

"However, taking into account the responses provided, the level of detail in your statement, your age as a minor, and that you were informed and instructed by adults at this time, it is considered that you have provided a broadly consistent account of your claim."

6. The respondent then considered whether there was evidence to support the appellant's claim in the country information. She concluded in paragraph 18:

"While there is some broad consistency between the country information identified and your claim, this material fact is not substantiated to the required standard. Consideration will be given as to whether the benefit of the doubt can be offered."

7. In paragraph 1 of the decision letter the respondent stated, under the heading "Benefit of the doubt", as follows:

"I have considered the material facts of your claim that have been left uncertain and whether to accept these aspects of your claim. It has been concluded that, taking into account your age as a minor, under the instructions and directions of adults on your journey to the UK, and the arduous nature of your journey, your general credibility is upheld. It is also noted that you went into the care of

Peterborough Social Services Department on 22 June 2015 and claimed asylum on 1 August 2015 as an unaccompanied asylum seeking child. You have provided a detailed witness statement and complied with screening and asylum interview requirements. Your statements are coherent and plausible and do not run counter to available, specific and general information relevant to your case.”

8. Accordingly the respondent gave the appellant the benefit of the doubt “because all the conditions in paragraph 339L of the Immigration Rules have been met”.

Paragraph 339L reads as follows:

“339L. It is the duty of the person to substantiate the asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim. Where aspects of the person’s statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate their asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim;
- (ii) all material factors at the person’s disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (iii) the person’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person’s case;
- (iv) the person has made an asylum claim or sought to establish that they are a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
- (v) the general credibility of the person has been established.”

The respondent accepted that the appellant’s father had been killed by the Taliban for standing up to them and that the Taliban threatened to kill the appellant and the rest of his family. It was accepted that the appellant had demonstrated a genuine subjective fear on return to his village in Nangarhar province.

9. The respondent nevertheless found that the appellant could relocate to Jalalabad where he had other relatives and in the light of the country information it would not be unreasonable for the appellant to live in Jalalabad or Kabul.
10. The appellant’s appeal came before the First-tier judge on 29 November 2016. The judge heard oral evidence from the appellant. She did not accept that the appellant was a minor as claimed and that aspect of her decision does not appear to be in dispute.

11. The judge reached her conclusions in respect of the appellant's asylum claim in the following extract of her decision:

- "34. It is not disputed by the Respondent that the Appellant's father was killed by the Taliban and that as a result of threats made by the Taliban to his entire family they fled to Jalalabad. However, the Respondent finds that the Appellant, although accepting that he has demonstrated a genuine subjective fear of returning to his village in the Koht District of Nangarhar, that his genuine subjective fear is not objectively well-founded because there are areas in Afghanistan to which he could reasonably relocate where he would not face the risk of serious harm. The Respondent noted that the Appellant had said his mother and siblings and other relatives were living in Jalalabad and that he was in regular contact with them and his maternal uncle by telephone and that they were well and that the Appellant would be returning to Afghanistan with a family support network and found that it would be reasonable to expect him to return to live with his family in Jalalabad or relocate to Kabul.
35. I have not found the Appellant's claim that he is no longer in contact with his family and he does not know their whereabouts to be credible. The Appellant, up until the date of the decision, said he had been in regular contact with his family but following the decision, claims that he has not been able to speak to his family and has lost contact with them. I have doubt the Appellant's overall credibility given that he has many family members who continue to live in the village where the Taliban made the initial threat and also has very many family members including his close family, living in Jalalabad. As the Respondent's Representative noted, the Taliban had spoken to the Appellant's uncle and know who he is and have identified him but the Appellant had never claimed that he was somebody who was at risk or someone who had to leave the home village. If the Appellant claims that the Taliban could find him in Jalalabad they could much more easily have found his uncle in the village and forced him to disclose the whereabouts of the Appellant and his family.
36. Further, the Appellant says that the threat is targeted at him as he is the eldest child. However, the Appellant has two brothers who would appear to be close in age to him although he has attempted to distance himself from claims as to the ages he gave for his brothers at his age assessment. However, if there was a genuine threat to the entire family, it is not reasonable that they would have remained in Jalalabad and only sent the Appellant out of the country. The entire family could have relocated elsewhere for considerably less cost than it has probably taken in sending the Appellant to the UK. Until the Appellant's refusal of his asylum claim he had been in regular contact with his family and he had indicated that they were safe. It is not credible that if the entire family were at risk that his mother, sister and brothers would not also have left Jalalabad with him.

37. The Appellant's credibility before me is further put in doubt by his responses to questions about the ages of his siblings and his parents. He appeared to say before me that he had been forced by the interpreter to give ages for his siblings. The age assessors found the Appellant engaged well with the interpreter and there was never any challenge previously made that the Appellant had not understood or had been forced to provide answers during the age assessment.
38. The Appellant today has claimed that he fears the Taliban because they will recruit him as a suicide bomber. He had previously made no mention of this fear. In his evidence he said that the Taliban are still after him and looking for an excuse to kill him or recruit him as a suicide bomber. It is not credible that the Taliban would need an excuse to pursue the Appellant. His own expert has stated that the Appellant would not be at risk of forced recruitment.
39. Also in the hearing, the Appellant said that he had heard that the Taliban are still looking for him and his family but they had not managed to find his house. Again, I do not find it credible that if the Taliban had any serious interest in locating the Appellant in Jalalabad that they would not have been able to do so given the existence of very close family members in the Appellant's home village and also in Jalalabad City. I find that the Appellant is likely to have embellished his account in response to the refusal letter which, although believing the threats, found that the Appellant would not be at risk of persecution as he had safely relocated with his family elsewhere. There was no objective evidence that the Appellant submitted showing any steps he had taken to contact his family given his claim that he has suddenly lost contact with them.
40. I find that the Appellant's account lacks credibility. There are clear inconsistencies in his account which cannot be attributable to his age and there was no evidence that he had ever claimed that he had any difficulty in understanding any interpreter. I find that the Appellant has embellished his claim by saying that the Taliban are still seeking him. I do not find it credible that the Appellant does not know the whereabouts of his family and I do not find it credible that he is not in contact with family members in Afghanistan. I do not find the Appellant has established to the lowest standard of proof that he is at risk of persecution outside his home area in Afghanistan as claimed and I find that he could safely return to Jalalabad or to Kabul.
41. I have considered the report of Dr Guistozi's report and note the submission made by the Respondent's representative that much of the evidence relied upon by Dr Guistozi predates the decision in **AK** and found that the references by the writer to recent years in paragraph 4 (to the situation in Nangarhar) referred to reports in 2009 and 2011 which he

submitted were not recent. In fairness to Dr Guistozi he does mention an INSO report from 2014 showing a rise in insurgent attacks in Nangarhar and that much of the recent fighting has been internecine between the Taliban and Islamic State. The references in paragraph 5 are to reports from 2003-2011. I find that the claim at paragraph 6 of the report is speculative claiming that the killing of the Appellant's father has started a blood feud which was not previously claimed by the Appellant and is not supported by the evidence; which is that his family members continued to live safely in his home village and in Jalalabad and this is not supportive of a claim that there is a blood feud. In any event the reports that Dr Guistozi relied upon relating to blood feuds are from 2005 and 2006 and the references to documented feuds provide no details as to whether they were specific feuds between families or if they were targeted at the Taliban which Dr Guistozi speculates may be why the Taliban will peruse the Appellant as they fear he will begin a blood feud against them as they killed his father. Also the report finds that there has been a slight increase in the number of targeted assassinations in 2014.

42. I have not believed the Appellant's account that the Taliban are actively seeking him and his family in Jalalabad and I do not find he would be at risk on return there or to Kabul.
  43. I concur with the findings of the Respondent in that the Appellant has not demonstrated an objectively well founded fear of persecution due to reasons covered by the Geneva Convention. I find the Appellant has produced no credible evidence to substantiate his claim that he is of ongoing interest to the Taliban given that large numbers of his family remained in his home area without suffering any ill-treatment and that many family members live in Jalalabad. I do not find that the Appellant's profile and history is such that he could not safely return to Jalalabad to his family or relocate within Kabul where sufficient protection would be available to him. I am also satisfied that the Appellant does have family members to whom he could rely upon for support should he return to Afghanistan.
  44. The Appellant further says he fears persecution on return to Afghanistan as he would be returning alone as a young man. I have not found the Appellant's account of his circumstances in Afghanistan to be credible, as I find it very likely that his family continue to live in Afghanistan. I do not find the Appellant has presented any credible claim that he is at risk of forcible recruitment by the Taliban."
12. Grounds of appeal were settled but these were not received until 9 January 2017. It was argued that the judge had not properly considered the expert's report in ground 1. In ground 2 it was argued that the judge had made adverse credibility findings on matters not in dispute. The judge had impugned the appellant's general credibility in paragraph 35 of her decision. She had made adverse findings on matters not in

dispute between the parties and the error was material as it had informed her findings on internal relocation.

13. A First-tier judge considered the application and found it was out of time and no reasons had been given to extend time. The delay was unexplained. The judge had given adequate reasons for rejecting the evidence in any event. The judge had made findings on matters of dispute that had been put to the appellant. There were no material errors of law.
14. The application was renewed on 10 February 2017. The appellant's advisors apologised for the mistake which arose from a misunderstanding of the definition of "working day" in the Rules which excluded various days around the Christmas period. The deadline it was now appreciated was to be calculated by reference to calendar days and not working days. The error was not the fault of the appellant. The error had not been appreciated when the initial grounds of appeal had been settled. An extension of time was requested. In relation to ground 1 (failure adequately to consider the expert evidence) it is helpful to set out the detailed challenge as follows:

"13. As stated in the previous grounds of appeal, the central issues for the Tribunal were whether there was sufficiency of protection for the appellant in Afghanistan and whether there was a viable and reasonable internal relocation alternative. This was because the Appellant's general credibility had been accepted by the Respondent and was not in dispute: paragraphs 21 to 23 of the Home Office Refusal Letter.

14. The expert evidence of Dr Giustozzi, visiting professor at the War Studies Department of Kings College, University of London, was relevant to the issues in dispute between the parties and Dr Giustozzi found (*inter alia*) that:

- a. the Appellant would be targeted by the Taliban – for interrogation in the very least, as his family were accused of refusing to hand over the weapons cache [5];
- b. the Taliban would expect the Appellant – as the eldest able-bodied male in his family – to seek [to] avenge his father's death [6];
- c. the Taliban may accuse the Appellant of spying on them as a means of executing him arbitrarily [8];
- d. the risk to the Appellant from the Taliban would be greatest in his home area, but also in Jalalabad [9]-[10] and Kabul [22]-[25];
- e. the Appellant would not be able to hide from the Taliban in Afghanistan [11]-[14];

- f. the police are corrupt, inefficient and are known to collaborate with the Taliban, they could not provide sufficient of protection [15]-[21], [26];
  - g. it would be very difficult for the Appellant to earn a livelihood if returned [42].
15. As stated above, in refusing permission, the First-tier Tribunal judge stated merely that as regards ground 1, 'the judge considers the expert report at paragraph 41 and gives adequate reasons for not accepting the evidence given by the expert'.
16. With respect however, this finding fails to address entirely the substance of ground 1 and does not in any way engage with the arguments contained therein, namely that the JFTT had materially erred in failing to take into account the country expert's evidence (on the central and material issues of internal relocation and state protection, given that the risk to the appellant in his home area had already been conceded by the Respondent) for at least 3 reasons.
17. Firstly, that apart from §6 of the expert report, the JFTT does not otherwise expressly reject or accept the conclusions reached by the expert, save for the criticism based on the dates of the sources, which itself is unfounded. This is because the JFTT criticises Dr Giustozzi's references to reports dated 2005 and 2006 (regarding blood feuds) as being outdated, when really there was no evidence before the JFTT that the sources were outdated in the sense of being superseded by later events or subsequent evidence to the contrary. Furthermore, although the JFTT referred to what he considered outdated evidence, he failed to refer entirely to the additional evidence regarding blood feuds cited by Dr Giustozzi immediately thereafter, in the same paragraph, which are dated 2012 and 2014. Indeed, no reference is made to the 2015 sources (see e.g. tables and maps at §9 of the report and footnotes at §§27 and 30) or to the fact that Dr Giustozzi at §1 also notes that he has made several trips to Afghanistan in 2016.
18. Secondly, that in relation to §6 of the expert report (in which Dr Guistozzi concludes that on the basis of Afghan social mores, the Taliban would suspect the Appellant to avenge his father's death), the JFTT rejects this as speculative as it *'was not previously claimed by the Appellant and is not supported by the evidence [as his] family members continued to live safely in his home village and Jalalabad [41].* However, whilst the words 'blood feud' may not appear in the appellant's witness statement, clearly it is the Appellant's evidence in substance that there was a blood feud (see e.g. [25] of the Determination where he is recorded as saying *'the custom in the tribal region is if someone is killed the person will kill all male members of that family to prevent revenge in the future'*). Therefore, if the substance of the appellant's



overall claim is considered fully and properly, it cannot reasonably be said that the Appellant had not referred to a blood feud. As to the JFTT's second reason for rejecting the report – namely that the Appellant's family have not been harmed – it should be noted that the report suggests that pre-pubescent males and females are not targeted [6]. Even on the basis that the Appellant's brothers were aged 12/13 (and not younger) in 2015 when he claimed asylum, they would remain pre-pubescent at the date of the hearing and so not yet at risk. It was therefore submitted that this was not a proper basis, for rejecting the report's conclusions as 'speculative'.

19. Finally, that the JFTT did not engage at all with the expert's conclusions on how the Taliban would be capable of locating the Appellant and the absence of sufficient protection from the police (as summarised at §4(d)-(f) above)."
15. The challenge in ground 2 was as before. The judge had gone behind the concessions as to the appellant's general credibility.
  16. Permission to appeal was granted by an Upper Tribunal Judge on 15 March 2017. The judge granted permission principally on the points set out at paragraphs 18 to 19 of the grounds which I have reproduced above and for the reasons given in ground 2 – the appellant's general credibility having been impugned when it was not in issue. The Upper Tribunal Judge found:
 

"It is arguable that the judge has failed to take into account the expert report in relation to why the appellant's siblings may not have been targeted and may have been able to remain in Afghanistan. It is also arguable that the judge has failed to deal with the expert's evidence as to protection from the Taliban if the appellant were to relocate elsewhere in Afghanistan. In relation to ground 2, while the judge has given a number of reasons for finding the appellant not credible which ultimately may have entitled her to find against him, the respondent had accepted that the appellant's claim as to risk in his home area was credible. It is arguable that if the judge intended to find against the appellant in relation to the core of his claim, she should therefore have put him on notice."
  17. The respondent filed a response on 23 March 2017 noting that the Upper Tribunal Judge had not dealt with the timeliness issue and therefore there was no basis for considering the substantive issues. In relation to the substantive points there had been changes and additions to the appellant's evidence on the day of the hearing and on the basis of the evidence it was clearly open to the judge to make adverse findings and to go behind what had previously been accepted by the respondent. The appellant's representative should have been alive to the issues and it was not incumbent on the judge to draw them to the attention of the appellant.
  18. There was a skeleton argument noting that the judge had failed to consider all the evidence in the round before making her findings – she had made her findings before

any consideration had been given to the expert country report at paragraph 41. Reference was made to **SA (Somalia) [2006] EWCA Civ 1302** at paragraph 32 where the court referred to what has been known as the “**Mibanga**” point. Medical evidence should not be treated as an add on and so it was argued by the representatives in this case the expert report should not be considered as an add on. In relation to ground 2, it was submitted that the respondent’s concessions were clear and unequivocal and were not formally withdrawn during the hearing and as such the only matter at issue in the appeal was whether the appellant would be able to internally relocate. Reference was made to **Kalidas (agreed facts - best practice) [2012] UKUT 00327 (IAC)** at paragraph 35:

“Judges, unless in exceptional circumstances, do not look behind factual concessions. Such exceptional circumstances may arise where the concession is partial or unclear and evidence develops in such a way that a judge considers that the extent and correctness of the concession must be revisited. If so, she must draw that immediately to the attention of the representatives so that they have an opportunity to ask further questions, lead such further evidence, and make such further submissions as required. An adjournment may become necessary.”

19. In relation to the issue of timeliness reference was made to **BO (extension of time for appealing) Nigeria [2006] UKAIT 00035**. In paragraph 16 of **BO** a delay by representatives may be a satisfactory explanation.
20. Although the Upper Tribunal Judge had not expressly extended time the grant of permission would be conditional on time being extended.
21. Counsel relied on the grounds. In relation to ground 1 the expert report had not been referred to until after the findings had been made. There had been no analysis or scrutiny of the expert’s report on the question of relocation to Kabul or Jalalabad. The expert had given a detailed analysis of the current situation in Kabul. The appellant would not be able to afford accommodation on such salary as he might obtain from working. This had all been ignored by the First-tier judge.
22. Jalalabad was one hour’s drive from his home area where the respondent had accepted that he was at risk. The expert had said that the appellant could not relocate and would still be at risk.
23. The expert report had simply been considered after the findings – by analogy the **Mibanga** point was relevant.
24. In relation to the concession issue, the judge had given no indication that she was going to go behind the concession.
25. Mr Tufan in relation to the timeliness issue noted that the delay had been the error of the representatives. In relation to the concession he submitted that the judge had not gone behind the points the respondent had expressly conceded in the refusal letter.

There had been doubts about the appellant's story but the respondent had resolved these in favour of the appellant.

26. In relation to the **Mibanga** point the judge had considered the expert's report. The European Court of Human Rights had considered a report by the expert in **H & B v United Kingdom 70073/1044539/11** and had stated in paragraph 108 as follows:

“Finally, the Court is unable to attach weight to the report of Dr Giustozzi submitted by the first applicant (see paragraph 71 above). The Court agrees with the Government's submission (summarised at paragraph 86 above) that the report appears to have no relation to the individual facts of the first applicant's case as submitted both before the domestic authorities and this Court and it therefore cannot assist him. “

27. The appellant had completely changed his story and was arguing that the Taliban were after him so that they could turn him into a suicide bomber.
28. In relation to the concession, there was no record in the Presenting Officer's minute of the proceedings to a concession being withdrawn.
29. The Tribunal had found in paragraph 253 of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)** that the appellant would not be at risk on returning on his own without any family support to Kabul. Assistance would be available to returnees and there was a very significant level of support provided – see paragraph 212 of the country guidance. The appellant could therefore relocate to Kabul irrespective of whether he could go to Jalalabad. There was no material error of law.
30. Mr Sellwood in reply submitted that the concession that had been made by the respondent was much broader than Mr Tufan had acknowledged. The appellant's general credibility had not been criticised.
31. The expert's report was personalised and tailored to the appellant and was not generic.
32. In relation to the blood feud point the appellant's claim had always been that he would be killed by the Taliban and the risk had not changed. In the country guidance the appellant had an uncle in Kabul but the appellant had no family ties to assist him getting accommodation. Paragraph 243 of the country guidance made it clear that “in every case there needs to be an enquiry into the applicant's individual circumstances; and what those circumstances are will very often depend on the nature of specific findings made about the credibility of an appellant in respect of such matters as whether they have family ties in Kabul. But here our premise concerns an appellant with no specific risk characteristics and someone found to have an uncle in Kabul... “. The expert had found that there would be a risk to the appellant and that the appellant could be tracked down – see paragraphs 11-15 of the report. Those with mental health problems might not be accepted. The Taliban could extract information through the use of informers. If there was a material error

of law a fresh hearing would be required before the First-tier Tribunal it was submitted. Mr Tufan agreed.

33. At the conclusion of the hearing I reserved my decision. I remind myself that I can only interfere with the judge's decision if it was materially flawed in law.
34. A preliminary point concerns the issue of the appeal being out of time.
35. This was a delay that was not explained in the application to the First-tier Tribunal for the reason that the representatives were unaware that they were out of time.
36. This was an application made during the Christmas period where days are identified as non working days. The representatives understandably but mistakenly assumed that time would not run during these non working days. In fact as was now acknowledged the time is calculated by reference to calendar days. The fact that they are non working days is not entirely irrelevant to the computation of time in this case because time did elapse on a non working day and accordingly would not have been deemed to have been out of time if it had been received on the next working day. However even making allowance for that the application was out of time.
37. In granting permission the Upper Tribunal Judge may be taken to have extended time by implication as her reasons are prefixed with the words "including any decision on extending time". However, if the application to extend time had been overlooked then the grant of permission would have been conditional on time being extended - see for example **Samir (First-tier Tribunal permission to appeal: time) [2013] UKUT 00003 (IAC)**. In that case it was a decision of the First-tier Tribunal that was in issue. The First-tier Tribunal had overlooked the application to extend time. In considering the question of an extension I am guided by the principles recently summarised by the Court of Appeal in **AM (Pakistan) & Ors v Secretary of State for the Home Department [2017] EWCA Civ 180** at paragraph 3 per Elias LJ:

"We have considered the relevant authorities including Mitchell v News Group Newspapers Ltd. [2013] EWCA Civ 1537; [2014] 1 WLR 795; Denton v TH White Ltd. [2014] EWCA Civ 906; [2014]2 WLR 3926 R (Hysaj) v Secretary of State for the Home Department [2014] EWCA Civ 1633; [2015] 1 WLR 2472. These cases require the court to consider the following factors in three stages: first, the seriousness and significance of the failure to comply; second, the reasons for that failure; and third, to evaluate all the circumstances of the case in order to deal justly with the application. As the court pointed out in Hysaj, para.42, there is no special rule for public authorities and no special leniency is shown to public bodies."

38. The Secretary of State in **AM (Pakistan)** had relied on out of date material in the White Book. In extending time the Elias LJ stated: "The breach is relatively minor; I would not describe it as trivial, but it is not very significant. Second, although there is no excuse for failing to comply with the rule, and it was not suggested that reliance on an outdated text provided one, the explanation does at least show that

this was not a cavalier disregard of the provisions. Third, when taken in the context of a relatively minor breach, the circumstances in my view make it just to allow the extension of time. There is no prejudice to the applicants in terms of their ability to respond to the appeal; and the case raised a point of real importance in public law.”

In this case the delay while not trivial was “not very significant” in my view and the mistake was not a mistake by the appellant. It was a mistake by the representatives. The mistake has been explained. It was in my view understandable and not a “cavalier disregard” of the rules. There is no real prejudice. The fact that the grounds submitted have been found to be arguable and permission to appeal has been granted indicates that the grounds are not without merit. Accordingly, having regard to all relevant considerations it is appropriate to extend time in this case.

39. This was a case in which the appellant’s general credibility was not questioned by the respondent. The judge focused on the narrow factual concession but did not give weight to the fact that there was a general concession as to the appellant’s credibility: in paragraph 21 of the decision letter the respondent expressly stated “your general credibility is upheld”. The appellant’s statements were viewed as coherent and plausible and the background to the appellant’s claim was set out – he had arrived as an unaccompanied asylum seeking child.
40. Mr Tufan accepted that there was no minute on the Presenting Officer’s file to the effect that the concession was withdrawn at the hearing. It was said in the respondent’s response that the appellant’s representatives should have been alive to the issues. It was not incumbent on the judge to draw them to the attention of the appellant.
41. With respect, if the respondent intended to resile from the concessions of fact that had been so clearly made in the letter of refusal the respondent should have drawn the matter to the attention of the parties and the judge. The appellant’s case had been prepared on the basis that his general credibility had been accepted and no doubt the expert’s report would have been written on that basis.
42. If the judge had had doubts about the appellant’s general credibility, and was of the view that the correctness of the concessions should be revisited, then, applying what was said in paragraph 35 of **Kalidas** her concerns should have been drawn immediately to the attention of the representatives “so that they have an opportunity to ask such further questions, lead such further evidence and make such further submissions as required”.
43. In **Kalidas** the position was that there had been a Case Management Review hearing and there had been a brief note about what had been agreed. This case is rather different in that the respondent had written a lengthy refusal letter including her considered reasoning in respect of the concession. In such a case it was in my view for the Presenting Officer to make it clear to the judge at the hearing in what respect it was sought to withdraw that concession and for the judge to take such steps as

advised. In any event the judge should not have gone behind a concession without alerting the parties.

44. In relation to the expert report, of course it is a matter for a judge as to what order he or she deals with particular aspects of the evidence. However it is of note that the judge found the appellant's account to lack credibility before turning to considering the report and the analogy with **Mibanga** is properly made. I have set out in detail the grounds of appeal in relation to the treatment of the report and I will not repeat them. I do not find expert's report can be criticised by reference to what was said in the case of **H & B**. The expert's report was sufficiently tailored to the appellant in this case – it was not a generic report.
45. I am very grateful to the assistance given by both parties in this appeal. They were of the view that if a material error of law was identified the appeal should be remitted for a fresh hearing. I agree that that is the appropriate outcome in this case given the degree of fact-finding that is required.
47. If the appellant's credibility is to be put in issue then the respondent must make this clear. The appeal is remitted for a fresh hearing before a different First-tier judge.
48. The anonymity order continues.

**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.

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 15 May 2017

G Warr, Judge of the Upper Tribunal